

**Law no. 411/2004**  
**on**  
**Privately Administered Pension Funds**

*as modified and amended by the Govern Emergency Ordinance no. 50/2005  
and by Law no.23/2007*

**Chapter I**  
**General Provisions**

**Art.1** (1) The present law regulates:

- a) The principles of establishing, organization and functioning of privately administrated pension funds;
- b) The principles of organization and functioning of privately administrated pension funds' administrators, as well as the coordination of activity carried out by other entities involved in this area;

(2) The goal of the privately administrated pension fund system is to provide a private pension, aside and supplementary to the pension provided by the public system pension, on the basis of collecting and investing, for the participants, a percentage of the individual contribution to the social insurance.

**Art.2** (1) In terms of present law, the terms and expressions below bear the following meaning:

1. *the assets of a privately administrated pension fund* represent financial instruments, including derived financial instruments, as well as ready cash, resulting from the investment of participants' personal assets;
2. *the personal assets* represents the amount collected in a participant's account, equal with the number of units of fund owned by the concerned participant multiplied with the daily updated value of a unit of fund;
3. *the total net assets of the privately administrated pension fund valid on a certain date* represent the value resulted after deducting the value of fund's liabilities from the value of fund's assets on the same date;
4. *the individual subscription act* represents an agreement concluded in written form between the natural person and administrator and comprises the person's agreement to become a part of the civil company contract, as well as of the pension scheme's prospectus;
5. *the significant shareholder* represents the natural or legal person or the group of legal and/or natural persons who act together and hold either directly or indirectly a participation quota of 10% or more from the social capital of a company or from the rights of vote or has a participation which permits to exert (exercise) a significant influence upon the management and business policy of the concerned company;
6. *the special administration* represents the exercise of fiduciary responsibility by the special administrator, for a defined period, upon the assets of the privately administrated pension fund, with the aim of reducing the losses so as to protect participants' and beneficiaries' entitlements;
7. *the special administrator* can be any legal person authorized to administrate a pension fund,

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

appointed by the Romanian Private Pension Supervisory Commission which subrogates in respect of administrator's rights and duties for a defined period;

8. *the administrator* is the commercial company, established in accordance with the provisions of the Romanian legislation in force and with the provisions of the present law, further named the pension company, that has as sole object of activity the administration of the pension funds and, optionally providing private pensions

9. *marketing agent* for the pension fund – the natural or legal person that is empowered to obtain the agreement of the participant to adhere at a pension fund.

10. *the beneficiary* is the participant's inheritor, defined in accordance with Civil Code's provisions;

11. *collateral benefits* represent any advantages, such as cash facilities or gifts, others than those resulting from the status of participant or beneficiary of a privately administrated pension;

12. *the of Private Pension System Supervisory Commission*, hereinafter called the *Commission* represents the autonomous administrative authority, with legal personality, subject to the control of Romanian Parliament, in accordance with the Emergency Ordinance of Government no.50/2005 on the establishment, organization and functioning of the Romanian Private Pension Supervisory Commission, approved with modification by Law no. 313/2005;

13. *the Council for Special Surveillance* represents two or more persons, in accordance with the number of administered pension funds or the number of participants thereof who belong to Commission's specialty staff and who provide assistance and supervision with regard to the activity carried out by administrator with the aim of decreasing risks and ensuring the recovery of pension fund;

14. *the administration contract* represents the contract concluded between administrator and participant, the object of which is the pension fund's administration;

15. *the custody contract* is the contract signed by the administrator, as legal representative of the private pension fund in relation with third parties, and by the custodian bank. The object of the contract is depositing the financial assets of the pension fund.

16. *the contributions* represent the amounts paid by participants and/or paid on their behalf to a pension fund;

17. *the custodian* is the Romanian credit institution, authorized by the National Bank of Romania, in accordance with the legislation regulating the banking area or the branch based in Romania of a credit institution authorized in a EU Member State or in a state included in the European Economic Area, endorsed by Commission to carry out activities of custody, according to law provisions and which is assigned with depositing all the assets of each privately administrated pension fund, in conditions of security;

18. *the privately administrated pension fund*, hereinafter named the fund, represents the fund established by a civil company contract concluded between participants, in accordance with Civil Code' provisions upon the private civil company, as well as with present law provisions;

19. *the guarantee pension fund* represents the fund established on the basis of contributions paid by administrators and providers of pensions, for the aim of protecting participants' and beneficiaries' rights, according to circumstances, acquired within the pension system regulated and supervised by Commission;

20. *the Central Collector* is the institution that has, by law, the obligation to collect all individual social insurance contributions.

21. *the Central Registry* is the institution that has, by law, the obligation, to keep the database of all insured persons in the public pension system.

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

22. *the financial instruments* represent:

- a) exchange securities;
- b) participation bonds in the bodies of collective investments;
- c) instruments of the monetary market, including state bonds with a due date below one year and certificates of deposit;
- d) financial “futures” contracts, including similar contracts with final settlement of accounts in funds;
- e) “forward” contract on interest rate;
- f) swaps on interest rate, on exchange rate and on shares;
- g) options on every financial instrument as presented in letters a) to d) including similar contracts with final settlement of accounts in funds, including options on exchange rate and on interest rate;
- h) any other instrument admitted for transaction on a regulated market within an EU Member State or a state included in the European Economic Area or for which was filled up a request for admission to transaction on such a market;

23. *the derivate financial instruments* represent the instruments defined at pt. 22. let.d) and g), their combinations as well as other instruments qualified as such by regulations of National Commission of Social Securities;

24. *the participant* is the person who contributes and/or on whose behalf were paid contributions to a fund of privately administrated pensions and who shall be, in the future, entitled to a privately administrated pension;

25. *the private pension* represents the amount paid periodically, on the whole duration of one's life, to titular or beneficiary, additionally and distinctly from the pension paid by the public pension system;

26. *the payer* is the legal or natural person that retains and pays the individual social insurance contribution.

27. *the daily weight of a fund* represents the ratio between the total net assets of fund and the sum of net assets of all funds calculated on that date;

28. *the average weight of a fund* for a certain period represents the arithmetic mean of daily weights of funds throughout the considered period;

29. *the prospectus of the privately administrated pension scheme* is the document comprising the terms of the administration contract and of the pension scheme;

30. *the technical provision* represents an adequate amount of liabilities in compliance with the financial commitments resulted from the investments portfolio able to cover the biometrical and risk-related investments.

31. *the profitability rate of a privately administrated pension fund* represents the annualized rate of the product of daily performances, quantified for a period of twenty-four months; the daily performance of a fund is equal with the ratio between the value of a unit of fund valid on that day and the value of the unit of fund on the previous day;

32. *the weighted average profitability rate of all funds* represents the sum of products between the rate of profitability of each fund and the average share of a fund within the totality of privately administrated pension funds in the concerned period;

33. *biometrical risks* are the death-, disability- and longevity-related risks;

34. *the privately administrated pension scheme* represents a system of terms, conditions and rules on the basis of which the administrator collects and invests the assets of privately administrated pension fund so as the participants to acquire a privately administrated pension benefit;

35. *the Member State of origin* represents the EU Member State or the state included in the

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

European Economic Area where is based the headquarters and the main administrative structure of the administrator or, in the event that it does not have a social headquarters, the place where its main administrative structure is based;

36. *the host Member State* represents the EU Member State or the state included in the European Economic Area whose social and labor legislation relevant in the area of privately administrated pension schemes is applicable to the relation between employer and participants;

37. *the third state* is any other state which is not an EU Member State or which is not included in the European Economic Area;

38. *the unit of fund* represents the ratio between the value of total net assets of privately administrated pension fund and the up-to-date value of a unit of fund;

(2) The person affiliated, in relation to a natural or legal person, called the *first entity*, represents:

a) a shareholder or group of shareholders which hold more than 10% from the shares issued by the first entity or which, although holds a lower percentage, can influence either directly or indirectly, the decisions taken by the first entity;

b) any entity wherein the first entity holds either directly or indirectly more than 10% of the issued stock or which, although holds a lower percentage, can influence either directly or indirectly, the decisions taken by the concerned entity;

c) any other entity wherein a shareholder holds, either directly or indirectly, more than 30% of issued stock and, at the same time, holds either directly or indirectly more than 30% from the totality of shares issued by the first entity;

d) any person who can influence, either directly or indirectly the decisions taken by the first entity;

e) any member of the Administration Board or of another leading or supervising body of the concerned entity;

f) the husband/wife or a relative up to the third degree or a relative by marriage up to the second degree, included, or any other person stipulated under letters a)-e).

## Chapter II The Pension Fund

**Art. 3** (1) The financial resources of the pension fund consist in:

- a) the net contributions converted into fund units,
- b) entitlements of beneficiaries which were not vindicated within the general limitation term;
- c) the interests and late payment penalties for the contributions not paid in due time;
- d) the amounts resulted from the investment of incomes stipulated under letters a) - c).

**Art. 4** The administration-related expenses will be covered by the administrator

**Art. 5** (1) A pension fund must have minimum 50.000 participants and is established by a civil society contract.

(2) The minimum number of participants, stipulated under paragraph (1) must be accomplished in the first three years from the date of establishment.

**Art. 6** (1) All participants and beneficiaries to a private pension fund have equal rights and liabilities and benefit of a non-discriminatory treatment.

(2) The participants and beneficiaries of a private pension fund are entitled to equal treatment even in the event of transferring to another work place, permanent domicile or residence on the territory of another state, either EU Member State or included in European Economic Area.

(3) In the event of transferring the work place, permanent domicile or residence on the territory of

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

another state, the participants choose between continuing to pay contributions to a privately administrated pension fund from Romania or to pay contributions to another pension fund.

(4) No person who wants to become participant can be subjected to a discriminatory treatment and can be denied from receiving the quality of participant if the eligibility terms are met.

(5) When applying the present Law, is strictly forbidden to discriminate, directly or indirectly, on the criteria of sex, especially with regard to the area of applicability and the conditions of the pension schemes, contributions and benefits.

**Art. 7** (1) The name of pension fund comprises the expression "privately administrated pension fund".

(2) The name of the pension fund must not be of such a nature as to mislead the participants, the potential participants or other persons.

**Art. 8** A privately administrated pension fund cannot go in bankrupt.

**Art. 9** (1) A privately administrated pension fund can be administered and represented in the relationships with third parties, including in front of law courts, only by its administrator.

(2) The complaints and requests brought in front of the competent Court of Law, in relation with the administration of the pension fund, are tax exempted.

(3) The headquarters of the fund are the same with those of its administrator.

**Art. 10** The framework of the civil company contract that establishes the pension fund, as well as the amending procedure of this contract will be given via the Commission's norms.

### Chapter III

#### Licensing the private pension scheme and the private pension fund

**Art.11** (1) The prospectus of privately administrated pension scheme is elaborated and proposed by the administrator.

(2) Each prospectus of the pension scheme proposed by administrator must be authorized by the Commission.

(3) The prospectus of a pension scheme can be modified only with Commission's prior endorsement.

(4) For receiving the authorization for the first prospectus of the pension scheme, the pension company submits to Commission a request, simultaneously with the administration authorization request, the prospectus of pension scheme, including the project of custody contract and the draft of civil company contract.

(5) The authorization of the first prospectus of pension scheme is issued at the same time with the authorization for pension fund' administration.

(6) The procedure of authorization and amendment of pension scheme's prospectus is stipulated in the Commission's norms.

(7) The administrator makes public the prospectus of pension scheme only after its authorization, or adversely the sanction applied shall be the withdrawal of administration authorization.

**Art.12** (1) The content of private pension scheme is established by Commission's norms and mandatory comprises the following elements at the least:

- a) administrator's name and headquarters
- b) the eligibility terms for the subscription of participants to the private pension scheme
- c) the method of sharing investments returns among participants

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- d) the investment principles of private pension scheme
- e) the financial, technical and other risks related to the private pension scheme
- f) the nature and distribution of risks stipulated under letter e)
- g) the exclusive right of property of the private pension scheme's participants upon the amount collected in their individual accounts
- h) the conditions for establishing and paying the private benefits
- i) the conditions for awarding the privately administrated benefits in the event that disability occurs
- j) the maximum percentages of commissions paid by the pension fund, differentiated on categories
- k) the periodicity and procedure of reporting to the participants
- l) the conditions and procedures of ceasing participation, as well as of transfer to another privately administrated pension fund.

(2) The private pension scheme prospectus may contain any other information required by the Commission.

**Art.13** The Commission norms offer the framework of the administration contract which must comprise:

- a) the contracting parties;
- b) the principles governing the private pension scheme;
- c) the basic rights and liabilities of contracting parties and the implementation method;
- d) the administration of the fund.
- e) the methods used by auditors to control the administrator;
- f) the administrator's liabilities regarding participants' and authorities' notification;
- g) administrator's records upon participants, contributions, investments and private pensions;
- h) administrator's records upon participants, contributions, investments and privately administrated pensions;
- i) the responsibility of contracting parties, including sanctions;
- j) the duration of administration contract, the methods of amending and ceasing the administration contract;
- k) information upon the custodian of privately administrated pension fund.

**Art.14** The custodian and the auditor pay themselves the licensing fee.

**Art.15** (1) The amendment of the pension scheme prospectus will be done by the administrator with the Commission's prior approval and under the obligation to subsequently inform the participants.

(2) The amendment procedure will be established by the Commission's norms.

**Art.16** (1) The Commission redraws the administration authorization of administrator whether it is proved that the regulations from a prospectus of the pension scheme, the present law provisions or Commission's norms were breached.

(2) As from the withdrawal date of the administration authorization of administrator, shall apply the provisions regarding the special administration.

(3) The administrator can appeal the decision of withdrawing the administrator's authorization in front of the competent court of law, in accordance with provisions of Law on administrative contentious falling within the competence of the administrative courts no. 554/2004 as subsequently modified and amended.

**Art.17** (1) The private pension fund must be authorized by Commission, after the authorization of administrators and of pension scheme's prospectus.

(2) The authorization is released on the basis of a request submitted by administrator, with the following documents attached

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- a) the civil company contract for establishing the privately administrated pension fund ;
- b) the individual subscription act to the civil company contract based on which is established the private pension fund and to the private pension scheme's prospectus
- c) other documents and information in accordance with the requirements stipulated by Commission's norms.

**Art.18** (1) The Commission can request from the administrator any other documents and information within 30 calendar days as from the registration date of the request for the privately administrated pension fund's authorization.

(2) The Commission can verify any aspect related to the request for privately administrated pension fund's authorization, being entitled to:

- a) contact the competent authorities;
- b) request documents and information from other sources.

**Art.19** The Commission verifies if the fund's members meet the conditions stipulated by present law as regards their entitlement to become participants according to present law, licenses the civil company contract and, within 30 calendar days as from the reception date of the last set of documents and information from administrator, either approves or denies on a justified basis, the authorization of pension fund.

**Art.20** (1) The Commission denies the authorization-request of a pension fund if the documentation submitted:

- a) remains incomplete after the term of 30 calendar days as from the request of any additional information or documents;
- b) is not drawn up in accordance with legal regulations in force;
- c) comprises provisions that might prejudice participants' interests or does not protect them properly.

(2) The decision to deny the fund's authorization-request, in written form and with a solid justification, is, communicated to the administrator within 10 calendar days from the adoption date.

**Art.21** (1) When the number of participants decreases and maintains below the legal minimum for a quarter of year, the Commission withdraws the authorization of a pension fund.

(2) The decision to redraw the authorization of the private pension fund, written and motivated, shall be communicated to the administrator within 5 days time from the day it is issued.

(3) The administrator must cease any activity related to the private pension fund as from the date of being notified upon the withdrawal of its authorization.

(4) As from the date when the Commission withdraws the authorization of a private pension fund the provisions regarding the special administration will be applied.

**Art.22** (1) The decision of denying the authorization-request of privately administrated pension fund or of withdrawing the authorization, according to circumstances, can be appealed, at the competent contentious administrative court, according to law provisions

(2). Within 10 calendar days after the date when the period of appeal expires or, according to circumstances, as from the date when the decision by which the appeal was solved is stated as irreversible and irrevocable, the Commission publishes the announcement upon the withdrawal of the authorization in the Official Gazette of Romania, Part IV, as well as in two central daily papers.

### Chapter IV

#### The investments of the private pension fund

**Art.23** (1) The Commission verifies if the administrators comply with the obligation to invest in a

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

prudential manner the private pension funds assets, basically in compliance with the following rules:

- a) the investments are made in participants' and beneficiaries' interest and in the event of a possible conflict of interests, the administrator charged with private pension funds' assets administration must adopt measures able to ensure that the investments are made to participants' exclusive interest;
- b) to make investments in a manner able to ensure their security, quality, liquidity and profitability, while the assets kept for the aim of covering the Guarantee Fund and the technical provisions are also invested in a manner adequate to the nature and duration of participants' and beneficiaries' entitlements;
- c) the investment in financial instruments transacted on a regulated market, such as it is stipulated by Law no.297/2004 upon the capital market, as amended and modified.
- d) the investments in derivatives are permitted only to the extent in which they contribute to the decrease of the investment's risk or facilitate the efficient administration of assets;
- e) the assets must be diversified in a proper manner so as avoid the excessive dependency on a certain asset, issuer or group of commercial companies and risks' concentrations upon assets' totality.

(2) The Commission can decide not to apply the requirements stipulated under paragraph (1) for the investments in state bonds.

**Art.24** (1) The administrator issues a statement upon the investment policy in written form. The declaration upon the investment policy complies with the investment rules and comprises:

- a) the investment strategy of assets, in relation with the nature and duration of liabilities
- b) methods of evaluating the investment-related risks
- c) risk management procedures;
- d) the methods to revise the investments principles ;
- e) the persons responsible with decision-making and investments' accomplishment, the decision-making procedures

(2) The administrator revises and amends the declaration upon the investment policy each time when an important change occurs in the area of investment policy or at least once in a period of 3 years, with Commission's prior approval, informing the participants upon the new investment policy

**Art.25** (1) In accordance with provisions of art.23, the administrator invests in:

- a) instruments of the monetary market, including accounts and bank deposits in ROL opened with a bank, Romanian legal person or with a branch of a foreign credit institution authorized to work on the Romanian territory and which is not under special surveillance or special administration procedure or its authorization was not withdrawn, on condition to not exceed the percentage of 20% from the total value of fund's assets;
- b) state bonds issued by the Romanian Ministry of Public Finances, issued by EU Member States or included in the European Economic Area, in a percentage of up to 70% from the total value of fund's assets
- c) bonds and other securities issued by the authorities of local public administration from Romania or from EU Member States or included in the European Economic Area, in a percentage of up to 30% from the total value of fund's assets;
- d) securities transacted on regulated and supervised markets from Romania, EU Member states or included in the European Economic Area, in a percentage of up to 50% from the total value of fund's assets
- e) state bonds and other transferable securities issued by third states, in a percentage of up to 15% from the total value of fund's assets;

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- f) bonds and other transferable securities transacted on regulated and supervised markets, issued by the bodies of public administration authorities from third states, in a percentage of up to 10% from the total value of fund's assets;
- g) bonds and other transferable securities transacted on regulated and supervised markets, issued by non-governmental organizations from third states, in a percentage of up to 10% from the total value of fund's assets;
- h) participation bonds issued by bodies charged with the collective investment in transferable securities from Romania or from foreign countries, in a percentage of up to 5% from the total value of fund's assets;
- i) other types of investments stipulated by Commission's norms.

(2) The investments stipulated under par. (1), according to circumstances are carried out in accordance with the regulations of the Central Bank of Romania upon the currency exchange operations..

(3) The Commission can temporarily modify the maximum percentage which can be invested in the categories of assets stipulated under par. (1) and shall issue norms oriented to this purpose

(4) In accordance with the nature of issuer of instruments wherein the administrator can invest, the maximum percentages are:

- a) 5% from the assets of a fund can be invested in a single commercial company or in each category of assets thereof, but no more than 5 %
- b) 10% from the assets of a fund can be invested in the assets of a group of issuers and persons affiliated with them.

**Art.26** The investments of private pension funds' assets are tax-exempted and the investment results.

**Art.27** (1) The administrator exerts, on behalf of the participants, the right of vote in the general assemblies of shareholders of commercial companies in the social capital of which the privately administrated pension fund's assets were invested.

(2) The vote is exerted exclusively in the best interest of the participants and beneficiaries into a privately administrated pension fund.

**Art.28** (1) The assets of privately administrated pension scheme can not be invested in

- a) Assets that are banned from sale according to law provisions
- b) Assets the evaluation of which cannot be exactly established, as well as antiquities, pieces of art, vehicles and other similar assets;
- c) real estates
- d) shares, securities and other transferable securities issued by administrator
- e) any other assets established by Commission's norms

(2) The assets of privately administrated pension funds are banned from sale to:

- a) administrator or auditor
- b) custodian
- c) special administrator
- d) Commission Council's members and Commission's staff
- e) persons affiliated with the entities stipulated under letters .a)-d)
- f) any other persons or entities stipulated by Commission's norms

(3) The assets of the private pension fund cannot be the object of a guarantee and cannot be used for granting credits, subject to invalidity.

**Art.29** (1) The Commission determines and publishes on a monthly basis the following information:

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- a) the weighted average profitability rate of all private pension funds for the last 24 months;
  - b) the profitability rate of each private pension fund for the last 24 months
  - c) the minimum profitability rate of all funds.
- (2) In the event that the profitability rate of a private pension fund is lower than the minimum profitability rate of all funds for four consecutive quarters, the Commission withdraws the administration authorization of the concerned administrator, and implements the procedure of special administration.

### Chapter V The Participants

**Art.30** (1) The persons no older than 35 years, who are insured in accordance with art.5 paragraph 1 from Law 19/2000 regarding the public pension system and other social insurance rights, and who are contributing to the public pension system, must participate in a private pension fund

(2) The persons, other than the ones mentioned under paragraph 1, no older than 45 years, who are already insured and who contribute to the public pension system, have the option to participate to a private pension fund.

**Art. 31** A person cannot participate in more private pension funds, established under the provisions of the present law, at the same time and he/she can only have one personal account with the fund where he/she is participating, excepting those mentioned under art. 38.

**Art.32** (1) A person becomes participant to a private pension fund by signing an individual adhesion act, at his/her own will or based on the assigning of the central registry institution.

(1) When signing the adhesion act, the participants are informed of the conditions of the pension scheme, emphasizing the following : the rights and liabilities of the parties to the pension scheme, the financial, technical and other risks as well as on the nature and distribution of these risks.

(2) It is forbidden to delegate or to represent somebody at the signing of the adhesion act.

(3) The Commission will approve the general frame of the adhesion act of every and each private pension fund, as well as, any change brought to it, if the legal requirements are met, in 10 days time since the day the request has been registered.

(4). The administrator shall send to the central registry institution, copies from the individual adhesion acts, in order to update the Participants Registry.

**Art. 33** (1) The person who has not adhered to a private pension fund in 4 months from the day they are obliged to do so under the provisions of the present Law, he/she shall be randomly distributed to a private pension fund, by the central registry institution.

(2) The random distribution shall be done proportionally with the number of the participants of every private pension fund, at the day the distribution is done.

(3) The central registry institution, shall notify the persons that did not adhere to a private pension fund in the period mentioned in paragraph 1, that they shall be randomly distributed, in 30 days time from the day the notification is issued.

**Art. 34.** (1) The Participant's Registry shall be established and updated by the central registry institution.

(2) Changes to the structure of the Participant's Registry shall be made only on the basis of and agreement between the Central Collector, the central registry institution and the Commission.

**Art. 35.** (1) Following the adhesion or the random distribution, the participants must contribute to a private pension fund and cannot redraw from the private pension funds system during the entire period that they make payments to the public pension system, until they are eligible for the payment

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

of a private pension.

(2) Are exempted from the provisions of paragraph 1, the periods when payments are not made to the public pension system.

(3) If a participant stops making contributions to a private pension fund, he/she will remain a participant, with full rights, at the fund.

(4) The rights of the participant can be transferred in other countries where he/she has established residence/domicile, under the provisions of the international agreements and conventions signed by Romania, and the transfer shall be made in the currency of that country or in the currency mutually agreed upon.

**Art. 36.** The participants whose personal account net asset value is not enough to allow for the payment of a minimum private pension, as established by the Commission's norms, receives a one time payment or periodical payments over a period of maximum 5 years, upon request.

**Art. 37.** - From the day of the retirement for invalidity reasons that are permanent, under the provisions of Law 19/2000 regarding the public pension system and other social security rights, modified and amended, the participant can obtain:

a) a one time payment or periodical payments over a period of maximum 5 years if the personal account net asset value is not enough to allow for the payment of a minimum private pension, as established by the Commission's norms

b) a private pension if the net asset value of its account is enough.

**Art. 38.** (1) If the participant dies before becoming eligible for the payment of a private pension, his/her beneficiaries shall have an account opened in their name at the pension fund where the deceased was participating, where the administrator shall transfer the actives that they are entitled to as beneficiaries.

(2) The rights of the beneficiaries mentioned under paragraph 1, are the same as those of all the participants to that private pension fund.

(3) The beneficiary has the right, to choose from the following:

a) merge the accounts into a sole account in a private pension fund, if he/she is participating to another private pension fund;

b) a one time payment or periodical payments over a period of maximum 5 years, without penalties, if the beneficiary is not a participant in any authorized private pension fund;

(4) the payment of the beneficiary's rights shall be made in 10 days time from the day he/she asks for the payment to be made.

**Art. 39.** (1) If a participant wishes to adhere to another private pension fund, he/she is obliged to notify in writing the administrator of the fund he/she want to transfer from, in 30 days time before the effective adhesion to the new private pension fund, and to send to it a copy of the new adhesion act.

(2) One stops being a participant to the old private pension fund on the day of the transfer of the account value, and the participation to the new fund starts on the same day.

**Art. 40.** (1) The transfer shall be made on the first working day following the term stipulated under art.39, paragraph 1, and the old administrator shall transfer the net value of the personal account minus the transfer penalty, if applicable.

(2) The old administrator shall inform the new administrator on the contributions made by the transferred participant, about the transfers made into this participant's account as well as on the contributions made by the participant to the funds he had previously participated into, to the extent of its knowledge.

**Art. 41.** - The Commission issues norms for:

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- a) keeping track of the participants to the private pension funds;
- b) informing the initial pension fund in regard with the transfer to another fund, as well as for the transfer of liquidities/cash to the new fund;
- c) the framework of the individual adhesion act and the procedure to modify it;
- d) the random distribution procedure;
- e) notifying the random distribution;
- f) payment procedures and keeping the evidence of the payments made to the fund
- g) the evidence and the payment order regarding the net asset value of the participant's or of the beneficiary's assets.
- h) the minimum amount needed for obtaining a private pension
- i) any issues where Commission considers a norm to be necessary .

### Chapter VI

#### The contributions to a private pension fund

**Art. 42.** (1) The contribution to a private pension fund is part of the payments made to the public pension system, as individual social insurance contributions.

(2) The contributions to the private pension funds, is recorded distinctively, is deducted from the gross salary of the insured, in a similar manner with the contributions paid under the provisions of Law 19/2000, modified and amended to day.

(3) The contribution to the private pension fund is established and paid in the same conditions as the social insurance contributions.

(4) The participant that is temporarily working in a foreign country has the right to continue payments to the private pension fund from Romania, during the entire period of the temporary assignment.

(5) In the case when the payments are being made to a private pension fund from a EU member state, or from a state from the European Economic Space, the employee assigned to work in Romania and his/her employer are relieved from the obligation to contribute to a Romanian private pension fund.

**Art. 43.** (1) The calculation base, the extraction and the payment terms of the contribution to the private pension fund are the same with those of for the payment of the social security insurance contribution.

(2) When beginning to collect the contribution, this will amount to 2% of the calculation base.

(3) Over a period of 8 years from the beginning of the collection, the contribution will rise to 6%, with a 0.5 percentage points growth per year, starting with January 1<sup>st</sup>, of the each year.

**Art. 44.** (1) The payment of the contributions to the private pension funds is made by the Central Collector, in 3 days time from their reception, based on the information received from the Central Registry.

(2) If the Central Collector or the Central Registry does not observe the period mentioned under paragraph 1, they shall pay penalties and interest, in the amount paid in the case of the budgetary obligations.

(3) The one who is making the payment shall inform the Central Collector and the Central Registry on the amount of money paid the personal numerical code of the participant, the period for which the contribution is paid, and the calculation base for it.

**Art. 45.** (1) If the administrator does not receive in the legal period, the contribution, it will inform, immediately, in writing the Central Registry

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- (2) If the payment of the contributions is not done on time, as required by the present Law, then:
- interest and penalties shall be paid by the entity/person responsible for the payment delay, similar with the amount paid in the case of the budgetary obligations;
  - the Central Collector proceeds to apply the legal measures for recovering and payment of debts, in accordance with the legal provisions regarding the collection of budgetary obligations.
  - interest and penalties shall be paid into the individual account of the participant, in 2 working days time from the day of their payment, and, the fee stipulated in art.88, paragraph 1, letter a) does not apply to them .

**Art. 46.** (1) The Commission, after obtaining the approval the Central Registry and of the Central Collector, shall issue norms on the following:

- payment of the contributions to the private pension funds;
- ways to transmit the legal information;
- the operations that must be completed by the Central Registry, Central Collector and by any other entities/persons, in the case of delays payments, in case of lack of payments, and for fixing any errors that might occur;
- the activity of the Central Registry and of the Central Collector in order to protect the interests of the participants and of the beneficiaries;
- any topic that the Commission considers necessary to regulate.

(2) The Commission, together with the Central Registry and the Central Collector, can propose measures for improving the activity of the last two.

### **Chapter VII** **Participants' accounts**

**Art. 47.** (1) Every participant has an individual account.

(2) The contributions and the cash/ liquidities transfers of the participants, as well as their accessories, are paid into the participant's individual account.

**Art. 48.** (1) The participant is the owner of the net personal assets deposited in his own account.

(2) The personal assets are not distrainable and cannot be subject to an action of legal enforcement

(3) The personal assets cannot be mortgaged or assigned, cannot be used for granting or guaranteeing credits, subject to invalidity.

**Art.49** The contributions and transfer of cash liquidities to a privately administrated pension fund are converted into units of fund within maximum 2 working days as from their reception date.

**Art.50** The initial value of a unit of fund shall be of ROL 10

**Art.51** (1) The value of net assets and the value of a unit of fund of a privately administrated pension fund are calculated by both administrator and custodian on each working day and notified to Commission on the same day

(2) If there are inconsistencies between the administrator's calculation of the net asset value and of the fund unit values, the correct values shall be the ones decided by the administrator together with the depository, based on the Commission's norms.

(3) The correct values established in accordance with paragraph 2, the causes of the inconsistencies and the method of resolving them shall be communicated to the Commission on the following working day.

(4) The value of net assets and the value of the fund unit of a privately administrated pension fund is subject on an annual basis to the audit carried out by a financial auditor, member of the Chamber of Financial Auditors from Romania, authorized by Commission and who cannot be a person

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

affiliated with the employer, the administrator or the custodian.

(5) Are exempted from the requirement of being a member of the Chamber of Financial Auditors from Romania, the auditing companies established in an EU Member State or a state included in the European Economic Area, that operates in Romania with a service rendering contract.

(6) The auditors authorized, licensed or subjected to a similar procedure for the aim of working as auditor on the market of pensions in an EU Member State or a state included in the European Economic Area are exempted from the requirement of being licensed by the Commission for Surveillance of Private Pension System.

**Art. 52.** (1) The administrator which received contributions for a period of minimum 24 months calculates, on the last working day of each quarter of year, the profitability rate of each privately administrated pension fund on the last 24 months and notifies the Commission upon it.

(2) The weighted average rate of return of the pension funds will be determined and published, on a quarterly basis by the Commission.

**Art. 53.** The Commission will warn to the administrator, every quarter when the profitability rate of the administered private pension funds lower than the minimum weighted average profitability rate of all private pension funds.

**Art. 54.** The Commission issues norms upon:

- a) the method of converting personal assets into fund units.
- b) the calculation rules of the daily value of the total net assets of a pension fund
- c) the calculation rules of the daily value of the fund unit and the ballpark figure method
- d) the calculation and reporting rules for the profitability rates of a private pension fund
- e) the method to solve the inconsistencies mentioned under art.50
- f) the method to correctly establish the values, under the provisions of art.51, paragraph 2

### Chapter VIII The Administrator

**Art.55** (1) A private pension fund can only be administrated by the joint-stock company, established in accordance with the provisions of commercial legislation and present law provisions whose unique object of activity is the administration of private pension funds .

(2) An administrator can administrate, in Romania, only one pension fund.

(3) As from the accession date of Romania to European Union, is entitled to become administrator in terms of present law, any entity authorized to carry out such activities in another EU Member state or in a state included in the European Economic Area.

(4) The administrators authorized, licensed or subject to a similar procedure for the aim of functioning as pension schemes' administrator in a European Union Member State or in a state included in the European Economic Area are exempted from the requirement of being authorized by the Commission for Surveillance of Private Pension System

(5) As from the EU accession date of Romania, the administrators authorized in Romania can receive contributions from participants and undertakings located into another European Union Member State or into a state included in the European Economic Area.

(6) As from the EU accession date of Romania's, the persons who meet the legal requirements to become participants to private pension schemes as well as the undertakings based in Romania can pay contributions to pension funds administered by administrators authorized in another European Union Member State or included in the European Economic Area.

(7) The administrator based in Romania which intends to accept contributions paid by a participant

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

from another European Union Member State or included in the European Economic Area must have the Commission's prior authorization.

(8) The administrator stipulated under par. (7) notifies the Commission with regard to its intention, indicating: the host Member State, participant's name, the basic characteristics of the concerned pension scheme.

(9) The Commission, notified in accordance with par.(8), if it finds no reasons to consider that administrator's administrative structure or its financial situation or its credibility and professional qualifications or the experience of persons involved in its management are incompatible with the activities proposed in the host-country, transmits to the competent authority of this state, within 3 months as from reception date, all the information stipulated under par.(8), and notifies the administrator about it.

(10) Before an administrator from an European Union Member State of included in the European Economic Area begins to administer a private pension scheme with Romanian participants, the Commission informs the competent authority of the Member State of origin, within 2 months as from the reception date of information stipulated under par.(8), upon the requirements set by Romanian legislation in private pension schemes' area, in accordance with which the pension scheme with participants from Romania must be administered.

(11) At the reception of information stipulated under par. (10) or in the event that no notification is received from the competent authority of the member state of origin after the period stipulated under par.(10), the administrator can begin the administration of the private pension scheme with participants from Romania, in accordance with the requirements stipulated by Romanian legislation upon private pensions.

(12) The administrator from an EU Member state or from a state included in the European Economic Area which administers a private pension scheme with participants from Romania shall comply with the requirements relative to information disclosure established by Commission, according to present law provisions.

(13) The Commission informs the competent authority from the Member state of origin with regard to any significant amendments occurred in the area of requirements of Romanian legislation upon private pensions.

(14) The Commission permanently supervises the administrator from an EU Member state of a state included in the European Economic Area which administers a private pension scheme with participants from Romania, monitoring the compliance of its activities with the requirements of Romanian legislation upon private pensions as well as with the information provision requirements stipulated under par. (12).

(15) In the event that the surveillance reveals that the administrator breached these requirements in the course of carrying out its activity, the Commission instantly notifies the competent authority from the EU member state of origin.

(16) The Commission, in collaboration with the competent authority of the host Member state, adopts the measures required so as to get sure that the administrator based in Romania ceases to breach the requirements set by social and labor legislation relevant in the area of pension schemes from the host Member state.

(17) In the event that, despite the measures taken by the competent authority from the Member State of origin of administrator or due to the fact that such measures were not adopted in the Member state of origin, the administrator continues to breach the Romanian legislation upon private pensions, the Commission can, after notifying the competent authority from the member state of origin, take the needed measures for preventing or sanctioning other breaches, including, if

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

necessary, by the interdiction imposed to administrator from carrying out activities into the account of participants from Romania.

(18) The Commission may require from the competent authority from the Member state of origin of administrator, to decide upon the separation of assets and liabilities related to the activity carried out in Romania by the other assets and liabilities

(19) At the request of the competent authority from the host Member state, the Commission requires from the administrator in Romania to separate the assets and liabilities related to the activity carried out in the host member state from other assets and liabilities.

**Art. 56.** - (1) The name of the administrator contains the expression “pension funds”.

(2) The expression, stipulated in par.(1) shall be used only in the name of the company which receives the administration authorization in accordance with present law provisions

**Art.57** (1) The activity carried out by an administrator basically includes:

- a) the administration and investment of the pension fund's assets;
- b) the conversion of participants' contributions into units of fund;
- c) paying the due amounts to participants and beneficiaries, in accordance with the Law;
- d) the calculation of the net value of pension fund's assets as well as of the unit of fund on each working day;
- e) the record of individual accounts, as well as the provision of documents regarding the participation, notification, periodical information or participants' transfer;
- f) the administration of daily operations carried out for the pension fund;
- g) paying the due amounts to the involved entities and to the Commission;
- h) mandate and monitor the marketing agents of the fund;
- i) coordination of relationships established with the involved institutions;
- j) release , presentation, submission, publication and distribution of reports to the Commission and the participants in accordance with law provisions;
- k) administration, keeping and archiving of documents regarding the pension fund, its own activity, its participants and beneficiaries;
- l) other activities stipulated by Commission's norms.

(2) The assets and liabilities of each private pension fund are organized, recorded and administered distinctly, on one hand separately from the other voluntary pension funds and, on the other hand, apart from administrator's own bookkeeping, without permitting the transfer between funds or between funds and administrator.

(3) All assets and liabilities related to the activity of administration of private pension funds are restricted, administered and organized separately from other activities carried out by the administrator, without providing the possibility of transfer.

(4) The assets and liabilities restricted, administered and organized distinctly, stipulated under par.

(3) are limited to the operations related to pension funds as well as to other connected activities.

(5) The bookkeeping of operations resulting from the application of present law provisions are carried out in accordance with applicable regulations in accounting field.

(6) The Commission elaborates and issues norms and regulations in the area of accounting and archiving, as regards the area subjected to its surveillance, with the Ministry of Public Finances' authorization.

**Art. 58.** (1) The administrator cannot transfer the responsibility resulting from the administration of a pension fund

(2) The transfer of some liabilities to a third party does not exonerate the administrator from its responsibility.

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

**Art. 59.** (1) The social capital of the administrator cannot be established nor increased through public subscription.

(2) Administrator's shares are registered as nominative, cannot be converted into shares to bearer, cannot have the form of preferred shares and cannot be denominated

(3) The establishment act of administrators must stipulate that stockholders cannot benefit of preferential rights or of other privileges and also that it is forbidden to restrict their rights or to impose additional liabilities.

**Art.60** (1) The minimum social capital required for the administration of a private pension fund is the equivalent amount in RON of EUR 4 millions, calculated at the exchange rate of the National Bank of Romania on the establishment date.

(2) The social capital of the administrator is fully subscribed and paid, exclusively in cash, at the establishment date.

(3) The administrator's social capital cannot be established nor increased through public subscription and cannot derive from loans or credits and cannot be burdened with charges.

(4) At the establishment date, the contribution to the social capital of the administrator must be placed into an account opened with a bank, Romanian legal person, or with a branch of a foreign bank authorized to work on the Romanian territory.

**Art. 61** (1) The administrator has the obligation to notify the Commission, without any delay, on any reduction of the social capital below the minimum amount. The social capital cannot decrease with more than 20% of the minimum value.

(2) In the case presented under par.(1), the administrator must replenish the social capital, in the time frame indicated by the Commission, which can be no shorter than 3 months and no longer than 6 months.

**Art. 62.** (1) A natural or legal person can be shareholder at one single administrator.

(2) The cumulated participation of natural persons cannot be higher than 5 %.

(3) The quality of shareholders must comply with the need of guaranteeing a prudential and sound administration of pension fund and allow the accomplishment of an efficient surveillance aimed at protecting participants' and beneficiaries' interests.

(4) The administrator's shareholders must meet the following conditions at the least:

a) must have a sound financial situation, that would allow them to sustain the entity, if necessary;

b) to justify in a satisfactory manner the source of origin of funds used for the participation to social capital;

c) to offer all the necessary information needed for determining the affiliation relationship with other persons.

d) the legal persons with status of shareholders must have been functioning for minimum 3 years, except for the shareholders resulting from the fusion or division of another legal person which, at its turn, before fusion or division, has been functioning for a minimum period of 3 years.

**Art. 63.** (1) The transactions involving the shares of an administrator must be first approved by the Commission, or are otherwise considered to be null.

(2) The Commission approves the transaction involving the administrator's shares, in 30 calendar days time from the date of the request, if the person who intends to purchase or sell these shares meets all the requirements of the present Law, regarding the shareholders of an administrator.

(3) Is excepted from the provisions of par.(1), the transaction involving a shareholder of the administrator, who, following this transaction, does not gain a significant position, the buyer must notify the Commission in 14 working days time from the day of the transaction.

**Art. 64.** (1) The Administration Board of the administrator decides upon the investment and

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

financial policy of pension fund, as well as upon any other prerogatives stipulated by the Regulations of organization and functioning, as authorized by Commission and stipulated in the commercial legislation, in force.

(2) The members of Administration Board and of the Committee of Direction, according to circumstances, must meet the conditions requested by the legislation upon commercial companies, as well as the following conditions

- a) to be graduates of a higher education institution;
- b) to have a professional experience of minimum 3 years in investment, financial, juridical, banking or insurance sector;
- c) to have the respectability required by the position they are about to hold

(3) At least one third of the members of the Administration Board must hold a university degree in legal or economic sciences.

(4) The members of the Administration Board and of Committee of Direction, according to circumstances, must have a moral and professional conduct correspondingly to their position and must have, at least, the following requirements:

- a) to have not been sanctioned by Romanian or foreign authorities with the interdiction to carry out activities in the financial area or, on the authorization-request submission date, with the temporary interdiction to carry out such activities;
- b) to have not held the position of administrator of a Romanian or foreign commercial company, in course of juridical re-organization or stated in bankruptcy, within the last 2 years prior to the starting date of the bankruptcy procedure;
- c) to have not been involved in the management of a company which did not comply with the material and financial liabilities taken in front of third parties on the date when the concerned company ceased to function;
- d) to have clean criminal and fiscal records.

**Art. 65.** (1) The members of Administration Board and of the Committee of Direction, according to circumstances, of an administrator, cannot be members of the leading bodies of:

- a) other pension funds' administrators or persons affiliated with them;
- b) fund's custodian of persons affiliated with it.

(2) The interdiction stipulated under par. (1) also applies to persons with labor, commercial or other similar relationships with the entities stipulated under the same paragraph.

**Art. 66.** (1) The administrator must establish within its organizational chart, a Direction of Internal Audit and a distinct direction responsible for carrying out analyses of investment opportunities and for assets' investment in accordance with the strategy established by the Administration Board.

(2) The administrator must keep all the records and registries regarding the pension funds, in accordance with the applicable archiving legislation and with the Commission's norms.

**Art. 67.** (1) Administrator's own financial assets cannot be used for:

- a) granting loans or guarantees;
- b) guarantee loans or debts, including issuing bonds that, together, add to more than 10% of the social capital;
- c) The transactions or any other kind of purchase of shares, other securities or ownership rights in any other entity, excepting the situation stipulated in art. 68.

(2) As from the date of EU accession to European Union, the administrators can appoint:

- a) for the purpose of preserving their assets, custodians based in another EU Member state or included in the European Economic Area and properly authorized for this type of activity;

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

b) for the administration of their investment portfolio, investments' administrators based in another EU Member State or included in the European Economic Area and properly authorized for this type of activity. At the request of the competent authority from administrator's state of origin, the Commission can forbid to the custodian based in Romania to freely decide upon the assets of pension fund.

(3) At the request of the competent authority from the administrator's home state, the Commission can forbid the depository from Romania to freely dispose of the pension fund's assets.

**Art. 68. (1)** The administrator may acquire a part or the entire social capital of another administrator only with the prior approval of the Commission and in accordance with the legislation in force regarding fair competition.

(2) The Commission will not approve the acquisition, provided for under paragraph , when:

- a) it is not in the best interest of the participants;
- b) one or both administrators nu not meet the legal requirements.

**Art. 69.** – repelled

**Art. 70.** – repelled

**Art. 71. (1)** The administrators can establish a professional body that will promote their collective interest in front of the public authorities, that will analyze the common problems that the administrators are facing, will promote cooperation, will inform the members of the association and the public, in general, and that will offer services benefiting the public/general interest.

(2) The professional body of the administrators collaborates with the Commission and may become member of the international, specialized, associations.

**Art. 72.** - The Commission issues norms regarding:

- a) framework of the administration contract;
- b) main responsibilities of the Administration Board;
- c) the eligibility criteria that the members of the Administration Board and of the Committee of Direction must meet;
- d) the criteria for the minimum social capital, the procedure for notifying the Commission and the procedure for replenishing it;
- e) the transactions regarding the social capital of the administrator;
- f) the eligibility criteria and the conditions that the administrator's shareholders must meet;
- g) the organization of and actual bookkeeping of the pension fund, as well as the financial situations that are issued by the administrator, with the endorsement of the Ministry of Finance;
- h) the archiving obligations.

### CAPITOLUL IX

#### Authorizing the Administrators

**Art. 73. (1)** The administrator cannot be registered with the Commercial Registry unless it has the establishment authorization from the Commission.

(2) Following the above mentioned registering, the administrator must be authorized by the Commission to administrate, in accordance with the provisions of the present Law.

(3) If the administrators decide to merge or divide, the new administrators start again the authorization procedure, found in art.74.

**Art. 74. (1)** The administrator needs to be authorized by Commission in respect of its establishment

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

and administration of pension funds.

(2) The authorization-request for establishing a pension company is accompanied by the following documents:

- a) the draft of establishment act;
- b) proof that the founders own the financial resources needed for depositing the social capital, as well as their origin;
- c) the criminal and fiscal records of founders;
- d) documents regarding the founders, comprising information upon their legal status, their possible quality of affiliated persons, as well as the nature or their interrelations;
- e) documents revealing the financial situation of founders throughout the last 3 years, audited by a financial auditor;
- f) the self-responsibility statement of founders, of candidates for the Administration Board and the Committee of Direction which should reveal that they own either individually or jointly with other persons involved in any commercial company, a minimum percentage of 5% from the social capital or from the rights of vote;
- g) documents regarding the candidates for the Administration Board and the Committee of Direction, according to circumstances, the curriculum vitae dated and signed, specifying the qualification and professional experience, the copy of identity card, the copy of education diploma, an organizational and financial plan for the first 5 years, the required documents for the custodian of the pension fund;
- h) the criminal and fiscal records of candidates to the Administration Board and to the Committee of Direction, if necessary;
- i) the draft of organizational and functioning regulations of the pension company;
- j) the proof of social capital's full payment in form of cash;
- k) the proof of paying the fee related to the authorization-request for establishment.

**Art. 75.** (1) The Commission may require from founders, within a term of 30 calendar days as from the reception date of the establishment authorization request, additional documents and information, which they must provide in maximum 30 calendar days as from the request's reception date.

(2) The Commission verifies each aspect related to the request for authorizing the establishment, being entitled to address to competent authorities and receive from these any documents and information regarded as relevant.

**Art.76** The Commission analyses the request for authorizing the establishment and, within maximum 30 calendar days as from the reception date of the last set of documents and information, either approves or denies it via a written and wellmotivated decision.

**Art .77** The Commission approves the request for establishment authorization whether all the following conditions are met, in a cumulative manner:

- a) the draft of establishing act and the organizational and financial 5 year plan guarantee the prudent and proper management of the pension fund;
- b) the founders have no debts to the state budget, the state social insurance budget, the local budgets and to the budgets of special funds;
- c) the quality of shareholders and of members proposed by the Administration Board and the Committee of Direction guarantees the fair and prudential administration of pension fund;
- d) the founders, the members proposed for the Administration Board and the Committee of Direction are not in the full progress of a re-organization or bankruptcy procedure and did not contribute either directly or indirectly to the bankruptcy of some legal persons, according to circumstances, and were not involved in any form in financial scandals;

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- e) the members proposed for the Administration Board and the Committee of Direction have the professional training and experience required by the position they will hold;
- f) the name of the pension company is not of such a nature able to mislead the participants, the potential participants or other persons;
- g) the founders prove that the social capital was fully paid and in form of cash;
- h) the payment of fee related to authorization-request for establishment is proved with documents.

**Art. 78.** (1) The Commission denies the application for authorization of establishment in the following circumstances:

- a) the documentation submitted remains incomplete or does not comply with the legal provisions in force;
- b) one of the conditions stipulated under art.77 is not met;
- c) there is the possibility that administration activities do not observe the prudential investment principles, stipulated in the present Law in the Commission's norms.

(2) The Commission communicates the motivated and written denial decision to founders, in maximum 5 calendar days as from its adoption date.

**Art.79** (1) The founders register the company at the National Office of Trade Register within 30 calendar days as from the reception date of the decision regarding the establishment authorization.

(2) In the event that the term stipulated under par. (1) is exceeded, the establishment authorization validity ceases.

(3) The establishment authorization of a pension company does not guarantee that the administration authorization shall be received.

**Art.80** (1) The administrator must obtain the Commission's authorization to administrate privately administrated pension funds .

(2) For the purpose of receiving the administration authorization, the pension company submits to the Commission a request with the following documents attached:

- a) the certificate of registry at the National Office of Trade Register;
- b) documents proving that the social capital was deposited or completed again, according to circumstances;
- c) the contract project with the depository;
- d) the contract project of civil society;
- e) the statement regarding the investment policy;
- f) the business plan for three years;
- g) the project of prospectus of privately administrated pension scheme;
- h) proof of payment of fees related to the request for administration authorization;
- i) any other supplementary documents and information as stipulated by Commission's norms.

(3) The Commission may request to the pension company, in maximum 30 calendar days as from the reception date of authorization-request, to provide additional documents and information, which they are charged to provide within maximum 30 calendar days as from the reception date of the request.

(4) The Commission analyses the request for administration authorization and, within 30 calendar days as from the reception date of the last set of documents and information, either approves or denies it through a written and motivated decision.

**Art.81** The denial decision regarding the request to authorize the establishment or the

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

administration is notified, in the following working day, from its adoption date, but no later than 5 calendar days as from and it can be appealed in a competent court of law, in accordance with Law 554/2004.

**Art. 82.** (1) The amendment of content of documents laying at the basis of the administration authorization must be subject to Commission's prior approval except for the case when the amendment is out of the administrator's control.

(2) The Commission analyses the amendments in accordance with the authorization procedure stipulated under art.77 and either approves or denies the requested amendments. The decision is notified in accordance with provisions stipulated under art.81.

**Art.83** (1) The Commission withdraws administrator's authorization in one of the following situations:

- a) non-compliance with provisions stipulated under art. 62 par.(2) and (3), art.64, art.65 par.(1), art.66 and art.82 par.(1);
- b) the profitability of pension fund was lower than the minimum profitability for 4 consecutive quarters of all private pension funds from Romania;
- c) the non-execution of the improper execution of liabilities resulting from present law, from Commission's norms or from the prospectus of pension scheme;
- d) the administrator did not begin the operations that he was authorized for within 1 year as from the reception date of authorization or did not carry out, for more than 6 months as from authorization reception date, the activity of administration;
- e) the shareholders decided upon the liquidation, fusion or division of administrator;
- f) the administrator is in payment incapacity;
- g) the administrator does not meet the functioning conditions;
- h) the administrator does not ensure the proper defense of participants' and beneficiaries' interests;
- i) the administrator did not establish technical provisions sufficient for the entire activity or does not hold assets enough high as to be able to cover the technical provisions;
- j) in the event of carrying out activity in the terms stipulated under art.55 par.(5), when the administrator does not comply with the requirements established by the legislation on labor and social protection relevant in the area of pension schemes in the host member state;
- k) any other situations stipulated by Commission's norms.

(2) The decision to withdraw the administration authorization, in written and motivated form, is notified in the first 5 working days after its adoption.

(3) The Commission issues norms upon the methodology withdrawal of the administrator's authorization.

(4) Within 10 calendar days as from the appeal period expires or, according to circumstances, as from the date when the judicial decision by which appeal was solved becomes definitive and unappealable, the Commission publishes the announcement regarding the withdrawal of administration authorization in the Official Journal of Romania, Part IV, as well as in two central daily papers.

**Art. 84.** (1) In the event that the Commission withdraws the administration authorization, the administrator is charged to submit to Commission the financial situation of the pension fund on withdrawal date, audited by a financial auditor.

(2) As from the date of administration authorization withdrawal becomes definitive, the Commission appoint the special administration.

**Art. 85.** The decision to deny the establishment or administration authorization or the decision to withdraw the administration authorization can be appealed at the competent legal court, in

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

accordance with art. 22

**Art. 86.** The Commission issues norms regarding:

- a) the content of the documents stipulated in art.74
- b) the methodology of establishment authorization, as well as of authorization withdrawal of the administrator's authorization.
- c) Regulations regarding the situation of the pension fund, in the case of the withdrawal of the administrator's authorization.

### **Chapter X** **Funding the administrator's activity**

**Art. 87.** Administrator's incomes resulted from the administration of privately administrated pension funds are established from:

- a) administration fees;
- b) transfer penalties;
- c) tariffs for additional information services, provided at request, in accordance with art.116 par.(2).

**Art.88** (1) The administration fee is established by:

- a) deducting an amount from the contributions paid, but not higher than 2.5%, on condition to make this deduction before the conversion of contributions into units of fund;
- b) deducting a percentage from the total net assets of privately administrated pension fund, but not higher than 0.05% per month, established by the pension scheme's prospectus.

(2) The transfer penalty represents the amount paid by participant in the event when the transfer to another administrator occurs earlier than two years as from the subscription date to the previous private pension fund, the maximum ceiling of this penalty being established by Commission's norms.

(3) The administrator makes use of the same method of calculation and collection of administration commissions for all participants to the same private pension fund.

(4) Are exempted from the payment of the commission stipulated in par.(1), letter a), the following:

- a) cash transfers in case the participant joins another private pension fund;
- b) the rights payable to the beneficiaries that are also participants;
- c) additional to the contributions.

(5) The administration fee can be lowered, upon the administrator's decision.

**Art. 89.** - The tariff for additional information services, provided at request cannot be higher than the real cost of making the information available.

**Art. 90.** The Commission issues norms regarding:

- a) establishment and payment of the administration fees;
- b) The methodology for establishing the tariff for additional information services.

### **Chapter XI** **The special surveillance**

**Art.91** The special surveillance aims at implementing some additional measures oriented towards risk's decrease and ensuring pension fund's recovery so as to protect participants' and beneficiaries' interests, in the situation when the controls carried out by Commission reveal some deficiencies of a nature which does not require the appointment of special administration.

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

**Art.92** The appointment of special surveillance, as well as the appointment of the Board for Special Surveillance will be done by the Commission.

**Art.93** The Commission notifies the administrators, no later than 5 calendar days after its adoption upon the appointment of special surveillance, together with the documents regarding the reasons and the appeal procedure.

**Art.94** The members of the Board for Special Surveillance have access to all documents and records of the private pension fund and of the administrator, being under the obligation to keep confidentiality of information.

**Art.95** The Board for Special Surveillance does not substitute the leading bodies of administrator.

**Art.96** The Board for Special Surveillance offers assistance and supervises the activity carried out by administrator in relation to the pension fund.

**Art. 97** (1) The Board for Special Administration exerts the following prerogatives:

- a) analyses the financial situation of the private pension fund and of administrator and submits to Commission periodical reports upon this;
- b) monitors the manner how the administrator applies the measures for remedying the deficiencies revealed by the reports of the Commission's control division;
- c) monitors the accomplishment of the plan for remedying deficiencies or for the financial recovery of the pension fund, at administrator's proposal;
- d) suspends or cancels those decision acts of administrator which either are contrary to prudential regulations or deteriorate pension fund's financial situation;
- e) proposes to Commission to apply sanctions in the event that the administrator does not comply with the measures ordered by the Board for Special Surveillance;
- f) other prerogatives established by Commission.

(2) Throughout the period of exerting the special surveillance, the Board for Special Surveillance endorses the decisions adopted by the leading bodies of administrator.

### Chapter XII The special administration

**Art.98** (1) The special administration aims at exerting the fiduciary responsibility to preserve the value of private pension funds' assets and at reducing losses for the purpose of protecting the rights that participants and beneficiaries are entitled to.

(2) The special administration is appointed in the event that the administration authorization is suspended or withdrawn, as well as in the event of the withdrawal of the private pension fund authorization.

**Art.99** In the following day after the adoption date of the decision for suspension or withdrawal of administration authorization or of the private pension fund authorization, the Commission notifies the administrator upon the suspension or withdrawal of authorization and asks for offers from the other administrators authorized for pension funds administration, with a view to take over under temporary administration the funds and prospectus of the concerned pension scheme.

**Art.100** (1) Within 5 calendar days as from the notification date, the administrators transmit the offers for temporary administration

(2) Within 5 calendar days as from the date when the term stipulated under par. (1) expired, the Commission selects the offers for temporary administration.

(3) The main selection criteria of offers are the administrators' performances, the investment policy, and the amount of administration-related expenses

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

**Art.101** (1) The administrator selected in accordance with the selection criteria stipulated under par. (2) of art.100, takes over under administration the pension funds' assets.

(2) In the event that the administrators do not transmit offers, the Commission appoints a special administrator to deal with the temporary administration of concerned privately administrated pension funds after the date when the term stipulated under art.100, par.(1) expires, from among the authorized administrators.

(3) On the following day after the appointment of the special administrator, the Commission publicly informs the participants of the concerned private pension fund about the necessity to join another private pension fund, within 90 calendar days.

**Art.102** After carrying out the assignment, the Commission notifies the appointed administrator with regard to the new administrator whereto must be transferred the personal assets of each assigned participant, up to the end of the period of 30 days.

**Art.103** The appointed special administrator deals with pension funds' assets administration, including the contributions received in this period, in a term of up to 12 months, aimed at transferring the personal assets towards the selected administrator.

**Art.104** In the event that, up to the end of term stipulated under art. 101, par.(3), the participants did not choose another private pension fund, the Commission transfers the participants towards other administrators, within 30 calendar days, taking into account the criteria stipulated under art.100 par.(3).

**Art.105** (1) The measure of appointing the special administration or of appointing the special administrator can be appealed at the competent contentious administrative court, according to law provisions.

(2) The announcement upon the appointment or cancellation of special administration as well as upon the appointed special administrator is published by Commission in the Official Gazette of Romania, Part IV, as well as in two central daily papers.

**Art. 106** The Commission issues norms upon:

- a) the selection criteria and the conditions which the special administrator must comply with;
- b) the prerogatives of special administrator;
- c) the private pension fund's administration procedure up to the date when the decision of competent contentious administrative court is stated as irreversible and irrevocable.

### **Chapter XIII** **The reserve fund** *Repelled.*

### **Chapter XIV** **The financial auditor**

**Art. 110. - (1)** The financial statements as well as those regarding the operations carried out by each entity subjected to Commission's authorization, surveillance and control, according to present law provisions shall be audited by active natural or legal persons, members of the Chamber of Financial Auditors from Romania.

(2) The methodology to apply the provisions of the present chapter shall be elaborated based on the agreement between the Commission and the Romanian Chamber of Financial Auditors.

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

**Art. 111.** The financial auditor will write a financial audit report, in accordance with the international audit standards and with the regulations of the Romanian Chamber of Financial Auditors.

**Art. 112.** In 30 days time from the day a financial auditor is no longer an active member, the Romanian Chamber of Financial Auditors notifies the Commission as to this situation.

**Art. 113.** (1) The expenses related to the administrator's financial audit for the a shall be paid by the administrator.

(2) The expenses related to the fund's financial audit, are operational expenses and are paid by the fund.

(3) The financial audit of the fund cannot be done by the same auditor for more than 5 consecutive years.

**Art. 114.** (1) The financial auditor cannot delegate it's responsibility to a third party, in regard to it's specific activity.

(2) Delegating the execution of specific activities to a third party does not relieve the financial auditor of it's responsibility.

**Art. 115.** When observing major deficiencies in the professional conduct of a financial auditor in relation with the entities subject to the Commission's authorization, surveillance and control, the Commission shall notify the Romanian Chamber of Financial Auditors and ask for the appropriate measures to be taken, in accordance with the legislation in force.

### Chapter XV

#### Reporting and transparency liabilities

**Art.116** (1) The administrator publishes, on an annual basis, no later than on May 31<sup>st</sup> of each year, an annual report with accurate and full information upon the activity carried out throughout the previous calendar year

(2) The administrator puts the annual report at the disposal of each person who claims to acquire the quality of participant.

(3) On an annual basis, the administrator puts the report at the disposal of Commission and of each participant to a private pension fund.

(4) The annual report comprises the following information relative to administrator and to the privately administrated pension fund or funds subject to his administration:

a) the members of the Administration Board and, if necessary, of the Committee of Direction;

b) the names of shareholders who own more than 5% from the total stock and the percentage these shareholders own from the total stock;

c) custodian's name and headquarters;

d) information regarding the financial situation of the private pension fund;

e) any other information requested by Commission's norms.

**Art.117** (1) The administrator submits to Commission on a monthly basis, a report relative to the investments of each private pension fund.

(2) The Commission elaborates the framework-report which must comprise at least:

a) The structure of the investment portfolio, relevant to the reporting period.

b) the percentage of a fund's assets invested in a single trade company or in each class of assets thereof;

c) the invested percentage of a fund's assets, in the case of assets of a single issuing entity;

d) the manner of transmission and publication of this report.

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

(3) The Commission can require from administrators, their Administration Boards' members and to other managers or directors or persons charged with their control, to provide information upon all the aspects of activity carried out or to put all documents at its disposal.

(4) The Commission can control the relationships between administrators and other administrators or trade companies in the event that the administrator transfers prerogatives to the last mentioned ones, able to influence administrator' financial situation or relevant for an efficient surveillance.

(5) The Commission can periodically receive the statement upon the investment policy, the annual accounts and reports, as well as all the documents necessary for an efficient surveillance. These can include documents such as:

- a) intermediary internal reports;
- b) actuarial assessments and detailed predictions;
- c) surveys upon assets and liabilities;
- d) proofs of compliance with the principles governing the investment policy;
- e) proofs that contributions were paid as planned;
- f) reports of persons charged with the audit of annual accounts;

(6) The Commission can carry out inspections on site at administrator's headquarters and, if necessary, with regard to the externalized functions, for the purpose of checking if the activities carry out in accordance with the control methods.

**Art.118** (1) The administrator informs on an annual basis, in written form, each participant, at the last notified address upon: the personal assets, respectively the number of units of fund and their value, as well as upon administrator's situation.

(2) The administrator transmits to participant and beneficiary or, according to circumstances, to their representatives, within 10 calendar days, each relevant information upon the amendments of pension scheme's regulations.

(3) The administrator puts, at request, at participants and beneficiaries' disposal or, according to circumstances, of their representatives, the declaration upon the investment policy stipulated under art.80 par. (2) letter c), the annual accounts and reports.

(4) Each participant and beneficiary receives also, at request, detailed and substantial information upon: investment's risk, the set of investment options, if necessary, the existing investment portfolio, as well as upon the degree of risk exposure and the investment-related expenses.

(5) In the event that the participant of beneficiary, in addition to the mandatory reports that he is entitled according to paragraphs (1) to (4), requires supplementary information upon his participation to a private pension fund, the administrator has the obligation to provide these information, in exchange of a certain price.

(6) The tariff for the service stipulated under par. (5) is established by Commission on an annual basis

(7) In the event that a participant to a private pension scheme based in Romania changes his working place, permanent home or residence on the territory of another EU Member State or a state belonging to European Economic Area, the administrator shall provide him, in written form, the adequate information upon the acquired private pension rights and his possible options in this case.

**Art.119** (1) The administrator elaborates and submits to Commission, up to the date of April 15<sup>th</sup>, an annual report able to offer a real and accurate image of the private pension funds under its administration, the concerned report comprising:

- a) the accounting statements of assets and liabilities, of revenues and expenses of each private pension under its administration;
- b) the statements of assets and liabilities, the profit-and-loss account relative to its own activity;

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- c) the statement of fees commissions paid for custodian, administrator and other statements upon the expenses requested by Commission;
  - d) the number of participants of each privately administrated pension scheme;
  - e) other information required by Commission.
- (2) The report stipulated under par. (1) is approved by an auditor endorsed by an audit licensed by the Commission which submits, inclusively, conclusions upon the compliance with the investment strategy presented by administrator. The provisions under art. 51 par. (6) will apply correspondingly.
- (3) The information comprised by the report stipulated under par. (1), must be coherent, complete, presented in a clear manner.

**Art. 120. Repelled.**

### Chapter XVI The marketing of private pension funds

- Art. 121.** (1) The marketing of the private pension fund is done by the administrator.
- (2) The agreement to participate in a private pension fund can be obtained by the administrator or by it's marketing agents.
- (3) The administrator is fully responsible for recruiting, training, monitoring and remunerating the marketing agents.

**Art. 122.** - (1) The marketing agents act on the basis of a mandate contract signed with the administrator.

- (2) The marketing agents have the following responsibilities:
- a) to present the potential participant relevant information about the private pension fund;
  - b) to obtain the participant's agreement to participate in the fund;
  - c) to send to the administrator the original adhesion act, in 5 calendar days time from the day it was signed.
- (3) The marketing agent activity is remunerated with a commission paid by the administrator.

- Art. 123.** (1) The administrator, the marketing agents and their affiliates are forbidden to:
- a) release false, misleading information or information that misrepresents the situation of the private pension fund and of it's administrator.
  - b) make statements or predictions as to the future evolution of the pension fund, in other ways than those presented in the Commission's norms.
  - c) offer collateral benefits in order to persuade a person to join or remain a participant to a pension fund;
  - d) offer incentives for facilitating the adhesion of potential participants.

(2) When the advertising materials have the potential to be misleading, the Commission has the right to ban the publishing and distribution of these materials and to force the administrator to publish the rectified material in 7 days time from the moment the administrator receives the Commission's notification.

**Art. 124.** The Commission issues norms upon:

- a) the private pension fund marketing;
- b) the liabilities of the administrator in relation with the marketing agents.

### Chapter XVII The custodian of the pension fund's assets

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

**Art. 125.** (1) The administrator can designate only one custodian, to deposit the pension fund's assets based in a custody contract, previously licensed by the Commission.

(2) The custodian may conclude custody contracts with several administrators, on condition that the assets, operations and records relative to each private pension fund, shall be hold distinctly for each fund apart, as well as separately from custodian's own assets.

**Art. 126.** The custodian cannot own shares of the administrator or of its affiliates and cannot have relation with the capital of these entities.

**Art. 127.** - (1) In order for a bank to be custodian for a private pension fund, it must be authorized by the Commission.

(2) In order to be authorized by the Commission, the custodian must first bring to the Commission an endorsement request together with documents that will prove the following:

a) the object of activity authorized by the National bank of Romania comprises activities of custody of the financial assets of pension funds;

b) is not subject to a procedure of special banking surveillance or administration;

c) is not an affiliated person;

d) payment of the licensing fee;

e) compliance with all other conditions stipulated in the Commission's norms.

(3) As from the date of Romania's accession to European Union, can also be custodian in terms of present law any entity authorized to hold this quality on the territory of an EU Member State or of a state belonging to European Economic Area. The custodians authorized, endorsed or subject to a similar procedure aimed at operating as custodian of pension funds' assets in an EU Member State or a state belonging to European Economic Area, are exempted from the requirement of being authorized by the Romanian Private Pension Supervisory Commission.

**Art. 128.** - (1) The Commission may require from the custodian, within a term of 30 calendar days as from the reception date of the licensing request, additional documents and information, which it must provide in maximum 30 calendar days as from the Commission's request reception date.

(2) The Commission verifies each aspect related to the request for licensing the custodian, being entitled to address to competent authorities and receive from these any documents and information regarded as relevant, in accordance with the applicable legislation.

**Art. 129.** The Commission analyses the request for the custodian's licensing and, within 30 calendar days, either approves or denies it through a written and motivated decision.

**Art. 130.** The Commission approves the request for licensing as custodian whether all the authorization conditions are met, in a cumulative manner.

**Art. 131.** - (1) The Commission denies the application for licensing of establishment in the following circumstances:

a) the documentation submitted remains incomplete or does not comply with the legal provisions in force;

b) one of the custodian authorization requirements is not met.

(2) The motivated and written denial decision is communicated to the custodian, in maximum 5 calendar days as from its adoption date.

**Art. 132** The amendment of content of documents laying at the basis of the custodian's license must be subject to Commission's prior approval , in accordance with the custodian's authorization procedure.

**Art. 133.** (1) The Commission redraws the custodian's license in one of the following situations:

a) for the same reasons it denies the custodian license request;

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

- b) the custodian license was obtained based on false declaration or by using any illegal means;
- c) not performing custodian activities for a period of 1 year from the authorization;
- d) at the custodian's request;
- e) the custodian's shareholders have decided to liquidate, merge or divide the company;
- f) being a custodian for an unauthorized private pension fund;
- g) the non-execution of the improper execution of liabilities resulting from present law, from Commission's norms or from the custody contract;
- h) situations when the participants' interests are harmed.

(2) The Commission notifies the custodian and the National Bank of Romania, on the decision to withdraw the custody authorization, in written and motivated form, is notified in the first 5 working days after its adoption.

(3) If the Commission redraws the custodian's license, the custodian must present to the Commission the report regarding the assets of the pension fund it deposited, audited by a financial auditor, at the custodian's expense.

**Art.134** In exerting its prerogatives, the custodian must:

- a) receive and secure the records relative to all assets of the private pension fund;
- b) to keep the records regarding the transferable securities in the form of intangibles representing the assets of the private pension fund;
- c) to calculate and inform, on the basis of each working day, the administrator with regard to the net value of pension fund's assets;
- d) to calculate and inform, on the basis of each working day, the administrator with regard to the net value of pension fund's assets;
- e) to transmit to administrator information relative to the private pension funds' assets;
- f) to comply with administrator's orders, except for the case when these are contrary to the legislation in force or to its establishing acts;
- g) to transmit to Commission the information and reports relative to the assets of the private pension fund, in compliance with conditions and terms established by its norms.

**Art. 135.** The assets of the private pension fund cannot be subject either to any enforcement procedure against the custodian or to any other transaction.

**Art. 136** (1) The custodian is responsible in front of administrator, participants and beneficiaries for each prejudice caused to them as a result of non-accomplishment or the inappropriate accomplishment of its incumbent obligations.

(2) The custodian is not exonerated from responsibility which cannot be limited by transferring his responsibilities to another entity, subject to invalidation.

(3) The Commission can force the administrator to replace the custodian if the financial situation or the organizational structure of the custodian has substantially deteriorated and the assets of the private pension fund are at risk.

**Art. 137.** (1) In the situation of cancellation of custody-contract, the administrator notifies the Commission at once.

(2) Replacing the custodian is done in such a manner that will ensure the continuation of the contractual custody liabilities' accomplishment.

(3) The former custodian transfers to the new custodian the assets held in his deposit, as well as the duplicates of records relative to the accomplishment of its liabilities, in 30 days time since the new custodian has been appointed.

(4) The announcement upon the withdrawal of the custodian's authorization is published by Commission in the Official Journal of Romania, Part IV, as well as in two central daily papers, in 5

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

working days time from the day of the decision to redraw the custodian's authorization.

**Art. 138.** The decision of deny the custodian license request can be appealed, at the competent contentious administrative court, according art. 22 provisions.

**Art. 139.** (1) The Commission issues norms for the criteria to license or deny the custodian licensing request, upon consulting with the National Bank of Romania.

(2) The Commission issues norms upon:

- a) custodian's and administrator's liabilities, as stated in the present Law;
- b) custody framework-contract;
- c) the custodian's commission and the method of calculating it.

### Chapter XVIII The private pension

**Art. 140.** (1) The participant chooses the private pension provider.

(2) The private pension provider cannot deny the request for a private pension if the person meets all the legal requirements.

(3) The private pension provider establishes the amount of the private pension, based on actuarial computation and on the net personal assets found in the participant's account.

(4) The transfer penalty does not apply in case of cash transfers between the administrator and the private pension provider.

**Art. 141.** (1) The participant becomes eligible to receive a private pension on the day he/she meets the age retirement conditions in the public system.

(2) The total amount due as private pension cannot be lower than the sum of the paid contributions, minus the transfer penalties and the legal fees.

**Art. 142.** (1) The personal net assets are used solely for acquiring a private pension.

(2) Are exempted from provisions of par.(1) the following situations:

- a) the beneficiaries are not participants, as well;
- b) the participant is retired for disability caused by diseases which do not permit to resume professional activity, defined in accordance with Law no.19/2000 on public system of pensions and other social insurance rights, with its subsequent amendments and completions and the personal assets are below the amount required for acquiring a private pension.

c) The participants whose personal assets are below the amount required for acquiring a private pension.

(3) In 30 days time, from the day the participant proves to meet the criteria for one of the situations mentioned under par.(2), the person receives a unique payment or of more installments paid within a period of maximum 5 years, upon request.

(4) If the period mentioned under par.(3) , the administrator does not comply, it shall pay penalties and interest, in the amount paid in the case of the budgetary obligations.

**Art. 143.** (1) The private pension is paid to the participant, to his/her representative based on a special mandate or to the his/her legal representative.

(2) The expenses related to the payment of the private pension are paid by the participant

(3) If the participant changes the employer, his/her domicile or place of residence in another country, a EU Member state of a state included in the European Economic Area, the participant and the beneficiary keep their right to a private pension within the Romanian

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

private pension schemes and the pension shall be paid in that country, in the amount remained after deducting all the taxes and fees related to the payment.

### **Chapter XIX** **Supervision and Control** *Repelled*

### **Chapter XX** **Technical provisions and other guarantees regulated and supervised by the Commission**

**Art.162** (1) The administrator must permanently ensure an adequate amount of liabilities in accordance with the financial commitments resulted from the existing portfolio of the private pension contracts.

(2) The administrator dealing with private pension schemes' administration wherein are provided measures of protection against bio-metric risks and/or guarantees upon investments performances or an established level of benefits, must ensure technical provisions for all these schemes.

(3) The administrator must permanently hold an adequate and appropriate amount of assets so as to be able cover the technical provisions related to all the privately administrated pension schemes under its administration.

(4) The calculation of technical provisions is made on an annual basis. The calculation can be carried out once in three years if the administrator submits to Commission and/or participants a report regarding the amendments occurred in the concerned years. The report must reflect the modifications of technical provisions and the transformations occurred in the area of covered risks.

(5) The calculation of technical provisions is carried out and certified by an actuary or by another specialist in this area, including by an auditor, in compliance with the national legislation, based on actuarial methods established by Commission's norms and in line with the following principles:

a) the minimum level of technical provisions is calculated in accordance with a rather prudent actuarial assessment, taking into account all commitments contracted by administrator with regard to benefits and contributions within the pension schemes under its administration. This level must cover the pensions and the benefits already in payment and also must reflect the commitments resulting from the pension rights acquired by participants. The economic and actuarial forecasts taken into account for the evaluation of commitments are chosen in a prudent manner, taking into consideration, if necessary, an adequate margin for unfavorable variations;

(b) the maximum interest rates used are chosen in a prudent manner and are set in accordance with national legislation. These prudent rates of interest are calculated taking into consideration: the performance level of corresponding assets owned by administrator and the future performance of investments and/or the performances of state or high quality bonds.

(c) bio-metric tables used for the calculation of technical provisions are based on prudent principles, taking into account the main characteristics of the group of participants and of pension schemes and especially the foreseen evolution of relevant risks;

(d) the methods and the calculation basis of technical provisions generally remain constant from a financial exercise to another. The discontinuities can be justified by the modifications of legislation, of economic or demographic conditions on which the provisions are based on;

(6) The Commission can establish additional requirements for calculating the technical provisions,

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

in the event that this measure is considered as necessary for the appropriate protection of participants' interests.

(7) The Commission can allow to administrator to own assets on a temporary basis below the level of technical provisions, on condition of accomplishing a concrete and feasible plan for covering provisions, in accordance with par.(3). The requirements which the plan for covering provisions must meet are established by Commission's norms.

(8) Provisions under par. (7) do not apply in the case of carrying out activities in the terms stipulated under art.55 par. (5).

**Art.163** Aimed at protecting participants' and beneficiaries' interest, by the contribution of pension administrators and providers, according to circumstances, is established the Guarantee Fund of pensions regulated and supervised by Commission, established in accordance with Law 204/2006 on Privately administrated Pension.

### Chapter XXI The legal responsibility

**Art. 164.** (1) The non-compliance with present law provisions leads to civil, contravention-related or criminal liability, according to circumstances.

(2) The administrator or the financial auditor, according to circumstances, is responsible in front of participants or beneficiaries, for the prejudices resulting from the non-accomplishment or the inappropriate accomplishment of their incumbent liabilities, except for the situations which represent "force majeure" cases.

(3) Any person who considers that was prejudiced as a result of non-implementation of present law provisions is entitled to address to competent courts of law, in accordance with Law 554/2004.

**Art.165** (1) The following deeds represent contraventions:

a) non-compliance with one of the provisions of art.6 regarding the equal treatment of the participants and of the beneficiaries

b) non-compliance with one of the provisions of art.28 regarding the investments and transactions of the pension fund's assets

c) non-compliance with one of the terms stipulated under art.38 par.(4), art.63 par.(3), art.118 par.(2), art.119 par.(1) and art.137 par.(3);

d) non-compliance with one of the provisions of art.61 par.(2) regarding the replenishing of the social capital of the administrator;

e) non-compliance with one of the provisions of art.65 regarding the incompatibilities for the members of the Administration Board or of the Committee of Direction.

f) non-compliance with provisions of art.116.

(2) The contraventions stipulated under par. (1) by a fine between ROL 10,000 and ROL 50,000

(3) The finding of contraventions and application of sanctions fall under the charge of staff authorized by Commission

**Art. 165<sub>1</sub>**(1) In regard to the sanctioning of contraventions, the provisions of art. 165 will be completed with those of the Romanian Govern Ordinance No 2/2001 regarding the legal status of contraventions as approved with amendments and changes by Law no.180/ 2002, as subsequently amended and modified.

(2) As to the procedure of establishing and determining contraventions, (misdemeanors) ,as well as the sanctioning procedure, the provisions of the present Law will be completed with those of the Romanian Govern Ordinance no.2/2001 regarding the legal status of contraventions as approved

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

with amendments and changes by Law no.180/ 2002, as subsequently amended and modified

(3) In order to fulfill its mission to control the activities undertaken in the private pension system, the Commission will issue norms for the procedure of establishing and determining contraventions as well as the sanctioning procedure.

**Art.165<sup>2</sup>** The statutory term of prosecution for contraventions (misdemeanor) is 3 years since the day the offence was committed.

**Art. 166.** The deed of a person, who is responsible for performing an activity without proper authorization or license, when the present Law requires one, represents a crime and is punished with 3 to 7 years prison.

**Art. 167.** The deed of a person who authorizes the use for other aims and the nonpayment or contributions collected from participants represents a crime and is punished either by prison from 6 months to 2 years or by fine.

**Art. 168.** The deed of a marketing agent who presents, with intent, adhesion acts that contain false information, represents a crime and is punished with 3 to 7 years of prison.

**Art. 169.** - The deed of a person who, with intent, uses the expression “pension fund”, mentioned in art. 56 par.(1) represents a crime and is punished with 1 to 3 years prison or with a criminal penalty.

**Articles 170, 171, 173, and par. (1) & (2) of art.175 from Chapter XXII – Final Dispositions are repelled.**

**Art.172** The complaints, of the participants of the beneficiaries, against the administrator, the employer or the Commission, will be addressed to the competent court for the area when the plaintiff has it's residence, and are fax exemplified.

**Art. 175** (1) In 4 months time, after it has issued the administration authorizations, the Commission organizes and then monitors the implementation and completion of the procedure of choosing an administrator, and adhesion to a private pension fund.

(2) In 30 day from the completion of the procedure of choosing an administrator, the participants that have not expressed their option will be randomly distributed.

(3)After the random assignment of the participants is finished , the administrators start collecting the participant's contributions.

**Art. 176.** In one year from the day the present Law comes in force, the Commission will adhere with specific amendments to the Protocol signed by the National Bank o Romania, by the Insurance Supervision Commission and by the National Securities Commission.

**Art. 177.** -Starting with the moment when an insured person becomes a participant to a pension fund and pays a contribution, the number of monthly points he/she is entitled to in accordance with Law 19/2000, modified and completed, and it will be matched with the ratio between the contribution to the public pension system and with the one established through the social insurance budget Law.

**Art. 178.** The present Law shall be applied in conjunction with the :

- a) commercial and competition legislation;
- b) civil society legislation;
- c) labor legislation;
- d) social insurance legislation;
- e) banking legislation;
- f) securities legislation;
- g) contraventions legislation;

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.

## ROMANIAN PRIVATE PENSION SUPERVISORY COMMISSION

h) administrative contentious legislation;

**Art. 179.** - All the applicants that have submitted the documents for obtaining the authorization to establish, within the term established by the Commission, and who have also obtained the administration authorization start their activity, including advertising and marketing activities, at the same date, which shall be set by the Commission.

**Art. 180 - repelled**

**Art. 181. - repelled**

**Art.182** The organization and functioning of the payment system for the pensions regulated and supervised by the Commission will be established through a special Law, in 3 years time from the day the present Law comes in force.

**NOTE:** This material is in no way to be considered legally binding. The only legally binding text is the one published in the Romanian Official Gazette.

The amendments and changes brought to Law no.411/2004 by the Govern Emergency Ordinance no. 50/2005 and by Law no.23/2007 were inserted into the original text by the Commission's staff.