

PARLIAMENT OF ROMANIA

THE CHAMBER OF DEPUTIES

THE SENATE

Law No. 246/ 2015 on the insurers' recovery and resolution

The Parliament of Romania adopts this law.

TITLE I

Scope, definitions and authorities

CHAPTER I

General Provisions

Art. 1. - (1) The law sets out rules and procedures on the recovery and resolution of Romanian legal person insurers.

(2) While exercising its competencies arising therefrom, the Financial Supervisory Authority shall consider the nature, extent and complexity of the activity carried out, the shareholding structure, the legal status, the risk profile, the size, its interconnection with other financial institutions or with the financial system in general.

Art. 2. - In accordance with the law, the terms and expressions below shall have the following meanings:

1. *shareholder* – means a shareholder or holder of other instruments of ownership;

2. *resolution administrator* – means any natural or legal person, including the Policyholders' Guarantee Fund, appointed by the Financial Supervisory Authority to implement the resolution measures;

3. *temporary administrator* - means any natural or legal person, including the Policyholders' Guarantee Fund, appointed by the Financial Supervisory Authority to supervise or to temporarily replace the insurer's management body, in order to maintain or restore its financial position and to ensure a sound and prudent management of the insurer's activity;

4. *insurer* – means the Romanian legal person insurance undertaking authorised by the Financial Supervisory Authority in accordance with Law No. 32/2000 on the insurance activity and supervision of insurance, as subsequently amended and supplemented;

5. *insurer under resolution* – means an insurer in respect of which resolution measures are applied;

6. *competent authority* – means the Financial Supervisory Authority, the national authority competent to supervise the insurance market;

7. *resolution authority* – means the Financial Supervisory Authority, authority empowered to apply resolution tools and to exercise resolution powers;

8. *state aid framework* – means the European Union legislation, namely the provisions of Art. 107, Art. 108 and Art. 109 of the Treaty on the functioning of the European union and other mandatory regulations, as well as the provisions regarding the national procedures in the field of state aid, as established by Government Emergency Ordinance No. 77/2014 on the national procedures in the field of state aid, as well as for the amendment and supplementation of Competition Law No. 21/1996, approved as amended and supplemented by Law No. 20/2015, as subsequently amended;

9. *recovery capacity* – means the capability of an insurer to restore its financial position following a significant deterioration of the financial ratios;

10. *transfer powers* – means the powers to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an insurer under resolution to a recipient;

11. *senior management* – means the natural persons exercising management positions within an insurer and who are in charge of the current management activity and are liable for the performance thereof before the management body, in accordance with the national legislation;

12. *financial contracts* – means the following contracts and agreements:
a) securities contracts, including:

(i) contracts for the purchase, sale or loan of a security, a group or index of securities;

(ii) options on a security or group or index of securities;

(iii) repurchase or reverse repurchase transactions on any such security, group or index;

b) commodities contracts, including:

(i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

(ii) options on a commodity or group or index of commodities;

(iii) repurchase or reverse repurchase transactions on any such commodity, group or index;

c) futures and forwards contracts, including contracts, other than a commodities contract, for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;

d) swap agreements, including:

(i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; a share index or share; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;

(ii) total return, credit spread or credit swaps;

(iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;

e) master agreements for any of the contracts or agreements referred to in Letters a) to e);

13. *insurance creditors* – means insured persons, insurance beneficiaries, aggrieved parties – in the case of civil liability insurance -, as defined in Art. 4 (1) Letter b) of Law No. 213/2015 on the Policyholders Guarantee Fund;

14. *insurance systemic crisis* - means a disruption in the insurance system with the potential to have serious negative consequences for the insurance market and the real economy;

15. *recipient* – means the insurer, bridge institution or asset management vehicle to which shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from a single insurer under resolution;

16. *directorate exercising the resolution function* – means a structure separate from the structures exercising the supervisory function within the Financial Supervisory Authority, that ensures the fulfilment of the resolution duties of the Financial Supervisory Authority;

17. *directorate exercising the supervisory function* – means a structure within the Financial Supervisory Authority, that ensures the fulfilment of the supervisory duties of the Financial Supervisory Authority;

18. *termination right* - means a right to unilaterally terminate a contract, to accelerate, extinguish or set-off obligations or the right arising from any similar provision that suspends, modifies or extinguishes an obligation of a party to a contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;

19. *critical functions* - means activities, services or operations the discontinuance of which is likely to lead to the disruption of the stability of the insurance market, to the loss of the consumers' trust in the insurance system and/or that is likely to endanger the protection provided by law to policyholders, due to the size, market share, external and internal interconnectedness, complexity of the insurer's activity;

20. *bridge institution* – means a legal person that meets the requirements laid down in Art. 89, authorised in accordance with Art. 104 or the Policyholders Guarantee Fund;

21. *instruments of ownership* – means shares and other instruments that confer an ownership right, as defined in Art. 2 (1) Item 33 of Law No. 297/2004 on the capital market, as subsequently amended and supplemented;

22. *asset separation tool* – means the mechanism whereby a resolution authority transfers an insurance portfolio of an insurer under resolution by an asset management vehicle in accordance with the provisions of Arts. 112 to 124;

23. *resolution tool* – means a tool referred to in Art. 68;

24. *sale of business and portfolio tool* – means the mechanism whereby a resolution authority transfers shares or other instruments of ownership, issued by an insurer under resolution, or assets, rights or liabilities of an insurer under resolution, in part or in full, to an asset management vehicle, in accordance with Arts. 74 to 88 or to an insurer that meets the solvency requirements;

25. *bridge institution tool* – means the mechanism whereby a resolution authority transfers shares or other instruments of ownership issued by an

institution under resolution, or assets, rights or liabilities of an insurer under resolution to a bridge institution in accordance with Arts. 88 to 95;

26. *winding up* – means the realisation of the assets of an insurer;

27. *core business lines* – means the business lines which represent material sources of revenue for the insurer;

28. *crisis management measures* – means resolution measures or the appointment of a resolution administrator in accordance with Arts. 49 to 54;

29. *early intervention measures* – means one or more measures as provided in Art. 26 (1), ordered by the Financial Supervisory Authority as competent authority in order to restore the financial position of the insurer and to evaluate the deterioration of its solvency capital, as well as of the own funds covering the solvency capital requirement;

30. *crisis prevention measure* – means the exercise of powers to direct removal of deficiencies or impediments to recoverability under in accordance with Art. 16, the application of early intervention measures in accordance with Arts. 26 to 28, the appointment of a temporary administrator in accordance with Arts. 30 to 38 or the exercise of the write down or debt conversion into relevant capital instruments powers in accordance with Arts. 125 to 132;

31. *resolution measure* – means the procedure whereby an insurer becomes subject to resolution in accordance with the provisions of Art. 42;

32. *recovery plan* – means a plan drawn up and maintained by an insurer in accordance with the provisions of Arts. 5 to 17;

33. *insurance portfolio* – means obligations arising from the insurance contracts and the related assets;

34. *resolution plan* – means a plan drawn up for an insurer in accordance with the provisions of Arts. 18 to 25;

35. *normal insolvency proceedings* – means the bankruptcy proceedings of insurance/reinsurance undertakings provided in Chapter IV Title II of Law No. 85/2014 on the insolvency prevention and insolvency proceedings;

36. *resolution objectives* – means the objectives referred to in Art. 40;

37. *secured liability* – means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or guarantee, including real guarantee contracts;

38. *insurer management body* – means administration and management body of an insurer, established by its constitutive documents, in accordance with the provisions of Company Law No. 31/1990, republished, as

subsequently amended and supplemented, and of Law No. 32/2000, as subsequently amended and supplemented;

39. *resolution* – means a legal regime consisting of a set of tools available for the Financial Supervisory Authority, which are necessary for it to promptly intervene at an early stage in the activity of an unsound or failing insurer, so as to ensure the continuation of its essential financial and economic functions, also minimising the impact of the insurer’s distress on the economy and financial system;

40. *insurance guarantee scheme* – means the Policyholders Guarantee Fund, established in accordance with Law No. 213/2015;

41. *public financial support* – means the state aid provided under Art. 107 (1) of the Treaty on the functioning of the European Union or any other public financial support provided at national level, that is provided in order to preserve or restore the viability, liquidity or solvency of an insurer;

42. *asset management vehicle* – means the legal person controlled by the Financial Supervisory Authority, in its capacity as resolution authority, and created for the purpose of receiving, in full or in part, the assets, rights and liabilities of one or more insurers under resolution or of a bridge institution;

43. *day* – means business days, other than Saturday and Sunday or any other day declared as public holiday in accordance with Romanian legislation.

CHAPTER II Recovery and resolution planning

SECTION 1 General provisions

Art. 3. - (1) Insurers having a significant share of the national insurance system shall prepare their own recovery plans in accordance with the provisions of Arts. 5 to 17 and shall be subject to individual resolution plans, in accordance with the provisions of Arts. 18 to 23.

(2) An insurer shall be considered to have a significant share in the national insurance system if any of the following conditions are met:

a) the value of its gross technical reserves exceeds 5% of the total value of the gross technical reserves in the market;

b) it has a market share of at least 5%.

(3) The market share of undertakings having a significant share of the national insurance system shall be determined based on the financial results of the last concluded financial year, considering the life insurance activity separately from the non-life insurance activity, as follows:

a) for life insurance, according to the ratio between the gross technical reserves of the undertaking and the total gross technical reserves of all of the undertakings underwriting life insurance;

b) for non-life insurance, according to the ration between the value of the gross written premiums of the undertaking, direct and from reinsurance acceptance, and the total value of the gross written premiums, direct and from reinsurance acceptance, of all undertakings underwriting non-life insurance.

Art. 4. - (1) By way of exception from the provisions of Arts. 5 to 17 and Arts. 18 to 23 and taking into account the evaluation on the impact that the major failure of an insurer and its subsequent winding up under normal insolvency proceedings would have on the market, as well as on other insurers and on the wider national economy, as well as the potential negative effects generated by the major failure of the insurer, the Financial Supervisory Authority, as competent authority and resolution authority, may establish, by a decision issued in accordance with Art. 6 (3) of Government Emergency Ordinance No. 93/2012 on the establishment, organisation and functioning of the Financial Supervisory Authority, approved as amended and supplemented by Law No. 113/2013, as subsequently amended and supplemented, simplified obligations with regard to the recovery and resolution plans of said insurer, as regards the following:

a) the contents and details of the recovery and resolution plans;

b) the date by which the first recovery and resolution plans are to be prepared and the update frequency of such plans, which can be inferior to that provided by law;

c) the contents and the amount of details of the information requested to insurers;

d) the amount of details of the information required to assess the settlement possibility provided by law.

(2) The decision referred to in Para (1) shall be communicated to the insurer at issue within 10 days from the date it is found that the simplified obligations on the resolution plan for such insurer are applicable.

(3) The Financial Supervisory Authority, as competent authority and, as the case may be, resolution authority, may decide, upon the termination of the causes for the application of the simplified obligations in accordance with Para (1), the full application of the obligations referred to in Arts. 5 to 17 and Arts. 18 to 25, and the establishment and communication of the deadline for compliance with the new requirements.

(4) The application of the simplified obligations, provided in Para (1), shall not affect the powers of the Financial Supervisory Authority, as competent authority and, as the case may be, resolution authority, to order crisis prevention or management measures.

SECTION 2

Recovery planning

Art. 5. - Each insurer shall draw up and maintain a recovery plan providing measures to be taken by it to restore the financial position in case of a significant deterioration of the financial ratios.

Art. 6. - The insurer shall update the recovery plans annually or, at the request of the Financial Supervisory Authority, as competent authority, more frequently, in the following situations:

- a) in case of a change in the organisational structure;
- b) after any change in the insurer's business or financial situation that may significantly impact the recovery plan or may require its modification;
- c) in case of any change of the mechanisms or measures referred to in Items 10 to 17 of the annexe, forming an integral part of this law, and which are included in the recovery plan.

Art. 7. - Upon drawing up the recovery plan, the insurers shall not rely in any way upon public financial support.

Art. 8. - Without prejudice to the provisions of this chapter, the recovery plan shall include:

- a) the information provided in the annexe;
- b) measures that may be taken by the insurer if the conditions for early intervention provided by law are met;
- c) adequate conditions and procedures to ensure the timely implementation of the recovery measures as well as recovery options;

d) the additional information and the range of scenarios referred to in the regulations issued by the Financial Supervisory Authority in accordance with the provisions of Letter j) of Art. 160.

Art. 9. - The Financial Supervisory Authority, as competent authority, may require an insurer to keep detailed records of the financial contracts to which it is a party.

Art. 10. – The management body of the insurer shall assess and approve the recovery plan before submitting it to the Financial Supervisory Authority, as competent authority.

Art. 11. – The insurer having the obligation to draw up the first recovery plan shall submit, within up to 90 days, calculated as of the entry into force of this law, the recovery plan to the Financial Supervisory Authority, as competent authority, for assessment.

Art. 12. – Within 6 months from receiving the recovery plan, the Financial Supervisory Authority shall analyse the recovery plan and shall assess to what extent it contains the information and complies with the requirements referred to in Art. 8 and the following criteria:

a) the implementation of the measures proposed in the recovery plan may ensure the maintenance or restoration of the insurer's viability and financial standing, taking into account the preparatory measures that the insurer has taken or has planned to take;

b) the implementation of the plan and of the recovery possibilities identified therein is quick and efficient, avoiding to the maximum extent possible any significant adverse effects on the financial system or on the insurers, including in scenarios which would lead other insurers to implement recovery plans within the same period.

Art. 13. – When assessing the recovery plan, the Financial Supervisory Authority, as competent authority, shall take into consideration the extent to which the insurer's capital level and quality, as well as its solvency and/or liquidity, correspond to its complexity and risk profile.

Art. 14. - (1) The Financial Supervisory Authority shall make sure that the directorate exercising the supervisory function submits the plan to the directorate exercising the resolution function.

(2) The Financial Supervisory Authority shall make sure that the directorate exercising the resolution function assesses the recovery plan in order to identify the measures contained by it that may adversely impact the restoration of the financial situation and may make recommendations with regard to those matters to the directorate exercising the supervisory function.

Art. 15. - (1) Where the Financial Supervisory Authority, as competent authority, assesses that there are material deficiencies in the recovery plan or material impediments to its implementation, it shall notify the insurer of its assessment and require it to submit, within two months, a revised recovery plan containing solutions for the removal of the deficiencies or overcoming of the impediments.

(2) The Financial Supervisory Authority, as competent authority, may extend, at the insurer's request, for serious reasons, the term referred to in Para (1) by one month.

(3) If the Financial Supervisory Authority, as competent authority, considers that the deficiencies and impediments were not addressed by the revised plan, it may require the insurer to make specific changes to the plan.

Art. 16. - (1) If the insurer does not present a revised recovery plan or the Financial Supervisory Authority, as competent authority, assesses that the revised recovery plan does not adequately address the issue of the material deficiencies or impediments identified during the initial assessment and that the imposing specific changes to the plan would not settle the issues, the Financial Supervisory Authority shall require the insurer to identify, within up to 60 days, changes it may bring to its activity to remove said deficiencies or overcome the impediments to the implementation of the recovery plan.

(2) The Financial Supervisory Authority, as competent authority, shall establish the duration of the period referred to in Para (1), on a case by case basis, depending on the position of the insurer and the nature of the deficiencies identified.

(3) If the insurer fails to identify such changes within the term timeframe established by the Financial Supervisory Authority in accordance

with Para (1) or if the Financial Supervisory Authority assesses that the actions proposed by the insurer would not adequately address the deficiencies or impediments, the Financial Supervisory Authority, as competent authority, may require the insurer to take any one or several of the measures referred to in Para (4) and/or any other measure it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and the significance of the impediments and the effect of the measures on the insurer's activity.

(4) The Financial Supervisory Authority, as competent authority, may require the insurer to take the following measures:

- a) reduce the risk profile of the insurer, including the solvency and/or liquidity risk;
- b) enable recapitalisation measures;
- c) review the insurer's strategy and operational structure;
- d) change the insurer's administration and management structure;
- e) verify the adequacy of the technical reserves and their cover with admitted assets.

Art. 17. - (1) The measures imposed on the insurers by the Financial Supervisory Authority, as competent authority, in accordance with Art. 16 (4), shall be proportional to the seriousness of the deficiencies and the significance of the impediments subject to remedy.

(2) The measures referred to in Art. 16 (4) shall not prevent the Financial Supervisory Authority from taking the measures referred to in Law No. 503/2004 on the financial recovery, bankruptcy, dissolution and voluntary liquidation in the insurance activity, republished, as subsequently amended, in order to restore the insurer's financial position.

(3) As of the entry into force of this law, the insurers under financial recovery in accordance with Law No. 503/2004, republished, as subsequently amended, may be subject to the provisions of this law, if the requirements referred to in Art. 42 and Art. 43 (2) are met.

SECTION 3

Resolution planning

Art. 18. - (1) The Financial Supervisory Authority, as resolution authority, shall draw up a resolution plan for Romanian legal person insurers.

(2) The Financial Supervisory Authority shall ensure that the directorate exercising the resolution function draws up the resolution plan after consulting directorate exercising the supervisory function.

Art. 19. - (1) The resolution plan shall include the resolution measures that the Financial Supervisory Authority, as resolution authority, may take where the insurer meets the conditions for the initiation of the resolution procedure.

(2) The Financial Supervisory Authority, as resolution authority, shall communicate the information referred to in Letter a) of Art. 23 to the insurer concerned.

Art. 20. – When drawing up the resolution plan, the Financial Supervisory Authority, as resolution authority, shall take into consideration relevant scenarios, including that the event of failure of the insurer may be owed to particular circumstances specific to the insurance market or to the economy overall.

Art. 21. – At the request of the Financial Supervisory Authority, as resolution authority, the insurer shall provide assistance for the drawing up and update of the resolution plan.

Art. 22. - (1) The Financial Supervisory Authority, as resolution authority, shall re-evaluate and, if applicable, update the resolution plans on an annual basis and after any material change in the organisational structure of the insurer, its business or financial position, that may have a material effect on the effectiveness of the resolution plans or that otherwise necessitates a modification thereof.

(2) For the purpose of the provisions of Para (1), the insurers shall inform the Financial Supervisory Authority, as resolution authority, of any change that may require a re-evaluation or an update of the plans. The Financial Supervisory Authority shall make sure that the directorate exercising the supervisory function promptly informs the directorate exercising the resolution function on any change that may require a re-evaluation or update of the plans.

Art. 23. – Without prejudice to the provisions of Arts. 3 and 4, the Financial Supervisory Authority, as resolution authority, shall provide in the

resolution plan the possibility to apply the resolution tools and to exercise the resolution powers provided by law and it shall include the following:

- a) a summary of the key elements of the plan;
- b) a summary of the material changes that have occurred within the insurer, according to the latest information relevant for resolution purposes;
- c) a demonstration of how critical functions and core business lines could be legally and economically separated from other functions, so as to ensure continuity upon the failure of the insurer;
- d) an estimation of the timeframe for executing each material aspect of the plan;
- e) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the insurer;
- f) a detailed description of the arrangements for ensuring that the information required pursuant to Art. 25 is up to date and at the disposal of the Financial Supervisory Authority, as resolution authority, at all times;
- g) a presentation of how the Financial Supervisory Authority, as resolution authority, considers that the resolution measures may be funded;
- h) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;
- i) an analysis of the impact of the plan on the employees of the insurer, including an assessment of any associated costs, and a description of envisaged procedures to consult the personnel, the employers' organisation and the trade union or employees' representatives, as the case may be, during the resolution process;
- j) a plan for communicating with the media and the public;
- k) the required solvency capital and the minimum capital, as well as the quality and quantity level of own funds required and the timeframe within which such level must be reached if applicable;
- l) a description of essential operations and systems for maintaining the continuous functioning of the insurer's operational processes;
- m) where applicable, any opinion expressed by the insurer in relation to the resolution plan;
- n) a detailed description of the assessment of the possibilities to apply the resolution plan;
- o) a description of all measures required to remove any impediments to the implementation of the resolution plan.

Art. 24. - (1) The Financial Supervisory Authority, as resolution authority, may require the insurers to keep detailed records of the financial contracts to which they are a party and may establish the time-limit within which they are to produce said records.

(2) The Financial Supervisory Authority, as resolution authority, may set different time-limits depending on the types of financial contracts defined in Art. 2 Item 12.

(3) The time-limits set according to Para (2) for producing the information shall apply to all insurers.

(4) The Financial Supervisory Authority, as resolution authority, may determine, after the assessments carried out, whether the insurer should be liquidated under the normal insolvency proceedings or resolved, by applying to the insurer the different resolution tools and powers, while avoiding any material adverse effect on the Romanian insurance market, including in circumstances of broader financial instability or system-wide events, with a view to ensuring continuity of the critical functions carried out by the insurer.

(5) For the purposes of assessing the possibilities of applying the resolution plan, the Financial Supervisory Authority, as resolution authority, shall examine at least the following:

a) the extent to which the insurer is able map core business lines and critical operations to legal persons;

b) the extent to which legal and corporate structures are aligned with core business lines and critical operations;

c) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity, solvency, insurance portfolio, technical reserves and capital to support and maintain the core business lines and the critical operations;

d) the extent to which the service agreements that the insurer maintains are fully enforceable in the event of resolution of the insurer;

e) the extent to which the governance structure of the insurer is adequate for managing and ensuring compliance with the insurer's internal policies with respect to its service level agreements;

f) the extent to which the insurer has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;

g) the adequacy of the management information systems in ensuring that the Financial Supervisory Authority is able to gather accurate and

complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;

h) the capacity of the management information systems to provide the information essential for the effective resolution of the insurer at all times even under rapidly changing conditions;

i) the extent to which the insurer has tested its management information systems under stress scenarios as defined by the Financial Supervisory Authority by regulations issued in accordance with Art. 160;

j) the extent to which the insurer can ensure the continuity of its management information systems both for the affected insurer and the new insurer in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

k) the extent to which the insurer has established adequate processes to ensure that it provides the Financial Supervisory Authority with the information necessary to identify insurer creditors and the amounts covered by the Policyholders Guarantee Fund;

l) the amount and type of assets and technical reserves of the insurer;

m) where the assessment involves an insurer forming part of a mixed activity holding company, the extent to which the resolution of the insurer could have a negative impact on the non-financial part of the group;

n) the existence and robustness of service level agreements;

o) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the insurer's structure;

p) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on insurance creditors, counterparties and employees and possible actions that other resolution authorities may take;

q) the extent to which the impact of the insurer's resolution on the financial system and on financial market's confidence can be adequately evaluated;

r) the extent to which the resolution of the insurer could have a significant direct or indirect adverse effect on the financial system, insurance market confidence or the economy;

s) the extent to which contagion to other insurers or to the financial markets could be contained through the application of the resolution tools and powers.

(6) If, after assessing the possibility to apply the resolution plan to an insurer, the Financial Supervisory Authority, as resolution authority, finds that there are material impediments to the possibility of applying such resolution to the insurer, it shall notify such findings in writing to the insurer concerned and to the resolution authorities of the jurisdictions in which branches of the insurer are located.

(7) Within four months from receiving a notification in accordance with the provisions of Para (6), the insurer shall propose to the Financial Supervisory Authority possible measures to remove the material impediments identified in the notification. The Financial Supervisory Authority shall assess the effectiveness of the measures proposed for the removal of the material impediments in question.

(8) Where the Financial Supervisory Authority assesses that the measures proposed by an insurer in accordance with the provisions of Para (7) do not effectively reduce or remove the impediments in question, it may request the insurer to take alternative measures that may achieve that objective, and notify in writing those measures to the insurer, which shall propose within one month a plan to comply with them.

(9) In identifying the alternative measures referred to in Para (8), the Financial Supervisory Authority shall demonstrate how the measures proposed by the insurer would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The Financial Supervisory Authority shall take into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the insurer, its stability and its ability to contribute to the economy.

(10) For the purpose of applying the alternative measures referred to in Para (9) the Financial Supervisory Authority shall have the power to take any of the following measures:

a) require the insurer to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions, in accordance with law;

b) require the insurer to limit its maximum individual exposures on certain classes of insurance and its maximum aggregated exposures for the entire insurance portfolio;

c) impose specific or regular additional information requirements relevant for resolution purposes;

d) require the insurer to partially or fully transfer its insurance portfolio;

e) require the institution to limit or cease specific existing or proposed activities;

f) restrict or prevent the development of new or existing business lines or sale of new or existing products;

g) require changes to the legal structures related to the contractual or operational commitments of the insurer, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

h) require an insurer to increase its own funds in order to meet the solvency requirements;

i) require an insurer to take other steps to meet the minimum requirement for own funds, including to attempt to renegotiate any won fund instrument it issued, with a view to ensuring that any decision of the Financial Supervisory Authority to write down or convert that instrument would be effected under the law of the jurisdiction governing such instrument.

Art. 25. - (1) At the request of the Financial Supervisory Authority, as resolution authority, each insurer shall:

a) cooperate in the drawing up of the resolution plan;

b) supply all information necessary to draw up and implement the resolution plan.

(2) The Financial Supervisory Authority shall make sure that the directorate exercising the supervisory function cooperates with the directorate exercising the resolution function, in order to verify to what extent the information referred to in Para (1) is already available. The Financial Supervisory Authority shall make sure that, if such information is available, the directorate exercising the supervisory function communicates it to the directorate exercising the resolution function.

CHAPTER III

Early intervention

SECTION 1

Early intervention measures

Art. 26. - (1) Where an insurer infringes, or is likely to infringe in the near future, due to a rapid deterioration of its financial condition, including a deterioration of its solvency capital and of its own funds covering the solvency capital requirement, the requirements for maintaining the authorisation provided by Law No. 32/2000, as subsequently amended and supplemented, the Financial Supervisory Authority, as competent authority, in addition to the remedy or sanctioning measures ordered in accordance with the provisions of Law No. 32/2000, as subsequently amended and supplemented, may take, where applicable, mainly the following measures:

a) require the management body of the insurer to implement one or more of the measures set out in the recovery plan or in accordance with Art. 16, to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the measures set out in the updated plan within a specific timeframe and in order to ensure that the insurer shall continue to meet the requirements for maintaining the authorisation;

b) require the management body of the insurer to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;

c) require the management body of the insurer to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the company, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

d) to require the replacement of one or more members of the management body or of the senior management of the insurer, if those persons are found unfit to perform their duties pursuant to Law No. 32/2000, as subsequently amended and supplemented;

e) require the management body of the insurer to draw up a plan for negotiation on restructuring of the debts of the insurer's creditors, in accordance with the recovery plan, where applicable;

f) require changes to the insurer's business strategy;
g) require changes to the operational structure of the insurer; and
h) require the insurer to communicate all information necessary for updating the resolution plan and for preparing a possible resolution of the insurer and to carry out a valuation of the assets and liabilities of the insurer in accordance with Chapter III of Title II. The data may be obtained by the Financial Supervisory Authority, as competent authority and by a spot inspection carried out in accordance with Law No. 32/2000, as subsequently amended and supplemented, if the information communicated by the insurer or held by the authority based on the reports submitted by it is not sufficient.

(2) The issuance of the documents regarding an insurer, ordering the measures referred to in Para (1), shall fall upon the Board of the Financial Supervisory Authority.

Art. 27. – The Financial Supervisory Authority shall make sure that the directorate exercising the supervisory function notifies without delay the directorate exercising the resolution function on the fulfilment of the conditions set out in Art. 26 (1) with regard to an insurer. The powers of the Financial Supervisory Authority, as resolution authority, include the power to require the insurer to contact potential purchasers in order to prepare for the resolution of the insurer, in compliance with the conditions provided by law.

Art. 28. – For each of the measures referred to in Art. 26 (1), the Financial Supervisory Authority, as competent authority, shall set an appropriate deadline for completion which shall enable it to evaluate the effectiveness of the measure.

Art. 29. - Where there is a significant deterioration in the financial situation of an insurer or where there are serious infringements of law, of the regulations specific to the insurance field and if other measures taken in accordance with the provisions of this law are not sufficient to reverse that deterioration, the Financial Supervisory Authority, as competent authority, may request the replacement of the senior management or of the management body of the insurer in its entirety or with regard to certain members thereof. The appointment of the new senior management or of the new management body shall be done in accordance with the provisions of

Law No. 31/1990, republished, as subsequently amended and supplemented, and shall be subject to the approval of the Financial Supervisory Authority, as competent authority.

SECTION 2

Appointment of the temporary administrator

Art. 30. - (1) Where the Financial Supervisory Authority, as competent authority, deems that the replacement of the senior management or of the management body in accordance with Art. 29 is insufficient to remedy the situation, it may appoint one or more temporary administrators to the insurer.

(2) The Financial Supervisory Authority, as competent authority, may appoint any temporary administrator, considering the circumstances, either to replace the insurer's management body temporarily or to work temporarily with the management body of the insurer and it shall specify it in its decision at the time of appointment.

(3) If the Financial Supervisory Authority, as competent authority, appoints a temporary administrator to work with the management body of the insurer, it shall further specify at the time of such an appointment the role, duties and powers of the temporary administrator and any requirements for the management body of the insurer to consult or to obtain the consent of the temporary administrator prior to taking specific decisions or actions.

(4) Financial Supervisory Authority, as competent authority, make public the appointment of any temporary administrator except where the temporary administrator does not have the power to represent the insurer. Upon appointing the temporary administrator, the Financial Supervisory Authority shall ensure that any temporary administrator has the qualifications, ability and knowledge required to carry out his or her functions and is free of any conflict of interests.

Art. 31. - (1) The Financial Supervisory Authority, as competent authority, shall specify the powers of the temporary administrator at the time of his/her appointment based on what is proportionate in the circumstances.

(2) The powers referred to in Para (1) may include some or all of the powers of the management body of the insurer under the statutes of the

insurer and under national law, including the power to exercise some or all of the administrative functions of the management body of the insurer. The powers of the temporary administrator in relation to the insurer shall comply with Law No. 31/1990, republished, as subsequently amended and supplemented.

Art. 32. - The role and functions of the temporary administrator shall be specified by the Financial Supervisory Authority, as competent authority, at the time of appointment and may include ascertaining the financial position of the insurer, managing its business or part of its business with a view to preserving or restoring its financial position and taking measures to restore the sound and prudent management of the business of the insurer. The Financial Supervisory Authority shall specify any limits on the role and functions of the temporary administrator at the time of appointment.

Art. 33. – The Financial Supervisory Authority, as competent authority, has the exclusive power to appoint and remove any temporary administrator, at any time. The Financial Supervisory Authority as competent authority, may vary the terms of appointment of a temporary administrator at any time subject to the provisions of this chapter.

Art. 34. - (1) The acts of the temporary administrator, except for those related to the insurer's current activity, are subject to the prior consent of the Financial Supervisory Authority, as competent authority.

(2) In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the insurer and to set the agenda of such a meeting only with the prior consent of the Financial Supervisory Authority, as competent authority.

Art. 35. – The Financial Supervisory Authority, as competent authority, may require that a temporary administrator draws up reports on the financial position of the insurer and on the acts performed in the course of its appointment, at intervals set by the competent authority and at the end of his or her mandate.

Art. 36. - The appointment of a temporary administrator shall not last more than one year. That period may be exceptionally renewed if the conditions for appointing the temporary administrator continue to be met.

The Financial Supervisory Authority, as competent authority, shall be responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any such decision to shareholders.

Art. 37. - The appointment of a temporary administrator in accordance with the provisions of this chapter shall not prejudice other rights of the shareholders provided by Law No. 31/1990, republished, as subsequently amended and supplemented, or the European Union company law.

Art. 38. – The temporary administrator authorised to exercise the duties provided herein shall be liable, under civil law, for any failure to fulfil or fulfilment in bad faith or in gross negligence of such duties.

TITLE II Resolution

CHAPTER I Objectives, conditions and general principles

SECTION 1 *Objectives*

Art. 39. - When applying the resolution tools and exercising the resolution powers, the Financial Supervisory Authority, as resolution authority, shall have regard to the resolution objectives, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.

Art. 40. - (1) The resolution objectives referred to in Art. 39 are:

- a) to protect the insurance creditors;
- b) to minimise the impact on the protection funds, to protect public funds by minimising reliance on public financial support;
- c) to avoid a significant adverse effect on the financial stability of the insurance market, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
- d) to ensure the continuity of critical functions.

(2) When pursuing the objectives referred to in Para (1), the Financial Supervisory Authority, as resolution authority, shall seek to minimise the

cost of resolution and avoid destruction of value unless this prevents the achievement of the resolution objectives.

Art. 41. – Subject to compliance with the provisions of this law, the resolution objectives are of equal significance, and the Financial Supervisory Authority, as resolution authority, shall balance them as appropriate to the nature and circumstances of each case.

SECTION 2

Conditions to initiate resolution

Art. 42. - (1) The Financial Supervisory Authority, as resolution authority, may take a resolution action in relation to an insurer provided that all of the following conditions are met:

a) it determines that the insurer is failing or is likely to fail. In this respect, the directorate exercising the supervisory function shall consult with the directorate exercising the resolution function;

b) the resolution action is necessary in the public interest pursuant to Art. 43 (2).

(2) The duty to determine whether the insurer is failing or is likely to fail falls upon the directorate within the Financial Supervisory Authority exercising the resolution function, further to consulting with the directorate exercising the supervisory function, if the directorate exercising the resolution function has the necessary tools to determine this fact, particularly adequate access to the relevant information. The directorate exercising the supervisory function shall communicate to the directorate exercising the resolution function any relevant information that the latter requests in order to perform its assessment without delay.

(3) The previous adoption of an early intervention measure according to Arts. 26 to 28 is not a condition for taking a resolution action.

Art. 43. - (1) For the purposes of Letter a) of Art. 42 (1), an insurer shall be deemed to be failing or likely to fail if one of the following conditions is met:

a) the insurer infringes or there are objective elements to support a determination that it will, in the near future, infringe the requirements for continuing authorisation, as a result of a rapid deterioration of the

situation of its solvency capital and of its own funds covering the solvency capital requirement in a way that would justify the withdrawal of the authorisation by the Financial Supervisory Authority, as competent authority, including if the insurer has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

b) the assets of the insurer are, or there are objective elements to support a determination that, the assets of the institution will, in the near future, be less than its liabilities;

c) the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its compensations/indemnities owed to the insurance creditors.

(2) For the purpose of Letter b) of Art. 42 (1), a resolution measure is deemed to be of public interest if it is necessary to adequately achieve one or more of the resolution objectives referred to in Art. 40, and winding up the insurer under the normal insolvency proceedings would not allow for achieving the resolution objectives to the same extent.

SECTION 3

General principles of resolution

Art. 44. – When exercising resolution powers and applying to an insurer the tools referred to in Art. 68, the Financial Supervisory Authority shall ensure that the resolution action is taken in accordance with the following principles:

a) the shareholders of the insurer under resolution bear first losses;

b) the creditors of the insurer under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise by law;

c) the management body and senior management of the insurer under resolution are replaced, except in those cases when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;

d) the management body and senior management of the insurer under resolution provides all necessary assistance for the achievement of the resolution objectives;

- e) the natural and legal persons are made liable, under civil or criminal law, for their responsibility for the failure of the insurer;
- f) the creditors of the same class are treated in an equitable manner;
- g) no creditor shall incur greater losses than would have been incurred if the insurer had been wound up under normal insolvency proceedings;
- h) the assets admitted to cover the technical reserves are protected in full; and
- i) the resolution actions are taken in accordance with the safeguards referred to in Arts. 133 to 137.

Art. 45. – When applying resolution tools and exercising resolution powers, the Financial Supervisory Authority, as resolution authority, shall comply with the state aid framework and with the applicable competition rules.

Art. 46. – Where an insurer is applied one of the resolution tools, namely the sale of its business and portfolio, the bridge institution or the asset separation, the legal provisions regarding the protection of the employees' rights in case of transfer of the undertaking, of the unit or of parts thereof shall not apply, the insurer being deemed subject to the bankruptcy proceedings within the meaning of Art. 5 (2) of Law No. 67/2006 on the protection of the employees' rights in case of transfer of the undertaking, of the unit or of parts thereof.

Art. 47. - When applying resolution tools and exercising resolution powers, the Financial Supervisory Authority, as resolution authority, shall inform and consult the employee representatives of the insurer under resolution where appropriate.

Art. 48. – The Financial Supervisory Authority, as resolution authority, shall apply resolution tools and exercise resolution powers without prejudice to the practices regarding the representation of employees in management bodies of the insurer.

CHAPTER II

Resolution administrator

Art. 49. – The Financial Supervisory Authority, as resolution authority, in compliance with the state aid framework, may appoint a resolution

administrator to replace the management body of the institution under resolution, in which case it shall make public such appointment. The resolution administrator shall have the qualifications, ability and knowledge required to carry out his or her functions. The Policyholders Guarantee Fund may be appointed as resolution administrator.

Art. 50. – The resolution administrator shall have all the powers of the shareholders and the management body of the insurer. However, the resolution administrator may only exercise such powers under the control of the Financial Supervisory Authority, as resolution authority.

Art. 51. – The resolution administrator shall have the statutory duty to take all the measures necessary to achieve the resolution objectives referred to in Art. 40 (1) and implement resolution actions according to the decision of the Financial Supervisory Authority, as resolution authority. The resolution actions may include an increase of capital, the change of the shareholding structure of such insurer or the takeover of the control thereof by insurers that are financially sound.

Art. 52. – The Financial Supervisory Authority, as resolution authority, may set limits to the action of the resolution administrator or require that certain acts thereof be subject to its prior consent. The Financial Supervisory Authority, as resolution authority, may replace the resolution administrator at any time.

Art. 53. – The resolution administrator has the obligation to draw up and submit to the Financial Supervisory Authority, as resolution authority, at regular intervals set by it, and at the beginning and the end of his or her mandate, reports on the economic and financial situation of the insurer to which a resolution administrator was appointed and on the acts performed in the conduct of his or her duties.

Art. 54. – The mandate of a resolution administrator may not exceed one year. The mandate may be renewed, in exceptional cases, if the Financial Supervisory Authority, as resolution authority, determines that the conditions for appointment of a resolution administrator continue to be met.

CHAPTER III

Valuation

Art. 55. - Before taking a resolution action in connection with an insurer, the Financial Supervisory Authority, as resolution authority, shall ensure that a legal person financial carries out a fair, prudent and realistic valuation of the assets, liabilities and own capital of the insurer. In compliance with the provisions of Art. 66 and Arts. 138 to 140, where all the requirements laid down in this chapter are met, the valuation shall be considered to be definitive.

Art. 56. - Where an independent valuation according to Art. 55 is not possible, the Financial Supervisory Authority, as resolution authority, may carry out a provisional valuation of the assets and liabilities of the insurer, in accordance with the provisions of Art. 63.

Art. 57. - The objective of the valuation shall be to assess the value of the assets and liabilities of the insurer that meets the conditions for resolution referred to in Art. 42 and Art. 43 (1).

Art. 58. - The purposes of the valuation shall be:

a) to support the assessment of how the conditions for resolution or the conditions for the write down or conversion of debts into relevant capital instruments are met;

b) if the conditions for resolution are met, to contribute to justifying the decision on the appropriate resolution action to be taken in respect of the insurer;

c) when the power to write down or convert debts into relevant capital instruments is exercised, to contribute to justifying the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of debts into relevant capital instruments;

d) when the bridge institution tool or asset separation tool is applied, to contribute to justifying the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the insurer under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

e) when the sale of business and portfolio tool is applied, to contribute to justifying the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to provide information that allows the Financial Supervisory Authority, as resolution authority, to determine what are the measures referred to in Art. 75;

f) in all cases, to ensure that any losses on the assets of the insurer are fully recognised at the moment the resolution tools are applied.

Art. 59. - Without prejudice to the state aid framework, the valuation shall be based on prudent assumptions and shall take into account the following conditions:

a) the Financial Supervisory Authority, as resolution authority, and the Policyholders Guarantee Fund, as administrator of the Insurers Resolution Fund, may recover any reasonable expenses properly incurred from the insurer under resolution, in accordance with the provisions of Art. 72;

b) The Policyholders Guarantee Fund, as administrator of the Insurers Resolution Fund, may charge interest or fees in respect of any loans or guarantees provided to the insurer under resolution, in accordance with Art. 146 and 147.

Art. 60. - The valuation shall be supplemented by the following information, as appearing in the accounting books and records of the insurer:

a) an updated balance sheet and a report on the financial position of the insurer;

b) an analysis and an estimate of the accounting value of the on balance sheet assets and liabilities, including the technical reserves;

c) a list of outstanding on balance sheet liabilities shown in the books and records of the insurer, with an indication of the respective credits and priority levels under the applicable insolvency law.

Art. 61. – To support the justification of the decisions referred to in Letters d) and e) of Art. 58, the information referred to in Letter b) of Art. 60 may be complemented, as the case may be, by an estimate of the value of the assets and liabilities of the insurer on a market value basis.

Art. 62. - (1) The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the

applicable insolvency law and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the insurer were wound up under normal insolvency proceedings.

(2) That estimate shall not affect the application of the “no creditor worse off” principle to be carried out under Art. 134.

Art. 63. - (1) Where due to the urgency in the circumstances of the case it is not possible to comply with the requirements in Art. 60 and 62, a provisional valuation shall be carried out.

(2) The provisional valuation referred to in Para (1) shall include a buffer for additional losses, with appropriate justification.

(3) A valuation shall be considered to be provisional until it is carried out by a legal person financial auditor in accordance with Art. 55. The definitive valuation carried out after the provisional valuation shall be different from the valuation referred to in Art. 134, regardless of whether it is carried out simultaneously therewith or by the same legal person financial auditor.

(4) The ex-post definitive valuation shall be carried out for the following purposes:

a) to ensure that any losses on the assets of the insurer are fully recognised in the books of accounts;

b) to contribute to the justification of the decision to write back creditors’ claims or to increase the value of the consideration paid, in accordance with the provisions of Art. 64.

Art. 64. – If by the definitive ex-post valuation it is estimated that the net asset value of the insurer is higher than the net asset value estimated in accordance with the provisional valuation, the Financial Supervisory Authority, as resolution authority, may:

a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down;

b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the insurer under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or instruments of ownership.

Art. 65. - Notwithstanding the provisions of Art. 56, the provisional valuation conducted in accordance with the provisions of Art. 63 shall be a valid basis for the Financial Supervisory Authority, as resolution authority, to take resolution actions, including taking control of a failing, or to exercise the power to write down or convert debts into relevant capital instruments.

Art. 66. - The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of debts into relevant capital instruments. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with the provisions of Arts. 138 to 140.

CHAPTER IV Resolution tools

SECTION 1 *General principles*

Art. 67. – The Financial Supervisory Authority, as resolution authority, shall have the necessary powers to apply the resolution tools to insurers that meet the applicable conditions for resolution.

Art. 68. – In accordance with the provisions of Art. 67, the resolution tools are as follows:

- a) the sale of the business and portfolio;
- b) the bridge institution;
- c) the asset separation.

Art. 69. – The Financial Supervisory Authority, as resolution authority, may apply the resolution tools individually or in any combination, subject to the provisions of Art. 70.

Art. 70. – The Financial Supervisory Authority, as resolution authority, may apply the asset separation tool only together with another resolution tool.

Art. 71. - Where only the resolution tools referred to in Letter a) or b) of Art. 68, are used, and they are used to transfer only part of the assets, rights or liabilities of the insurer under resolution, the residual insurer from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings. Such winding up shall be done within a reasonable timeframe, having regard to any need for that residual insurer to provide services or support in order to enable the recipient to carry out the activities or services related to the transferred elements, and any other reason for which the continuation of the residual insurer is necessary to achieve the resolution objectives or comply with the principles provided by law.

Art. 72. – The Financial Supervisory Authority, as resolution authority, and the Policyholders Guarantee Fund, as administrator of the Insurers Resolution Fund, acting pursuant to Arts. 146 and 147, may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or the exercise of the resolution powers, in one or more of the following ways:

- a) as a deduction from any consideration paid by a recipient to the insurer under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
- b) from the insurer under resolution, as a preferred creditor;
- c) from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle, as a preferred creditor

SECTION 2
The business or portfolio sale tool

Art. 73. - (1) The Financial Supervisory Authority, as resolution authority, shall have the power to transfer to a purchaser that is not a bridge institution:

a) shares or other instruments of ownership issued by an insurer under resolution;

b) any categories of assets, rights or liabilities of an insurer under resolution or all of them, including the transfer of the insurance portfolio.

(2) The transfer referred to in Para (1) shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser, and without complying with any procedural requirements provided by civil law or by the insurance market legislation, other than those referred to in Arts. 89 and 90.

Art. 74. - A transfer made pursuant to the provisions of Art. 73 shall be made in accordance with the provisions of Law No. 32/2000, as subsequently amended and supplemented, having regard to the circumstances, and in accordance with the state aid framework.

Art. 75. – In accordance with the provisions of Art. 72, the Financial Supervisory Authority, as resolution authority, shall take all reasonable steps to perform a transfer based on the valuation carried out based on the provisions of this law, having regard to the circumstances of the case.

Art. 76. - Any consideration paid by the purchaser under Art. 72, shall benefit:

a) the owners of the shares or other instruments of ownership, where the sale of business and portfolio has been effected by transferring to the purchaser the shares or instruments of ownership issued by the insurer under resolution from the holders of those shares or instruments;

b) the insurer under resolution, if some or all of the assets or liabilities of the insurer under resolution were transferred to the purchaser.

Art. 77. - When applying the sale of business and portfolio tool, the Financial Supervisory Authority, as resolution authority, may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an insurer under resolution or, as the case may be, assets, rights or liabilities of the insurer under resolution.

Art. 78. - Following an application of the sale of business and portfolio tool, Financial Supervisory Authority, as resolution authority, may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the insurer under resolution, or the shares or other instruments of ownership back to their original owners, and the insurer under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

Art. 79. – The purchaser shall meet the legal requirements to carry out the business it acquires by the transfer if the transfer is made in accordance with the provisions of Art. 73. If the Financial Supervisory Authority is the competent authority of the purchaser, it shall assess a potential application for authorisation in this respect, together with the transfer, within a term of up to 30 days.

Art. 80. – The Financial Supervisory Authority shall carry out the necessary assessment so as to allow the application without delay of the sale of business and portfolio tool and to facilitate the achievement by the resolution action of the relevant resolution objectives. If a transfer of shares or other instruments of ownership that takes place based on the application of the sale of business and portfolio tool led to the purchase or the increase of a qualified holding within an insurer, the Financial Supervisory Authority, as the competent authority of such insurer, may carry out the assessment, by way of derogation from the legal provisions regarding the procedure and the assessment criteria applicable to potential purchasers in order to acquire the capacity of significant shareholder of an insurer.

Art. 81. - (1) If the directorate exercising the supervisory function within the Financial Supervisory Authority has not completed the

assessment referred to in Art. 80, on the date of transfer of shares or other instruments of ownership the following measures shall apply:

a) such a transfer of shares or other instruments of ownership to the acquirer shall have immediate legal effect;

b) during the assessment period and during any divestment period provided by Para (5) Letter b), the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended until the Financial Supervisory Authority gives its prior consent. During the suspension, the Financial Supervisory Authority, as resolution authority, may not exercise such voting rights.

(2) During the assessment period and during any divestment period provided by Para (5) Letter b), the penalties and other measures for infringing the requirements regarding the approval of the significant shareholders of an insurer in accordance with Law No. 32/2000, as subsequently amended and supplemented, shall not apply to such transfers of shares or other instruments of ownership.

(3) The Financial Supervisory Authority shall make sure that, promptly upon completion of the assessment, the directorate exercising the supervisory function notifies in writing to the acquirer and to the directorate exercising the resolution function its decision to approve or to oppose, in accordance with the provisions of Law No. 32/2000, as subsequently amended and supplemented and of the regulations issued for the implementation thereof such transfer of shares or other instruments of ownership to the acquirer.

(4) If the directorate exercising the supervisory function within the Financial Supervisory Authority approves such a transfer of shares or other instruments of ownership to the acquirer, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt by the acquirer and the directorate exercising the resolution function of such an approval notice.

(5) If the Financial Supervisory Authority, as competent authority, opposes such a transfer of shares or other instruments of ownership to the acquirer, in the following situations, then:

a) the voting rights attached to such shares or other instruments of ownership as provided by Para (1) Letter b), shall remain in full force and effect;

b) The Financial Supervisory Authority, as resolution authority, may require the acquirer to divest such shares or other instruments of ownership

within a divestment period determined by it, that does not adversely affect the acquirer, taking into account the market conditions;

c) if the acquirer does not complete such a divestment within the divestment period established according to Letter b), then the Financial Supervisory Authority, as competent authority, may impose on the acquirer penalties and other measures for infringing the requirements for the approval of significant shareholders on an insurer. The Financial Supervisory Authority shall make sure that said sanctions and/or other measures are imposed with the consent of the directorate exercising the resolution function.

Art. 82. - Transfers made by virtue of the sale of business and portfolio tool shall be subject to the safeguards provided by law.

Art. 83. – For the purpose of exercise the rights to provide services or to establish itself in a Member State, the purchaser shall be considered to be a continuation of the insurer under resolution, and may continue to exercise any such right that was exercised by the insurer under resolution in respect of the assets, rights or liabilities transferred, as provided by law and by the insurance contracts to which it is a party.

Art. 84. - The purchaser referred to in Art. 73 may continue to exercise the rights of the insurer under resolution, as provided by law and by the insurance contracts to which it is a party.

Art. 85. – The shareholders or creditors of the insurer under resolution and other third parties whose assets, rights or liabilities are not transferred shall not have any rights over or in relation to the assets, rights or liabilities transferred.

Art. 86. - When applying the sale of business and portfolio tool to an insurer, the Financial Supervisory Authority, as resolution authority, shall market, or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership of that insurer that it intends to transfer. Pools of rights, assets, and liabilities may be marketed separately.

Art. 87. - (1) Without prejudice to the state aid framework, where applicable, the marketing referred to in Art. 86 shall be carried out in accordance with the following criteria:

a) it shall be transparent and shall present in detail the assets, rights, liabilities, shares and other instruments of ownership that the Financial Supervisory Authority, as resolution authority, intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;

b) it shall not favour or discriminate between potential purchasers;

c) it shall be free from any conflict of interest;

d) it shall not confer any unfair advantage on a potential purchaser;

e) it shall take account of the need to effect a rapid resolution action;

f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

(2) Subject to the criterion referred to in Para (1) Letter b), the criteria referred to in Para (1) shall not prevent the Financial Supervisory Authority, as resolution authority, from soliciting potential purchasers.

SECTION 3

The bridge institution tool

Subsection 3.1.

General provisions

Art. 88. - (1) In order to give effect to the bridge institution tool and having regard to the need to maintain the critical functions in the bridge institution, Financial Supervisory Authority, as resolution authority, shall have the power to transfer to a bridge institution:

a) shares or other instruments of ownership issued by an insurer under resolution;

b) any assets, rights or liabilities of one or more insurers under resolution.

(2) The transfer referred to in Para (1) may take place without obtaining the consent of the shareholders of the insurer under resolution or any third party other than the bridge institution, and without complying with any procedural requirements provided by Law No. 32/2000, as subsequently

amended and supplemented, and by the regulations issued for the implementation thereof, in compliance with the provisions of Art. 139.

(3) Prior to establishing the bridge institution, the Financial Supervisory Authority, as competent authority, shall carry out an assessment of its viability, in order to achieve the objectives for which it is to be authorised.

Art. 89. - (1) The bridge institution shall be a legal person that meets all of the following requirements:

a) is controlled by the Financial Supervisory Authority, as resolution authority;

b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an insurer under resolution or some or all of the assets, rights and liabilities of one or more insurers under resolution with a view to maintaining access to the critical functions and selling them.

(2) If the Policyholders Guarantee Fund operates and is authorised under this law to exercise the powers of a bridge institution, its activity shall be recorded separately.

Art. 90. - When applying the bridge institution tool, the Financial Supervisory Authority, as resolution authority, shall ensure that the total value of liabilities related to the insurance contracts transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the insurer under resolution.

Art. 91. - any consideration paid by the bridge institution shall benefit, in accordance with Art. 73:

a) the owners of the shares or instruments of ownership, where the transfer to the bridge institution has been effected by transferring shares or instruments of ownership issued by the insurer under resolution from the holders of those shares or instruments to the bridge institution;

b) the insurers under resolution, where the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the insurers under resolution to the bridge institution.

Art. 92. - When applying the bridge institution tool, the Financial Supervisory Authority, as resolution authority, may exercise the transfer power more than once in order to make supplemental transfers of shares or

other instruments of ownership issued by an insurer under resolution or, as the case may be, assets, rights or liabilities of the insurer under resolution.

Art. 93. - (1) Following an application of the bridge institution tool, the Financial Supervisory Authority, as resolution authority, may:

a) transfer, shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party;

b) transfer rights, assets or liabilities back from the bridge institution to the insurer under resolution, or the shares or other instruments of ownership back to their original owners, and the insurer under resolution or original owners shall be obliged to take back, if this is expressly mentioned in the instrument whereby the transfer was performed or if the transfer conditions are not met.

(2) Such a transfer back may be performed at any time and in accordance with any other conditions stipulated in such instrument for such purpose.

Art. 94. - (1) For the purposes of exercising the rights to provide services or to establish itself in another Member State, the bridge institution shall be considered to be a continuation of the insurer under resolution, and may continue to exercise the rights exercised by it.

(2) For other purposes, the Financial Supervisory Authority, as resolution authority, may require that a bridge institution be considered to be a continuation of the insurer under resolution, and be able to continue to exercise all rights exercised by it.

Art. 95. – The management body or the senior management of the bridge institution shall be liable under civil law for the failure or omission to fulfil, in bad faith or by gross negligence, the duties provided by law.

Subsection 3.2.

Operation of a bridge institution

Art. 96. - (1) The operation of a bridge institution shall comply with the following requirements:

a) the contents of the bridge institution's constitutional documents are approved by the Financial Supervisory Authority, as resolution authority;

b) subject to the bridge institution's ownership structure, the Financial Supervisory Authority, as resolution authority, either appoints or approves the bridge institution's management body;

c) the Financial Supervisory Authority, as resolution authority, approves the remuneration of the members of the management body and determines their appropriate responsibilities;

d) the Financial Supervisory Authority, as resolution authority, approves the strategy and risk profile of the bridge institution;

e) the bridge institution is authorised in accordance with the provisions of Law No. 32/2000, as subsequently amended and supplemented, and with the applicable regulations issued by the Financial Supervisory Authority;

f) the bridge institution operates in accordance with the Union State aid framework and the Financial Supervisory Authority, as resolution authority, may specify restrictions on its operations accordingly.

(2) Notwithstanding the provisions referred to in Para (1) Letter e), and where necessary to meet the resolution objectives, the bridge institution may be established and authorised in accordance with Art. 104, at the beginning of its operation. To that end, the directorate within the Financial Supervisory Authority exercising the resolution function shall submit a request in that sense to the directorate exercising the supervisory function. If the Financial Supervisory Authority, as competent authority, decides to grant such an authorisation, it shall indicate the period for which the bridge institution shall operate with the share capital below the level provided by law.

Art. 97. - Subject to any restrictions imposed in accordance with Union or national competition rules, the management of the bridge institution shall operate the bridge institution with a view to maintaining access to critical functions and selling the insurer, its assets, rights or liabilities, to one or more insurers, when conditions are appropriate.

Art. 98. – The Financial Supervisory Authority, as resolution authority, shall take a decision that the bridge institution is no longer a bridge institution within the meaning of Art. 89 in any of the following cases:

a) the bridge institution merges with another entity;

b) the bridge institution ceases to meet the requirements of Art. 89;

c) the sale of all or part of the bridge institution's assets, rights or liabilities to a third party;

d) the expiry of the two year period from the date of the last transfer from an insurer under resolution or the end of the extension period granted in accordance with Art. 100;

e) the bridge institution's assets are completely wound down and its liabilities are completely discharged.

Art. 99. - (1) When the Financial Supervisory Authority, as resolution authority, seeks to sell the bridge institution or its assets, rights or liabilities, it shall ensure that they are marketed openly and transparently, and that the sale does not materially misrepresent them or favour or discriminate between potential purchasers.

(2) The sales in accordance with Para (1) shall be carried out in accordance with law, having regard to the circumstances and in accordance with the state aid framework.

Art. 100. – The Financial Supervisory Authority, as resolution authority, may extend the period referred to in Art. 98 Letter d), while notifying the Competition Council for the exercise of its legal powers, for one or more additional one-year periods where such an extension:

- a) supports the outcomes referred to in Art. 98 Letters a), b), c) or e); or
- b) is necessary to ensure the continuity of essential insurance services.

Art. 101. – Any decision of the Financial Supervisory Authority, as resolution authority, to extend the period referred to in Art. 98 Letter d), shall be reasoned and shall contain a detailed assessment of the situation justifying the extension, including of the market conditions and outlook.

Art. 102. - (1) Where the operation of a bridge institution is terminated in the circumstances referred to in Art. 98 Letter c) or d), the bridge institution shall be wound up under normal insolvency proceedings.

(2) Subject to the provisions of Art. 73, any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit the shareholders of the bridge institution.

Art. 103. - Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one insurer under resolution the obligation referred to in Art. 99 (1) shall refer to the assets and liabilities

transferred from each of the insurers under resolution and not to the bridge institution itself.

Subsection 3.3.

Other provisions on the establishment and operation of a bridge institution

Art. 104. - (1) The Financial Supervisory Authority, as competent authority, may decide to approve the establishment of a bridge institution authorised in accordance with the provisions of Law No. 32/2000, as subsequently amended and supplemented, with a share capital below the level provided by the regulations issued by the Financial Supervisory Authority for the implementation of the provisions of Law No. 32/2000, as subsequently amended and supplemented, but which shall not be less than the RON equivalent of EUR two million. The Financial Supervisory Authority shall notify, in this case, the authorisation to the bridge institution and to the European Commission, together with the reason for the share capital level established.

(2) The authorisation of the bridge institution shall be made in compliance with the state aid framework.

Art. 105. – Upon the establishment of a bridge institution authorised by the Financial Supervisory Authority, as competent authority, the Financial Supervisory Authority shall appoint the persons ensuring the management of the structures in charge of the risk management, internal audit, compliance activities and of any other activities that may expose such bridge institution to significant risks.

Art. 106. - (1) By way of derogation from the provisions of Art. 10 (3) of Law No. 31/1990, republished, as subsequently amended and supplemented, a bridge institution authorised by the Financial Supervisory Authority may be established as a joint stock company with a sole shareholder.

(2) The provisions of Art. 9 (2) and Art. 111 (2) Letter b¹) of Law No. 31/1990, republished, as subsequently amended and supplemented, shall not apply to the bridge institution authorised by the Financial Supervisory Authority. This paragraph shall be applied in compliance with the state aid framework.

Art. 107. – The Financial Supervisory Authority shall establish, by its own regulations, the documentation based on which the establishment of a bridge institution in accordance with the provisions hereof is authorised, and the contents of the decision on the establishment of such a bridge institution.

Art. 108. - (1) The registration of the bridge institution with the trade registry shall be made based on its constitutional documents and, where applicable, the establishment authorisation, within 24 hours from the submission of the documents with the trade registry within whose jurisdiction the headquarters of the bridge institution is located.

(2) The other documents provided by law for the registration of a company in accordance with Law No. 31/1990, republished, as subsequently amended and supplemented shall be submitted within maximum 30 days from the submission of the constitutional documents and, where applicable, of the establishment authorisation.

(3) Failure to comply with the provisions of Para (2) shall be sanctioned in accordance with the provisions of Art. 44 of Law No. 26/1990 on the Trade Registry, republished, as subsequently amended and supplemented.

Art. 109. – The bridge institution authorised by the Financial Supervisory Authority shall commence its activity on the first business day following its registration with the trade registry.

Art. 110. – Within the insolvency proceedings applicable to the insurer under resolution, the liquidator shall make sure that the instructions of the management body of the bridge institution to be fulfilled by the personnel of the insurer under resolution are implemented.

Art. 111. - (1) If the sale of the bridge institution authorised by the Financial Supervisory Authority is carried out by selling the shares, as of the sale date thereof, the insurer operating as bridge institution shall comply with all of the requirements provided by Law No. 32/2000, as subsequently amended and supplemented, for the operation of an insurer, including the minimum capital requirement.

(2) In the situation referred to in Para (1), the authorisation of the insurer that operated as bridge institution and that meets the requirements

provided by Law No. 32/2000, as subsequently amended and supplemented, shall continue to produce effects indefinitely.

SECTION 4
The asset separation tool

Art. 112. - (1) In order to give effect to the asset separation tool, the Financial Supervisory Authority, as resolution authority, shall have the power to transfer assets, rights or liabilities of an insurer under resolution or a bridge institution to one or more asset management vehicles.

(2) The transfer referred to in Para (1) may take place, in compliance with the provisions of Arts. 138 to 140, without obtaining the consent of the shareholders of the insurers under resolution or any third party other than the bridge institution, and without complying with any procedural requirements provided by law.

Art. 113. - For the purposes of the asset separation tool, *an asset management vehicle* shall be a legal person that meets all of the following requirements:

- a) it is controlled by the Financial Supervisory Authority, as resolution authority;
- b) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more insurers under resolution or a bridge institution.

Art. 114. - The asset management vehicle shall manage the assets transferred to it with a view to protecting them for the purpose of their sale or orderly wind down.

Art. 115. – An asset management tool shall operate provided that the Financial Supervisory Authority, as resolution authority:

- a) approves the contents of the asset management vehicle’s constitutional documents;
- b) appoints or approves the asset management vehicle’s management body;
- c) approves the remuneration of the members of the management body and determines their appropriate responsibilities;

d) approves the strategy and risk profile of the asset management vehicle.

Art. 116. – The Financial Supervisory Authority, as resolution authority, may exercise the power specified in Art. 112 to transfer assets, rights or liabilities only in compliance with one of the following conditions:

a) the situation of the particular market for those assets is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets;

b) such a transfer is necessary to ensure the proper functioning of the insurer under resolution or bridge institution; or

c) such a transfer is necessary to maximise liquidation proceeds.

Art. 117. - When applying the asset separation tool, the Financial Supervisory Authority, as resolution authority, shall determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with the principles established by law and with the state aid framework.

Art. 118. – Any consideration paid by the management vehicle of the assets and portfolios acquired directly from the insurer under resolution shall be made on account of the insurer under resolution, in compliance with the provisions of Art. 72. Consideration may be paid in the form of a receivable issued by the asset management vehicle.

Art. 119. - Where the bridge institution tool has been applied, an asset management vehicle may, subsequent to the application of the bridge institution tool, acquire assets, rights or liabilities from the bridge institution.

Art. 120. - (1) The Financial Supervisory Authority, as resolution authority, may transfer assets, rights or liabilities from the institution under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the insurer under resolution provided that the conditions specified in Art. 121 are met.

(2) The insurer under resolution shall be obliged to take back any such assets, rights or liabilities.

Art. 121. - (1) The Financial Supervisory Authority, as resolution authority, may transfer rights, assets or liabilities back from the asset management vehicle to the insurer under resolution in one of the following circumstances:

a) the possibility that the specific rights, assets or liabilities may be transferred back is stated expressly in the instrument by which the transfer was made;

b) the specific rights, assets or liabilities do not fall within the classes of, or meet the conditions for transfer of, rights, assets or liabilities specified in the instrument by which the transfer was made.

(2) In either of the cases referred in Para (1), the transfer back may be made within any period, and shall comply with any other conditions, stated in that instrument for the relevant purpose.

Art. 122. - Transfers between the insurer under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers provided by law.

Art. 123. – The shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle or its management body or senior management.

Art. 124. - The objectives of an asset management vehicle shall not imply any duty or responsibility to shareholders or creditors of the insurer under resolution, and the management body or senior management shall be liable under the civil law before such shareholders or creditors for the failure to fulfil or fulfilment in bad faith or gross negligence of the duties provided by law.

SECTION 5

Write down of capital instruments

Art. 125. - The power to write down or convert debts into relevant capital instruments may be exercised either:

a) independently of resolution action; or

b) in combination with a resolution action, where the conditions for resolution provided by law are met.

Art. 126. – The Financial Supervisory Authority, as resolution authority, has the power to write down or convert debts into relevant capital instruments.

Art. 127. – The Financial Supervisory Authority, as resolution authority, shall exercise the power referred to in Art. 126 in accordance with the legal provisions, without delay, in relation to relevant capital instruments issued by an insurer, when one or more of the following conditions are met:

a) where the Financial Supervisory Authority determined that all conditions for resolution provided by law were met before any resolution action is taken;

b) the Financial Supervisory Authority, as competent authority, determines that, unless that power is exercised in relation to the relevant capital instruments, the insurer will no longer be viable.

Art. 128. – It is deemed that an insurer is no longer viable if all of the following conditions are met:

a) the insurer is failing or likely to fail;

b) the alternative private sector measures, the supervisory actions, including an early intervention measure, except for the write down or conversion into capital measure, considered individually or combined with another resolution action, cannot prevent the failure of the insurer;

c) there is no reasonable prospect for the failure of an insurer to be prevented in due time by any measure, whether it is an alternative private sector measure or a supervisory action, including an early intervention measure, except for the write down or conversion of debts into capital measure, considered individually or combined with a resolution action.

Art. 129. – For the purpose of Art. 128 Letter a), an insurer shall be deemed to be failing or likely to fail where one or more of the conditions referred to in Art. 43 (1) are met.

Art. 130. – The Financial Supervisory Authority shall make sure that, in the case provided in Art. 129, the directorate exercising the supervisory function promptly informs the directorate exercising the resolution function.

Art. 131. - (1) Before exercising the power to write down or convert debts into capital instruments, the Financial Supervisory Authority, as resolution authority, shall ensure that a valuation of the assets, liabilities and capital of the insurer, is carried out in accordance with the provisions of this law.

(2) For the purpose of Para (1), valuation shall form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalise the insurer.

Art. 132. - Where the principal amount of a relevant capital instrument is written down:

a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism following the definitive valuation carried out, in which case a receivable write up mechanism may be applied to repay the creditors and, subsequently, the shareholders, up to the level deemed necessary;

b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any compensation owed, that may arise as a result of an appeal challenging the legality of the exercise of the write-down power or of the power to convert the debts into relevant capital instruments;

c) no compensation is paid to any holder of the relevant capital instruments.

CHAPTER V

Safeguards

Art. 133. – The Financial Supervisory Authority shall ensure that, where one or more resolution tools have been applied and, in particular for the purposes of Art. 135, it transfers only parts of the rights, assets and liabilities of the insurer under resolution, the shareholders and those creditors whose claims have not been transferred, receive in satisfaction of

their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision to apply the resolution measures was taken.

Art. 134. - (1) For the purposes of assessing whether shareholders and creditors would have received better treatment if the insurer under resolution had entered into normal insolvency proceedings, the Financial Supervisory Authority, as resolution authority, shall ensure that a valuation is carried out by a legal person financial auditor as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out in accordance with the provisions of Art. 55-66.

(2) The valuation referred to in Para (1) shall determine:

a) the treatment that the shareholders and the insurance creditors would have received if the insurer under resolution had entered normal insolvency proceedings at the time when the decision regarding the resolution measures was taken;

b) the actual treatment that the shareholders and insurance creditors have received, in the resolution of the insurer under resolution; and

c) if there is any difference between the treatment referred to in Letter a) and the treatment referred to in Letter b).

(3) The valuation shall:

a) assume that the insurer under resolution would have entered normal insolvency proceedings at the time when the decision regarding the resolution measures was taken;

b) assume that the resolution action or actions had not been effected.

Art. 135. - If the valuation carried out in accordance with the provisions of Art. 134 determines that any of the shareholder or creditors referred to in Art. 133 has incurred greater losses than it would have incurred if the insurer had been wound up under normal insolvency proceedings, any of them is entitled to the payment of the difference from the resolution financing arrangements.

Art. 136. – The Financial Supervisory Authority, as resolution authority, shall ensure that the protection measures apply in the following circumstances:

a) if the Financial Supervisory Authority, as resolution authority, transfers some but not all of the assets, rights or liabilities of an insurer under resolution to another insurer or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another insurer;

b) if the Financial Supervisory Authority, as resolution authority, exercises the power to request the competent court to annul or amend, in order to protect insurance creditors, the clauses of a contract to which the insurer under resolution is a party or the power to replace another recipient insurer as signatory.

Art. 137. – The Financial Supervisory Authority, as resolution authority, shall establish by its own regulations the categories of contracts to which the protection measures and the conditions for implementation of the safeguards provided by this chapter apply.

CHAPTER VI

Right of appeal and exclusion of other actions

Art. 138. - (1) The decisions to take a crisis prevention measure or to exercise one of the powers provided by law, other than that regarding the crisis management measures, may be appealed before the Administrative and Fiscal Disputes Section of the Bucharest Court of Appeal, within 10 days from the communication date, on penalty of loss of right.

(2) The appeal shall be judged as a matter of urgency and with priority. The court decision may be appealed in accordance with law.

Art. 139. - (1) all persons affected by a decision to take a crisis management measure, have the right to appeal against that decision in accordance with the provisions of Art. 138 (1).

(2) While settling the appeal, the court of law shall use complex economic assessments of the facts carried out by the Financial Supervisory Authority, as resolution authority.

Art. 140. - (1) The use of a way of appeal shall not suspend the effects of the decision issued by the Financial Supervisory Authority, as resolution authority appealed, which shall constitute an enforceable title.

(2) Where it is necessary to protect the interests of third parties who, acting in good faith, have acquired shares or other instruments of ownership, assets, rights or liabilities of an insurer under resolution by virtue of the use of resolution tools or exercise of resolution powers by the Financial Supervisory Authority, as resolution authority, the annulment of a decision of the Financial Supervisory Authority shall not affect any subsequent administrative acts or transactions concluded based on the annulled decision. In that case, the remedies for a wrongful decision or action by the Financial Supervisory Authority, as resolution authority, shall be limited to compensation paid by the Financial Supervisory Authority for the loss suffered by the applicant as a result of the decision or act.

CHAPTER VII

Financing arrangements

Art. 141. – In order to ensure the effective implementation of the resolution tools and measures by the Financial Supervisory Authority as resolution authority, the Insurers Resolution Fund shall be established, whose resources shall be used in accordance with the resolution objectives and principles provided under Arts. 40 and 44.

Art. 142. – The Insurers Resolution Fund shall be managed by the Policyholders Guarantee Fund.

Art. 143. – In order for the Policyholders Guarantee Fund to exercise its functions as manager of the Insurers Resolution Fund, the Financial Supervisory Authority shall issue regulations on its operation, within 60 days from the entry into force of this law.

Art. 144. - (1) The Insurers Resolution Fund shall be established from the following financial sources:

a) contributions from all insurers authorised in accordance with Law No. 32/2000, as subsequently amended and supplemented;

b) interest and delay penalties from the late payment of the contributions by the insurers;

c) loans or bond loans by issuance of securities of the Guarantee Fund, as manager of the Resolution Fund, and other forms of financial support from institutions, financial institutions or other third parties, if the amounts charged as contributions in accordance with Letter a) are insufficient to cover the losses, costs or other expenses incurred with the implementation of the resolution tools. By way of exception from the provisions of Law No. 213/2015, these operations shall be carried out by the Guarantee Fund as manager of the Resolution Fund.

(2) The insurers shall pay to the Policyholders Guarantee Fund the contributions referred to in Para (1) Letter a) in the national currency - leu.

(3) The Policyholders Guarantee Fund, as manager of the Insurers Resolution Fund, has the obligation to invest the available funds of the Insurers Resolution Fund in low risk assets in a sufficiently diversified manner.

(4) The Policyholders Guarantee Fund, as manager of the Insurers Resolution Fund, shall establish the strategy on the investment of the resources of the Insurers Resolution Fund and shall revise it on an annual basis or more frequently, if required.

(5) The strategy on the investment of the resources of the Insurers Resolution Fund has as main objectives the minimisation of the risk and the liquidity of the investment, and as secondary objective their profitability. The investment selection criteria shall be quantified and hierarchized depending on these 3 objectives.

Art. 145. - (1) The resources of the Insurers Resolution Fund shall be used based on the decision of the Financial Supervisory Authority, as resolution authority, and only for the purposes referred to in Art. 146.

(2) The financing arrangements referred to in Art. 146 (1) shall be carried out in compliance with the state aid framework.

Art. 146. - (1) The use of the resources of the Insurers Resolution Fund may be decided by the Financial Supervisory Authority, as resolution authority, to cover the needs related to the implementation of the resolution tools, for the following purposes:

a) to guarantee the assets or the liabilities of the insurer under resolution, a bridge institution or an asset management vehicle;

b) to grant loans to the insurer under resolution, a bridge institution or an asset management vehicle;

c) to transfer assets and the insurance portfolio of the insurer under resolution;

d) to finance a bridge institution or an asset management vehicle;

e) to pay compensation to shareholders or creditors, if they accrued greater losses than they would have accrued if the insurer had been wound up under normal insolvency proceedings;

f) to repay the loans contracted and the costs associated thereto;

g) any combination of the actions referred to in Letters a) to f).

(2) The resources of the Insurers Resolution Fund may be used to take the actions referred to in Para (1) also with respect to a potential purchaser in the context of the sale of business and portfolio tool.

Art. 147. – The resources of the Insurers Resolution Fund shall not be used directly to absorb the losses of an insurer. In the event that the use of the resources of the Insurers Resolution Fund for the purposes in Art. 146 indirectly results in part of the losses of an insurer being passed on to the resolution financing arrangement, the principles set out in Art. 44 shall apply.

Art. 148. – The financial resources collected under Art. 147 may be used only for the purposes provided under Art. 146.

Art. 149. – The amounts received from the insurers under resolution or from the bridge institution, the interest or other income generated by investments shall be used to fund the Insurers Resolution Fund.

Art. 150. – The Policyholders Guarantee Fund, as manager of the Resolution Fund, may contract borrowings or other forms of support from credit institutions, financial institutions or other third parties in the event that the amounts raised in accordance with Art. 144 (1) are not sufficient to cover the losses, costs or other expenses incurred by the use of the Insurers Resolution Fund or those for the implementation of the resolution tools.

Art. 151. – Until the Insurers Resolution Fund reaches a sufficient level in accordance with the provisions of Art. 141, the financial resources of the Policyholders Guarantee Fund may be used to cover the needs related to the implementation of the resolution tools, which shall be repaid in full by the

Insurers Resolution Fund, as it raises the financial resources provided by law.

Art. 152. - (1) The contributions owed by insurers to the Resolution Fund shall be calculated separately for the two categories of insurances, namely life and non-life insurance, based on the monthly accounting records thereof, by applying a percentage fee established in accordance with the provisions of Para (3).

(2) The percentage of the contributions shall not exceed 1% of the gross premiums collected by the insurers from the direct insurance activity.

(3) The percentage shall be established separately for the two categories of insurance, by regulations issued by the Financial Supervisory Authority, at the proposal of the Policyholders Guarantee Fund, as manager of the Resolution Fund.

(4) In case of shortfall of the Resolution Fund, in order to cover the liabilities generated for the implementation of this law, the Financial Supervisory Authority may increase, during the year, the percentage taken into account upon determining the contribution, in compliance with the limit provided under Para (2).

(5) The insurers' contribution to the Resolution Fund shall be recorded separately in the accounting records of the Policyholders Guarantee Fund, as manager of the Resolution Fund.

Art. 153. - (1) The contribution owed by insurers to the Resolution Fund shall be transferred monthly into the account of the Policyholders Guarantee Fund, as manager of the Resolution Fund, by insurers, in the national currency - leu, no later than the last working day of the month following the reporting month.

(2) The contributions owed and transferred into the account of the Policyholders Guarantee Fund, as manager of the Resolution Fund, by insurers shall not be repaid.

Art. 154. - (1) The insurers have the obligation to prepare and submit on a monthly basis to the Policyholders Guarantee Fund, as manager of the Resolution Fund, no later than the last working day of the current month for the previous month, the reports on the establishment and transfer of the contribution owed, separately for the two categories of insurance, namely life and non-life insurance.

(2) The insurers shall attach to the reports a statement signed by their legal representative, subject to the sanctions provided by Law No. 286/2009 on the Criminal Code, as subsequently amended and supplemented, for the crimes of fraud and/or false statements, attesting to the fact that the data and/or information submitted is real, correct and complete.

Art. 155. - (1) The act establishing and identifying an insurer's payment obligation to the fund referred to in Art. 141, issued by the Financial Supervisory Authority, represents a debt security, in accordance with law.

(2) On the maturity date, the debt security becomes an enforceable title based on which the Financial Supervisory Authority shall initiate the forced execution proceedings to recover the claims, in accordance with the provisions of Law No. 134/2010 on the Civil Procedure Code, , republished.

(3) The amounts transferred by insurers to the Policyholders Guarantee Fund, as manager of the Resolution Fund, as contribution may only be forcibly executed for failure to fulfil the obligations for which they were established.

(4) In case of failure to pay on term the amounts owed to the Policyholders Guarantee Fund, as manager of the Resolution Fund, delay penalties and interest shall be applied, calculated in accordance with the applicable regulations related to the recovery of fiscal claims. The interest and penalties shall be transferred into the account of the Policyholders Guarantee Fund, as manager of the Resolution Fund.

CHAPTER VIII

Confidentiality

Art. 156. – The following persons and authorities have the obligation to keep the confidentiality of all information they have access to and manage in accordance with this law:

a) the Financial Supervisory Authority, as resolution authority and competent authority;

b) the resolution administrators or the temporary administrators appointed in accordance with the provisions of this law;

c) potential acquirers, both those contacted by the Financial Supervisory Authority, as competent authority, and those solicited by the

Financial Supervisory Authority, as resolution authority, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business and portfolio tool and irrespective of whether the solicitation resulted in an acquisition;

d) the auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the Financial Supervisory Authority, as resolution authority or competent authority, or by the potential acquirers referred to in Letter c);

e) the Policyholders Guarantee Fund;

f) other authorities involved in the resolution process;

g) the bridge institution or the asset management vehicle involved;

h) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to the entities referred to in Letters a) to g);

i) the senior management, the members of the management body, and the employees of the insurer under resolution, during and after their appointment.

Art. 157. - (1) Without prejudice to the generality of the requirements under Art. 156, the persons referred to in Art. 156 shall be prohibited from disclosing confidential information received during the course of their professional activities or from the Financial Supervisory Authority, as competent authority or resolution authority, in connection with their functions under this law, to any person or authority, with the following exceptions:

a) the disclosure is made in the exercise of their functions under this law;

b) the information is supplied in summary or collective form such that the insurers under resolution cannot be identified;

c) with the express and prior consent of the authority or the insurer under resolution which provided the information.

(2) The persons referred to in Art. 156 shall assess the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits.

(3) The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the

contents and details of recovery and resolution plan, and the result of any assessment carried out in accordance with the provisions of this law.

(4) Any person or entity referred to in Art. 156 shall be subject to civil liability, in accordance with law, for the prejudice caused by the disclosure of information in breach of the provisions of this chapter.

Art. 158. - (1) This chapter shall not prevent:

a) the employees and experts of the entities referred to in Art. 156 Letters a) to h) from sharing information among themselves within each entity;

b) the Financial Supervisory Authority, as resolution authority and competent authority, including its employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, subject to strict confidentiality, with a potential acquirer for the purposes of planning or carrying out a resolution action.

(2) Notwithstanding any other provision of this chapter, the exchange of information is permitted:

a) subject to strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;

b) with the parliamentary enquiry commissions of the Parliament of Romania, the Court of Accounts of Romania, in appropriate conditions;

c) with the authorities responsible for the insolvency proceedings, the supervisory authorities of other entities within the financial sector, the authorities responsible for the supervision of banking markets, and with the personnel in charge of carrying out on the spot inspections acting in their name, with the authorities responsible for maintaining the stability of the financial system in the Member States by using the macroprudential rules, the authorities responsible for protecting the stability of the financial system and the persons in charge of carrying out statutory audits.

Art. 159. – The provisions of this chapter shall be without prejudice to the criminal legislation on the disclosure of information during judicial proceedings in criminal or civil cases.

CHAPTER IX

Final provisions

Art. 160. – The Financial Supervisory Authority, both as competent authority, and as resolution authority, shall issue regulations for the implementation of this law with regard to:

a) the powers of the Financial Supervisory Authority regarding early intervention measures;

b) the conditions necessary for carrying out early intervention measures;

c) the identification of the situations where an insurer is failing or is liable to fail;

d) the assessment process and the decision making process with regard to resolution;

e) the establishment of the elements required for the efficiency of the sale of business instrument;

f) circumstances adequate to the use of recapitalisation measures, considering the factors related to such measures;

g) transparency rules applied in case of use of the resolution tools;

h) the critical services that the Financial Supervisory Authority may require from the institutions under resolution to allow a recipient to effectively exercise an activity that was transferred to it;

i) the methodology used for establishing the value of derivatives when an insurer is under resolution;

j) details on the information, quality and quantity indicators, and the sets of financial crisis and severe macroeconomic crisis scenarios, relevant to the insurer's specific conditions including system-wide events and relevant specific crises, that must be included in the recovery plans;

k) the establishment of the activities, services and operations falling under the category of critical functions and the criteria for determining the business lines and related services falling under the category of core business lines;

l) the criteria for assessing the impact of an insurer's failure on the insurance market and on other insurers;

m) the additional details and the circumstances in which the resolution measures may be carried out;

n) the criteria necessary to assess the possibilities to carry out and the implementation procedure of the measures in the resolution plan.

This law was adopted by the Parliament of Romania, in compliance with the provisions of Art. 75 and Art. 76 (2) of the Constitution of Romania, republished.

PRESIDENT OF THE
CHAMBER OF DEPUTIES

PRESIDENT OF THE
SENATE

VALERIU-ȘTEFAN ZGONEA

CĂLIN POPESCU-TĂRICEANU

Bucharest, 02.11.2015
No. 246

Information to be included by the insurer in the recovery plan

1. a summary of the key elements of the plan and a summary of overall recovery capacity of the insurer;
2. a summary of the material changes to the institution since the most recently filed recovery plan;
3. a communication and disclosure plan outlining how the insurer intends to manage any potentially negative market reactions;
4. a range of capital and liquidity actions required to maintain or restore the viability and financial position of the insurer;
5. an estimation of the timeframe for executing each material aspect of the plan;
6. a detailed description of any material impediment to the effective and timely execution of the plan;
7. the identification of the critical functions;
8. a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the insurer;
9. a detailed description of how the recovery plan is integrated in the insurer's management framework, as well as of the policies and procedures for the approval of the recovery plan and the identity of the persons responsible for preparing and carrying out the plan;
10. arrangements and measures to conserve or restore the institution's own funds;
11. arrangements and measures to ensure that the insurer has adequate access to contingency funding sources;
12. arrangements and measures to reduce risk and leverage;
13. arrangements and measures to restructure liabilities;

14. arrangements and measures to restructure business lines;
15. arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
16. arrangements and measures necessary to maintain the continuous functioning of the insurer's operational processes, including infrastructure and IT services;
17. preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
18. other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
19. preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the insurer;
20. a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.