

Cover article: "Mandatory home insurance. The Insurance Pool Against Disasters (PAID)"

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According to innumerable statistics carried out both at an international and domestic level by the competent authorities, Romania ranges among the countries that present a high risk of natural disaster occurrence, as well as of extreme weather events such as earthquakes, floods, landslides. Given this situation, this month's article covers the issue of mandatory home insurance against earthquakes, landslides or floods as part of the Romanian Insurance Program Against Disasters, as well as the role of the Insurance Pool Against Disasters (PAID).

Legislative Retrospective

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- Banking
- Competition
- Private Pensions
- Real Estate
- Tax

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**Florina Tanase, Vice-President Legal
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- Voicu & Filipescu assisted the real estate developer Bel Rom, one of the most active retail park developers on the Romanian market in the sale of European Park Braila to the British private equity fund New Europe Property Investments (NEPI), a EUR 63 million transaction.
- This year Romania marks 150 years since the establishment of the Law School, one of the first three founding Faculties of the University of Bucharest. As part of its giving back policy, Voicu & Filipescu became one of the main sponsors of the celebrating events organized on November 25-26, 2009.

MANDATORY HOME INSURANCE. THE INSURANCE POOL AGAINST DISASTERS (PAID)

NATURAL DISASTER RISK IN ROMANIA

According to innumerable statistics carried out both at an international and domestic level by the competent authorities, Romania ranges among the countries that present a high risk of natural disaster occurrence, as well as of extreme weather events such as earthquakes, floods, landslides.

Nevertheless, there is too little reasonable anticipation and awareness of the damages impossible to cover that such phenomena might trigger, as well as little understanding of the need to underwrite home insurance policies, as only 10% of the total number of dwellings benefit from protection under optional insurance schemes.

Unfortunately, though, the incidents in the past years when Romania saw itself faced with various weather events, the floods and the landslides bringing about million-euro damages in each of the high risk areas for years in a row have led to the introduction of draft laws aimed at bringing together prominent players of the private insurance field, supported by state public authorities, as well as by international forums.

FIRST INSURANCE PROGRAM AGAINST DISASTERS

Thus, in 2004, the Ministry of Administration and Interior, the Ministry of Environment and Water Management, the Ministry of Transport, Construction and Tourism and the National Agency for Mineral Resources were appointed responsible for the initiation and development of a complex draft with a view to strengthen Romania's financing and management capacity in emergency situations, including as well the working out of an insurance program against disasters.

For the purpose of the conduct and implementation of the Romanian Insurance Program Against Disasters (the "Program"), the Romanian Government decided in 2005 to establish the Disaster Insurance Executive Committee, as an inter-ministry structure within the National Committee for Emergency Situations, the main function of which consisted in the preparation of national policies and legislative drafts concerning insurance against disaster, and in particular in the taking of action with a view to meet the objectives set out under the Loan Agreement between Romania and I.B.R.D. in relation to the funds granted for the Hazard Risk Mitigation and Emergency Preparedness Project, ratified by Law no. 398/2004.

The next step to take was to create an independent institutional and legal framework for the implementation of the Program, and thus, after extensive debates on the institutional form of implementation of mandatory home insurances, Law no. 260 on mandatory home insurance against earthquakes, landslides or floods was enacted in 2008, following that it come into force in March this year, and such law regulated the establishment of the Insurance Pool Against Disasters ("**PAID**") and the underwriting by the same of home insurance policies.

INSURANCE POOL AGAINST DISASTERS

Pursuant to this law, PAID takes up the form of organization and operation of an insurance-reinsurance company, as a structure resulting from the association of those insurance companies authorized to underwrite mandatory home insurances of the type of Insurance Policies against Disasters, in accordance with the provisions under Law 260/2008. The scope of PAID is to manage the activity of the mandatory insurance of homes against disasters, such as earthquakes, landslides or floods, being under the surveillance of the Insurance Supervisory Commission, which will act both as the main regulatory body and as a self-regulatory body in specific matters or by means of issuing organization and operation regulations.

The main activity of the Pool includes the activity of insurance carried out in Romania, consisting primarily in the provision, negotiation and execution of Insurance Policies against Disasters, in the collection of premiums, damage settlement, as well as in the investment or increase of the equity generated by the business activity conducted. The insurers authorized by the Insurance Supervisory Commission to underwrite mandatory home insurances against disasters will conclude Insurance Policies against Disasters either directly or through the intermediary of brokers, in accordance with the applicable legal regulations.

The establishment of PAID actually stands as a solution to moderate social and financial pressures on the state in the event that disasters occur, following that PAID cover any potential damages of the dwellings owned by private or legal persons, as a result of disasters such as earthquakes, landslides or floods. PAID is also the institutional platform whereby such risks will be reinsured by specialized companies outside Romania. Yet, considering the potential difficulties likely to be encountered upon the registration of these risks with PAID's balance sheet, the law provides for specific mechanisms by means of which the state will grant financial support to PAID in its first five years of activity in the form of loans which are to be added to the PAID funds in order for reinsurance premiums to be paid or for any potential losses to be covered.

PAID was established on September 23, 2009 by consensus of 13 insurers, of which 4 hold each the maximum interest admitted by law, and namely 15%, whereas the other 9 founding members have contributed each with the minimum amount of EUR 250,000, holding thus 5.5% of the total share capital of PAID. The share capital of PAID currently amounts to Lei 19,341,819, the equivalent in Euro of 4,545,455 on the basis of an exchange rate of EUR 1 = RON 4.2552, an amount that is in some people's opinion insufficient to ensure a significant net withholding from the insured risk and the negotiation of the reinsurance agreement on better terms.

Once it is established and registered with the Trade Registry, PAID may proceed to perform any and all acts for the execution of the legal deeds required to start conducting activities and to prepare for the first year in which mandatory insurances are to be underwritten. Pursuant to the law, the maximum insured amount is of EUR 20,000 for the A-type dwellings (buildings the structure of which is made up of reinforced concrete, steel or wood or the outer walls of which are made up of stone, burnt brick or of any other materials subject to thermal and/or chemical treatment) and of EUR 10,000 for the B-type

dwellings, respectively (buildings the outer walls of which are made of non burnt brick, soil or of any other materials which had not been subject to any thermal and/or chemical treatment). The premiums due for the herein stated insured amounts are of EUR 20 for the A-type dwellings and of EUR 10 for the B-type dwellings, respectively, and such values can only be adjusted by Government Decision.

For the following period, it is expected that the legislative framework be aligned to PAID's specific operation-related needs and the population be informed on the mandatory nature of these insurance policies, as well as on the benefits in relation thereto, to which effect the public authorities, among which the Insurance Supervisory Commission, play an important part.

DRAFT AMENDING LAW 260/2008

In addition to the aforementioned objectives, the Ministry of Administration and Interior drafted this summer a draft law amending Law no. 260/2008, the most prominent of the proposed amendments being the following:

- (i) the dwellings presenting high seismic risk further to the seismic surveys carried out by public authorities will not be insured;
- (ii) the insurers will be conferred the rights and obligations set out under Law 260/2008 on behalf of PAID, whereas the obligations to both pay indemnities and the counter value of repair costs up to the limit of the overall amount insured under the Insurance Policy against Disasters, and offset the expenses incurred by insurers with respect to the ascertainment and appraisal of damages, will be incumbent upon the latter;
- (iii) in the event of a disaster, should the PAID net withholding be overrun, indemnities will be paid by PAID after the respective amounts have been collected from reinsurance;
- (iv) the mandatory insured amount and the insurance premium will be adjusted by Order of the President of the Insurance Supervisory Commission (as opposed to adjustment by Government Decision as the current wording of the law provides for);
- (v) the insurer will underwrite the mandatory home insurance with the new owner in prior to the expiration of the validity term of the disaster insurance policy;
- (vi) the shareholders of PAID cannot be held liable to cover from their own funds any differences between the awarded indemnities and the PAID available funds;
- (vii) the notion of group is inherently defined – companies controlled by the same persons/group of persons.

The draft had been subject to public debate until August 16, 2009, the date by which the Ministry of Administration and Interior expected to receive comments. The final form will have to be submitted to the Legal Boards of the Parliament and will come into force upon the publication of the amending deed in the Official Gazette. Until then, the regulations applicable to the Insurance Pool against Disasters and to the insured of the same remain Law 260/2008 with its current wording and the Norms issued by the Insurance Supervisory Commission for the implementation thereof.

banking - legislative restrospective

Regulation of the National Bank of Romania ("NBR") no. 19/2009 amending NBR Regulation no. 1/2001 on the organization and operation of the Payment Incident Bureau within the National Bank of Romania. According to such amendment, in the event that a declarant – the bank, as drawee bank, of the drawee or of the underwriter, decides to refuse payment of the cheque, promissory note or bill of exchange, such declarant will be held liable to lodge with the Payment Incident Bureau an application for the registration of the bank refusal, by no later than the banking day following the day of refusal.

NBR Regulation no. 20/2009 on non-bank financial institutions, published in the Official Gazette no. 707 of October 21, 2009. This Regulation applies to non-bank financial institutions - Romanian legal entities, and to the Romanian branches of financial institutions - foreign legal entities, and it regulates the registration of non-bank financial institutions with registries, the notification of any alterations occurred in the standing of non-bank financial institutions, the prudential requirements applicable to the non-bank financial institutions registered with the Special Registry.

NBR Regulation no. 21/2009 on payment institutions, laying down the rules for the establishment and business operation of payment institutions, Romanian legal entities, as well as the prudential supervision of the business thereof. To this effect, this Regulation regulates the requirements and documentation to be submitted to the National bank of Romania in order for such payment institutions to be issued operation permits, the notification procedure of the NBR for the provision of payment services through the intermediary of agents, the methodology for the calculation of the minimum amount and the structure of equity, the measures for the protection of funds granted with the aim that payment operations be carried out, the notification procedure of the NBR with respect to the alterations occurred in the standing of payment institutions and in the reporting-related requirements.

competition - legislative retrospective

Law no. 321/2009 on the marketing of food products, published in Official Gazette no. 705 of October 20, 2009.

The provisions stipulated in the new normative act, which shall come into force within 30 days following the date of its publication, set out the payment obligations between the tradesperson and the supplier of food products. Thus, the law provides that, for fresh food products, the tradesperson's term of payment to the supplier should not exceed 12 days. For frozen products, the payment term should not exceed 20 days, and for any food products other than those that are fresh or frozen, the tradesperson's term of payment to the supplier should not exceed 35 days. The law also sets out that for failing to comply with their contractual obligations, the parties may set out penalties in an equal quantum, but for failing to comply with the aforementioned payment terms, the defaulting party shall be obligated to pay daily penalties representing twice the interest of the NBR reference rate, calculated on the owed amount.

At the same time, the new law offers protection against anti-competition practices. A series of clauses are prohibited in the agreements regulating the supplier-tradesperson relationship:

- The agreements under which parties bind each other to purchase/sell services from/to a third party;
- The clause whereby a tradesperson prohibits a supplier from selling to other tradespersons the same products at an acquisition cost that is either lower than, or equal to, the price for which the former acquired such products.
- Unilateral delisting (ceasing the sale of the products representing the object of the agreement), without prior notification (two months in advance), save in the case where the delisting is due to the supplier's contractual default.
- Sacrifice product sale (at a cost that is lower than the acquisition cost), save in the events provided for in case of bargain sales, clearance sales etc.

It is prohibited for tradespersons to request and to cash from the supplier services that have no direct connection to the product sale operation and are not included in the acquisition cost. The following fees are especially prohibited:

- fees related to the extension of the tradesperson's distribution network;
- fees in view of the arrangement of the tradesperson's sale areas; and
- fees for the promotion of the tradesperson's activity and image.

The agreements containing provisions that contradict the new regulations must be adjusted within 60 days following the date when the new law comes into force.

private pensions - legislative restrospective

On October 7, **the Private Pension System Supervisory Committee („CSSPP”)** decided **to adopt Norms 16/2009 and 17/2009, respectively** and, by means of such norms, to adopt the one-year extension, beginning from November 3, 2009, of the waiver term for the maximum limit applicable to the investments of private pension funds in government securities, such measure being taken in view of protecting the participants' assets in the current economic context.

We must reiterate the fact that, according to Norm no. 22/2008 for the temporary amendment of the maximum limit applicable to the investments of privately-administered pension funds in government securities, currently amended by Norm no. 16/2009, the administrator of a pension fund may decide that, over a period of 365 days, it may invest in government securities in Romania or in the European Union member states, exceeding 70% of the total value of the pension fund's assets. The regulation also exists in the facultative pension system, Norm no. 23/2008 for the temporary amendment of the maximum limit applicable to the investments of facultative pension funds in government securities, amended by Norm no. 17/2009.

During the same month, CSSPP approved, in its meeting of October 28, **the Norm on the collection and payment operations conducted through the bank accounts of facultative pension funds**, in view of better protecting the interests of the participants and beneficiaries in the Pillar III system. The Norm applies to pension funds, to the administrators and depositaries existing on the facultative pension market and clarifies the collection and payment operations conducted through the bank accounts of the facultative pension funds, for example: the operations regarding the wire transfers of the participants' individual contributions, the operations regarding the redeeming of the facultative pension fund's obligations, the operations regarding the payment of the equivalent value of the facultative pension fund's participant's net personal assets in cases of invalidity, in the event of death and in the event that said participant obtains a retirement right, the operations regarding the discounting of transactions with financial instruments, the operations regarding the transfer of the participants' assets among the facultative pension funds.

Also, the CSSPP's website one published, for purposes of public debate until November 5, 2009, **the draft Norm regarding the obligations of reporting and transparency in the system of privately administered pensions**, which shall regulate the reporting and transparency obligations and shall apply to the administrators, depositaries and legal entity marketing agents. The draft Norm contains provisions regarding the administrators' obligations to inform the participants, as well as the obligations regarding the security of the informatics systems thereof.

real estate- legislative retrospective

Law no. 314.2009 amending Government Emergency Ordinance no. 30/2006 on the **verification of the procedural issues related to the process of awarding public procurement contracts, public works concession contracts and services concession contracts** was published in the Official Gazette no. 694/15.10.2009. The said amendment bears particular reference to the increase of the threshold values with respect to which the procedural verification of the process of awarding public procurement contracts is performed. The threshold values concerning the contracts which are to be subject to such verification are thus the values provided for under article 124 of Government Emergency Ordinance no. 34/2006, as follows: (i) for supply contracts-EUR 100,000; (ii) for services contracts-EUR 100,000; (iii) for works contracts-EUR 750,000. Under reasonable circumstances, upon request of certain public bodies or entities, the said procedural verification may be carried out as well for contracts of lower value.

In accordance with the new law, the verification procedure comprises the stages of the public procurement process undergoing after the publication of the notice and until the award and execution of the contract. In the situations where the law provides for the conclusion of a contract without the prior publication of the contract notice, the verification procedure shall commence upon the delivery of the invitation to take part in negotiation and shall last until the award and execution of the contract.

tax - legislative retrospective

Form letter no. 35/2009 of October 1, 2009 regarding the level of the **reference interest rate** of the National Bank, valid in October 2009 – sets out the level of the interest reference interest rate for the month of October at 8.50% per annum. The normative act was published in the *Official Gazette no. 648/ October 1, 2009*.

Emergency Ordinance no. 109/2009 of October 7, 2009 for the **amendment and supplementing of Law no. 571/2003 on the Tax Code** with respect to **terms and definitions, VAT, the profit tax, the tax on income and excises**.

1. Definitions, other general regulations

Additions are brought to the definition of the Romanian legal entity, the foreign legal entity, the resident person, the legal entity established in accordance with the European legislation.

The definition of marketable titles is implemented. The category of marketable titles also includes derivative financial instruments.

A mention is also inserted in the Tax Code with respect to the obligation to declare any services agreements concluded with non-residents, provided that such agreements are carried out (even partially) on the Romanian territory.

2. The income tax

The income tax shall be called **tax return**. The date for declaring and paying the final tax on the income obtained during the tax year shall be May the 25th of the year following the year for which the tax return is submitted.

The incomes obtained up to January 1, 2010, shall be declared and subject to taxation according to the legislation in force up to said date.

The following items shall not be included in the category of salary-related incomes, therefore they are not subject to taxation in the sense of the income tax: holiday tickets awarded under the law, as well as any benefits in the form of a right to a stock options plan at the time of awarding and at the time of exercise thereof.

If the incomes obtained from transferring the use of goods are obtained on the basis of over 5 lease agreements at the end of a tax year, beginning from the following year, the taxpayer shall include such incomes in the category of incomes obtained from independent activities.

3. Tax on the incomes of non-resident persons

The provisions of the Tax Code with respect to the incomes obtained by non-residents in Romania are supplemented by specific provisions referring to legal entities having their headquarters in Romania, established according to European legislation. According to this normative act, no tax is payable for the dividends paid by a Romanian legal entity or a foreign legal entity having its headquarters located in Romania, established in accordance with European legislation, to a legal entity residing in another EU

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member state, provided that certain requirements are met.

Beginning from 2010, the interest and/or dividends paid to pension funds, as the same are defined in the legislation of the EU member state, are tax exempt.

Non-residents must submit to the income payer a tax residence certificate, as well as an affidavit attesting to the fulfillment of certain requirements in view of applying the more favorable provisions of European legislation.

The term for submitting the declaration regarding the taxes withheld by the payers of such incomes shall be June the 30th of the current tax year, for the previous year.

4. The revenue tax

The amendments and additions brought by this ordinance to the revenue tax refer to: the inclusion of a new category of taxpayers (legal entity having its headquarters located in Romania, established in accordance with European legislation), the setting out of new terms for declaring and paying the revenue tax (on April the 25th of the following year for declaring the annual income statement, and February the 25th of the following year, inclusively, for submitting and paying the annual tax, in the event that the closing of the previous tax year is completed by said date), and the tax on dividends, respectively (on January the 25th of the following year, in the event that the distributed dividends have not been paid by the end of the year during which the annual financial statements were approved).

The category of incomes that are not subject to taxation also includes incomes obtained from the reimbursement or the annulment of the interest and penalties for which no deductions were awarded.

The increases and the penalties resulting from economic agreements concluded with foreign legal entities are no longer considered non-deductible expenses.

It is expressly specified that in the event that the degree of indebtedness exceeds three, the expenses with the interest and the net loss resulting from exchange rate differences, related to the loans taken into consideration at the calculation of the degree of indebtedness are non-deductible and may be carried forward into the following period until they become fully deductible.

In article 24, the accounting value of an asset is replaced by the notion of tax value of such asset at the time of its inclusion in the patrimony.

5. The value-added tax

The amendments brought by this ordinance with respect to the value-added tax refer to the following issues: § The amendment/supplementing of the significance of certain terms in the Tax Code and the provision of new terms (established in Romania, fixed head office).

- The location where the services are performed, which is set out in accordance with the **nature of the beneficiary of the services** (a taxable person, in which case the location where the services are performed shall be the place where the beneficiary has the headquarters where it carries out its business activity, or a fixed head office towards

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which the services are being performed, or a non-taxable person, respectively, in which case the location where the services are performed is the place where the supplier has established the headquarters for carrying out its business activity, or a fixed head office from which the services are being performed).

There are exceptions from this rule, set forth in the Emergency Ordinance (services performed with respect to real estate goods, passenger transportation services, the leasing of means of transportation, cultural, artistic services, services performed to non-taxable persons, etc).

- The triggering event and exigibility – setting forth the exceptions from the rule according to which the triggering event occurs on the date of delivery/performance of the goods/services, and the exigibility, respectively, occurs on the date when the triggering event (goods in consignment, stocks at the client's disposal, goods sent for testing purposes, etc).
- The deduction right: in the event of the delivery/performance of goods/services for which the beneficiary is obligated to pay VAT, the registration of the tax as a tax collected in the VAT statement pertaining to the tax period during which the tax becomes payable, no longer represents a mandatory requirement for the exercise of the deduction right.
- The reimbursement of the value-added tax: the persons who have not settled and have not been registered in Romania may request the reimbursement of the value-added tax, under the terms of, and in compliance with the procedure to be detailed in the norms.
- Turnover: when computing of the turnover (by reference to the EUR 35,000 limit – a requirement in order to benefit from the tax exemption) one shall also take into consideration the operations resulting from business activities for which the place of delivery/performance is considered to be abroad.
- Registration for VAT purposes: one shall register, for VAT purposes, such persons who are not registered and who are to further perform services or to receive services for which the beneficiary who is established in the Community is obligated to pay the tax.

Order no. 2861/2009 of October 9, 2009 for the **approval of the Norms for organizing and conducting the annual patrimony count** of assets, liabilities and equity elements – the Norms for organizing and conducting the annual patrimony count of assets, liabilities and equity elements are approved.

The normative act was published in the Official Gazette no. 704/October 20, 2009 and comes into force as of November 4, 2009, on which date Order 1753/2004 of the Finance minister for the approval of the Norms for organizing and conducting the annual patrimony count of assets and liabilities will be repealed, published in the Romanian Official Gazette, Part I, no. 1.174 of December 13, 2004, as

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subsequently amended.

Law no. 324/2009 of October 20, 2009 for the approval of the Government Emergency Ordinance no. 46/2009 on the **improvement of the tax procedures and the diminishing of tax evasion**

This normative act approves Government Emergency Ordinance no. 46/2009 on the improvement of the tax procedures and the diminishing of tax evasion, with its amendments and additions with respect to the reinstatement of the facilities for the payment of tax obligations. The facilities for the outstanding amounts shall be maintained until December 25, 2009 (according to the previous legislation, the term had expired on July 31, 2009). The normative act was published in the Official Gazette no. 713/October 22, 2009.

Order 2578/2009 of October 1, 2009 for the approval of the Norms on the access of business operators to the ICS-RO national application for the import control System.

The norm approved by this order provides for certain specifications with respect to the Procedure for the authorizing of the access to the ICS-RO application, by using the DTI solution, the Procedure for the authorizing of the access to the ICS-RO application, by using the EDI solution, the technical requirements for the access and the use of the ICS-RO application etc. The normative act was published in the Official Gazette no. 669/October 7, 2009.

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