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LEGAL UPDATE

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INSURANCE MARKET

Following the significant amendments of the Law on insurance and reinsurance in Romania, in the middle of this year, in the light of the negotiations between Romania and the European Union on the chapter "Free movement of services", requiring profound reforms of the Romanian financial market (reforms already performed in the banking field and on the capital market) it was insurance and insurance brokers' turn.

The adaptation was achieved by amending and completing Law no. 32/2000 regarding the insurance companies and the supervision of insurance by Law no. 403/2004 that expressly indicates for the first time the whole series of community Directives which determined the legislative transpositions.

These significant amendments consist both of clarifying many of the already existing provisions and in setting new rules regarding authorisation and operation of insurance and reinsurance companies and of the insurance brokers, most of which came into force at the end of October while some shall be enforced at the time of Romania's accession to the European Union.

Terminology unification and enrichment

The new law brings a whole series of clarifications on the specific insurance terminology, on the one hand by harmonising the definitions common to the financial market (such as: *significant shareholder, significant person, control, mother* and *affiliated company, participation, "tight" relations, holding, group*) and on the other hand by inserting the definitions required by the regulation of the insurance, reinsurance and insurance brokerage activity carried out by entities with registered office in a EU member state, so as to really deregulate these services.

Moreover, specific notions regarding the relations existing on the financial market between the credit institutions, the investment companies and the insurance companies were also inserted, giving definitions of such notions as: *financial conglomerate* (that refers to a group of companies run by an insurance company, a credit institution or an investment company, or if these are the mother company of a financial entity, or if 40% of the total annual balance sheet of a group is related to financial entities) ; or *intragroup transactions* (referring to certain transactions within a financial conglomerate or concerning insurance companies, credit institutions or investment companies as an integral part of it).

Insurance classes

One of the most important change of the Romanian insurance market is the so long desired separation between the two categories: general insurances and life insurances, thus setting that an insurer can carry out only one of these two activities, requirement that is also comprised in Directive 2002/83/CE of the European

Parliament and of the Council on life assurance. Consequently, all insurance companies in Romania currently authorised to simultaneously deliver life insurances and general insurances shall be obliged to separate these activities into different companies by December 31, 2005.

Moreover, the insurance classes that may be delivered by the insurance companies are now set forth by the Law no. 403/2004 (respectively by a specific appendix forming an integral part thereof), as opposed to the previous regulation which was an Order issued by the Insurance Supervising Commission ("**ISC**").

Authorisation of insurers

The entire procedure for the authorisation of insurers and reinsures was reviewed in the sense that the previous double authorisation was eliminated (authorisation and operation) and the principle of freedom of establishment and of freedom to provide services were fully enforced. Thus was set the rule according to which the authorisation granted by ISC to an insurer is valid all over the European Community and the member states of the European Economic Space. Uniform rules regarding authorisation of insurers headquartered outside the European Union and wishing to establish a branch or agency in Romania were also distinctly set, with the obligation that they requested the official authorisation from ISC. The cases in which ISC can withdraw the operation authorisation have been regulated in detail too.

New principles regarding the operation of insurers

The amendments are also significant as regards the rules concerning the operation of insurers and the requirements that should be met cumulatively. In this respect, besides the minimum share capital (the level of which remained unchanged) and the solvency margin (for the calculation of which the following categories have been introduced: *minimum* solvency, *available* solvency and *adjusted* solvency), the newly introduced notion of *security fund* makes it possible to use the method for calculating the solvency margin for supervising the financial stability of insurers in accordance with the community regulations.

Another particularly important aspect is that when this new law comes in force, the insurance companies shall keep a *register with the assets* that form the technical reserves and shall have a financial auditor perform an *audit of their annual financial reports*. The conditions regarding the approval of the portfolio transfer, including when performed between a Romanian insurer and an insurer residing in the European Union have also been tackled by the new regulation.

Insurance brokers

The regulation regarding insurance brokers was completed and enriched. The legal provisions in force expressly stipulate the domain-specific incompatibilities, as follows: (i) the incompatibility of holding both the capacity of insurance agent and of

insurance and/or reinsurance broker; (ii) an insurance agent can not intermediate the same classes of insurances for more than one sole insurer; (iii) an insurance and/or reinsurance broker can not be a significant shareholder or a significant person of an insurer and/or reinsurer while an insurer/reinsurer can not be a shareholder or an administrator of an insurance and/or reinsurance broker; (iv) the principle that the insurance and/or reinsurance brokers can not carry out their activity by means of insurance agents.

Insurance Supervising Commission

In order to efficiently enforce the legal framework concerning the insurances it became necessary to enhance the ISC's capacity to regulate, supervise and control, the attributions of which were enlarged especially so as to ensure the means needed for a prudential supervision. Furthermore, the characteristic principle of financial supervision authorities was inserted therein, according to with ISC is the only authority able to decide on the opportunity reasons, on the assessments and quality analyses which ground its acts being issued, and if the ISC's acts are contested in court, the court is to rule only on lawfulness of such acts.

COMMERCIAL LAW

The recently adopted Law no. 359/2004 regulating the formalities for the registration with the trade register and the authorisation for the operation of the legal persons (published in September 2004), has already undergone amendments and completions as a result of the adoption of the GEO no. 75/2004 (Official Gazette of Romania no. 932 of 12.10.2004).

This amendment aims to continue the simplification of the registration with the trade registry by means of the widely used standard statements on own responsibility of those having to comply with the registration procedures.

Reduced term for authorisation of legal persons' operation

Following the amendments introduced by GEO no. 75/2004, the persons requesting to be registered with the trade registry may file standard statements in which they take full responsibility regarding the lawful conditions in which they shall perform the stated activities.

If before the GEO no. 75/2004 the operation authorisation was issued only subsequent to the certificate of registration of the legal person, the new regulation enables the legal person setting up to get the authorisation in the same time as the proper registrations, on the basis of statements on own responsibility filed by the shareholders or administrators, in accordance with the law.

Following the introduction of this procedure, the term within which the registration certificate or, as the case may be, the certificate for registration of mentions is issued is reduced to 3, respectively 5 days

from the registration of the request, unless otherwise provided by the delegated judge.

Fiscal registration

The sole registration code is granted by the Ministry of Finance, provided that the registration request was approved by the delegated judge. This code shall be granted within maximum 8 hours from the electronic transmission of the necessary data by the competent Trade Register Office.

Checking the correctness of the statement

In order to enable the competent authorities to check the truthfulness of the statements, the Trade Register Office shall provide such authorities with the necessary information on the legal persons within 3 days from the registration with the trade registry.

If it is found that the legal requirements for operating are not met, the applicant is granted a term, extendable on express demand from the applicant, so as to remedy the irregularities found. If the irregularities are not remedied in due time, the authorities shall notify the trade register office about the prohibition act for the respective legal person to perform its activity, so that this be registered with the trade register.

Change of registration certificates and of tax registration certificates

As regards the terms within which the registration certificates and the tax registration certificates shall be changed, the GEO no. 75/2004 sets the time limit on December 31st, 2004.

PRIVATE SCHOLARSHIPS

The private scholarships alternative, anticipated by the Law on education as well as by the provisions regarding the actions to uphold private education, was recently the subject of a new normative regulation, namely Law no. 376/2004, which came into force in early October. If the types of scholarship granted from the state budget were clearly regulated (excellence scholarships, merit scholarships, study scholarships or social aid), those to be granted from private sources have generically fallen under the loose category of scholarships, study credits, donations or sponsorings. Thus, it became necessary to regulate the concrete conditions for granting private scholarships and the benefits they bring both to the beneficiary and to the sponsor.

The new Law roughly sketches the framework in which a pupil, an undergraduate or a postgraduate student within an accredited higher education institution in Romania or abroad or a doctorand may receive a study financial aid from a private law legal person or from a natural person, including from a person engaged in independent activities.

A private scholarship shall be granted only on the basis of an agreement that comprises all the provisions regarding the way the beneficiary must fulfil its study obligations,

the quantum of the scholarship, its duration, the possible obligation of the beneficiary to work upon graduation for a certain period as an employee with the legal or natural person granting the scholarship, agreement to be also signed by the receiving institution.

Legal restrictions on granting private scholarships

Certain legal limitations to be considered when granting a scholarship have also been set, such as: it is forbidden to grant a scholarship to relatives or in-laws up to the fourth degree included, whereas the minimum monthly quantum of the scholarship is set to the level of the minimum salary (currently ROL 2.800.000) provided that this amount covers at least the accommodation and meal expenses or the board and lodging fees. Another major restriction is that the beneficiary is not allowed to work for the person or entity that grants the scholarship or for any other person designated by it, during the whole period of the scholarship.

Tax deductibility

Unfortunately, for the moment the new regulation benefits only to the beneficiaries of such scholarships who now enjoy a clearer contractual frame, whereas for the sponsors there are no tax facilities other than those previously provided by the Fiscal Code. Thus, although the law describes the principle of tax deductibility for the amounts allocated to private scholarships, in fact it only reiterates the limits of sponsoring deductibility already set by the tax regulations in force and anticipated for the period following January 1st 2005 (a limit of 3% of the turnover without exceeding 20% of the income tax). In addition, the fact that the amounts granted as private scholarships are not subject to taxation is no news for the beneficiary either since this type of income has always been considered as a non-taxable income.

Consequently, although certain Romanian private operators have already granted study scholarships for the domains in which they practice and the training and professional specialisation expenses exceed in many cases the deductibility limits, the new Law on private scholarships is not a real incentive that proliferate sponsoring for education purposes, precisely because it did not rise the deductibility rate related to these amounts, the sole alternative remaining the amendments of the Fiscal Code, in the light of new tax policies.