

Updates - insurance and private pensions in Romania - impact of the new Criminal Code

On 1 February 2014, a new Criminal Code entered into force in Romania. As a result of the enactment of this piece of legislation, and of Law 187 of 2012 for the application of the new Criminal Code (“**Law 187/2012**”), there have been several changes to the legislation regarding the insurance and private pensions sectors.

(i) On insurance legislation

In Article 245 of the new Criminal Code, insurance fraud has been criminalized. This is defined as:

(1) Destroying, damaging, making impossible to use, hiding or disposing of an item that was insured against the risk of destruction, damage, wearing, loss or theft, with the intent to obtain the insured amount, for either the offender, or for a third party. This offence is punishable by imprisonment for 1 to 5 years.

(2) In addition, it is criminalised the simulation or self causing or aggravation of injuries if such injuries are caused by an insured risk, with the scope to obtain the insured amount for the offender or a third party. In this case, the punishment may be a fine or imprisonment ranging from 6 months to 3 years.

Upon the involved parties’ agreement, the charges under (1) or (2) above are dropped and the offender will not be subject to further criminal investigations for insurance fraud.

Further, Article 39 paragraph 8 of Law 32 of 2000 regulating the insurance activity and insurers supervision (“**Law 32/2000**”) was amended by Law 187/2012. As such, the following activities represent a criminal offence: undertaking insurance activity within or originating from Romania without the authorization of the Romanian Financial Supervisory Authority (“**FSA**”) or undertaking such activity without the registration within the Registry of insurers, reinsurers and of insurance and/or reinsurance intermediaries. The punishment for this offence is a fine or imprisonment ranging from 3 months to 2 years. For this offence the upper limit of imprisonment was reduced from 3 years.

(ii) On private pensions legislation

Law 411 of 2004 regulating the privately managed pension funds (“**Law 411/2004**”) has been amended as follows:

(1) Under Article 144, the operation of an undertaking which does not have the requisite FSA authorization or approval (as provided for under Law 411/2004) has been criminalised; the penalty for this crime can be either a fine or 1 to 3 years imprisonment for the operator.

(2) Under Article 145 the following criminal activities are punishable by imprisonment for 1 to 5 years: (a) use of the contributions to the Pillar II funds for a purpose other than expressly

provided for by Law 411/2004; (b) non-observance by the management company of legal requirements regarding investment and disposal of the Pillar II funds' assets; (c) use of the Pillar II participant's assets for a purpose other than expressly provided for by Law 411/2004; (d) unauthorised management or unauthorised amendment of the privately managed pension schemes. Should the above mentioned actions produce serious damages, offenders found guilty of this crime face a custodial sentence of between 1.5 and 7.5 years.

(3) Article 146 criminalises the act of submitting misleading adhesion contracts to the management company of the pensions funds by the marketing agent. Such criminal offence is punished either by fine or imprisonment ranging from 3 months to 2 years.

The relevant amendments to Law 204 of 2006 regulating the voluntary private pensions ("**Law 204/2006**") are the following:

Violation of Article 123 is punishable by 1 to 5 years imprisonment, in respect of the following actions: (a) use of the contributions to the Pillar III funds for any purpose other than expressly provided by Law 204/2006; (b) use of the Pillar III participant's assets for any purpose other than expressly provided by Law 411/2004; (c) unauthorised management or unauthorised amendment of the voluntary pension schemes. Should the above mentioned actions produce serious damages, the limits of the imprisonment are from 1.5 years to 7.5 years. The legal text sanctions alternatively with fine or imprisonment ranging from 1 to 3 years the undertaking without having the legal right of the activities for which Law 204/2006 requires the issuance of an FSA authorisation or approval.

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