

Briefing

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New Soil Quality Certificate – a potential impediment for land transactions

As of 1 January 2021, Law 246/2020 on soil use, conservation and protection ("**Law 246/2020**"), introduces a new requirement for certain land operations - obtaining a **soil quality certificate** in the following cases (for both *extra muros* and *intra muros* plots of land):

- a) the change of the holder of the land / the transfer of the land by means of any valid title, which land was and/or is subject to the following activities: (i) existing or new agricultural, forestry and zoo technical activities; (ii) existing or new industrial and economic activities with significant impact on the soil; (iii) military activities with significant impact on the soil.

The "holder of the land" is defined as *the individual person or legal entity owning or using land on the basis of a valid title or constructions of any kind*. This means that the soil certificate is not only needed in case of transfer of the land (*e.g.* by sale or donation or as a result of inheritance), but also in case of creating any other real estate right over such land (such as superficies rights, as well as agricultural lease rights).

- b) upon finalisation of any works where the soil shell is affected - a very broad wording covering any constructions over the land.

The soil quality certificates will be issued by the National Research and Development Institute for Soil Science, Agro Chemistry and Environment ("**ICPA**"). Unfortunately, ICPA has issued a statement that they are currently not able to issue the soil quality certificate¹, as the implementation norms of Law 246/2020 are not drafted and approved – the deadline for the approval of such norms being 1 January 2022.

Given that failure to obtain the soil quality certificate may trigger the relevant land operation null and void, until the implementation norms are issued and ICPA commences to issue the certificates, it seems that all changes to the holder or transfers of land are, in fact, suspended – this also applies to finalisation of works in which the soil shell is affected.

We believe that the application of the new legal requirement for a soil quality certificate should be postponed by the authorities (*e.g.* by means of a Government Emergency Ordinance) to avoid negative impact in many sectors which require land in order to be developed and/or operated, such as the agricultural, energy or real estate sectors.

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¹ Please see https://www.icpa.ro/anunt_certificat_cs.shtml