

The Parliament of Romania - Law no. 71/2019 of April 22, 2019

**Law no. 71/2019**  
**regarding the mutual insurance companies**  
**and for the modification and completion of some normative acts**

In force from April 27, 2019

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Form applicable on November 7, 2019

The Parliament of Romania adopts this law:

**CHAPTER I**

General provisions

**ARTICLE 1**

Object and scope

**(1)** In order to carry out the insurance activity in accordance with the provisions of Law no. 237/2015 regarding the authorization and supervision of the insurance and reinsurance activity, with the subsequent modifications and completions, the individuals, legal entities and / or entities without legal personality established according to the law, may be associated and may be established in the territory of Romania mutual insurance companies, with personality legal, in compliance with the provisions of this law.

**(2)** Mutual companies acquire the authorization to carry out the insurance activity, operate and are supervised by the Financial Supervisory Authority, hereinafter referred to as the F.S.A., under the conditions of this law, of the legal provisions, as defined in art. 1 paragraph (2) point 37 of Law no. 237/2015, as subsequently amended and supplemented, as well as the regulations issued by the FSA in the application of this law.

**(3)** This law regulates:

**a)** the establishment and organization of the mutual companies provided in art. 1 paragraph (2) section 56 letter b), in conjunction with art. 1 paragraph (1) of Law no. 237/2015, as subsequently amended and supplemented;

**b)** specific requirements for mutual companies regarding the authorization, functioning, merger, division, modification of the legal form in joint stock companies, dissolution, liquidation and other aspects regarding their activity.

## **ARTICLE 2**

### Definitions

The terms and expressions used in this law have the meanings provided in Law no. 237/2015, with the subsequent modifications and completions, as well as the following meanings:

**a)** fixed or variable contribution - the fixed or variable amount due by the members of the mutual companies for the insurance of the risks, as insurance premium, for the conclusion of the insurance contract;

**b)** additional contribution - the additional amount that the mutual companies can request to each of their members in case the total of the financial resources available for the payment of the compensations and the insurance indemnities would not cover the obligations resulted from the insurance contracts, according to the legal provisions, or in the situation of non-compliance with the solvency requirements and / or regarding the prudence indicators in the insurance activity according to the legal provisions;

**c)** initial fund - fund established by the articles of incorporation, set up at the disposal of the mutual company through cash contributions of the founding members in order to set up and finance the activity of the company;

**d)** balancing fund for unfavourable situations - fund constituted by allocations from the annual surplus of the mutual company, in accordance with the provisions of the articles of incorporation, in order to cover any losses resulting from the activity of the company;

**e)** free reserve fund - the sum between the initial fund and the balancing fund for unfavourable situations;

**f)** member - natural or legal entity or entity without legal personality established according to the law that is associated in mutual companies, either at the date of their establishment, as a founding member, or after the authorization of the mutual companies, under the conditions of this law;

**g)** mutual insurance company - legal entity without profit purpose, with an unlimited and variable number of members, constituted according to this law, having as object the insurance activity according to the provisions of Law no. 237/2015, with the subsequent amendments and completions, and which are financed mainly through the contributions of the members;

**h)** entity without legal personality - form of organization constituted on the basis of a company contract according to the common law or based on the provisions of special laws, without legal

personality, with the purpose of carrying out production, trade, service, agricultural or exercise activities some regulated or liberal professions.

## **CHAPTER II**

### **Establishment and organisation of mutual companies**

#### **SECTION 1**

##### **Purpose, Constitution and general principles for the organisation of mutual companies**

#### **ARTICLE 3**

##### **Purpose of mutual companies**

(1) Mutual undertakings shall aim to cover, through insurance contracts, the risks of its members and the payment of compensation and insurance allowances to them, the beneficiaries of contracts and/or third parties, in the event of the insured risks.

(2) Mutual companies shall carry out only insurance activity and operations directly linked to this activity for their members, on the basis of the principle of mutuality.

(3) By exception to the provisions of para. (1), mutual companies may conclude with their members legal entities or entities without legal personality and group insurance contracts for their employees, without the latter becoming members, the obligation to pay the contributions provided for in this Law, the Articles of Incorporation and the contracts concerned returning those members.

#### **ARTICLE 4**

##### **Guaranteeing social obligations**

(1) The social obligations of mutual companies shall be guaranteed with their social patrimonies.

(2) Members shall not be held personally liable to the creditors of the mutual company.

#### **ARTICLE 5**

##### **Name, registered office and secondary offices**

(1) Mutual companies shall necessarily include in the name the phrase 'Mutual insurance Company'.

(2) Mutual undertakings shall establish their registered office and, where appropriate, their head office, representing the place where the main management and management centre of the activity are located, on the territory of Romania.

(3) Branches shall be dislocated without legal personality of the Mutual Company and shall be recorded, before the commencement of their activity, in the trade register of the county in which they will operate.

(4) If the branch is opened in a locality in the same county or in the same locality as the mutual company, it shall be registered in the same office of the Trade register, but distinct as a separate registration.

(5) The other secondary establishments, such as agencies, workstations or the like, are dismantling without legal personality of mutual companies and are mentioned only in the registration of the company in the trade register of the main office.

## **ARTICLE 6**

### Deeds of association

(1) The act underlying the establishment of mutual companies is the Articles of Incorporation, which ends under the private signature of the founding members.

(2) The Articles of Incorporation of the Mutual Company shall comprise at least the following:

(a) The name of the Mutual Company;

(b) The duration of the Mutual Company;

(c) The head office and head Office of the Mutual Company;

(d) The object of the activity of the Mutual Company;

(e) The insurance classes which they practise, the risks subject to insurance;

(f) the way of acquiring and terminating membership;

(g) The rights and obligations of the members;

(h) The financial resources of the mutual company, including provisions on the setting-up of the balancing fund for unfavourable situations and, where appropriate, other statutory reserve funds in accordance with art. 17 para. (1), in compliance with this law, and the type of contributions, fixed and/or variable, levied on its members;

(i) How to determine the additional contributions and their maximum amounts, as well as the situations in which members may be requested;

(j) Provisions relating to the initial fund, relating to its amount, the time limit for any remaining unbroken sums, its use and, where appropriate, the rights of the members contributing to its establishment, as provided for in this law;

(k) Data identifying the founding members of the Mutual company, Signatories to the Articles of Incorporation;

(l) Provisions on the organisation of General meetings of members relating to their duties, the manner and deadlines for convening, the conditions of quorum and the adoption of judgments, the conditions of representation of members;

(m) clauses concerning the management, operation and control of the Mutual company by the statutory bodies, namely the number of members of the Management Board and directors or, where applicable, the number of members of the supervisory board and of the Directorate;

(n) The data identifying the first members of the Board of directors and the first members of the supervisory board, depending on how the management is organised in a unified system or in a dualist system;

(o) The powers conferred on the Supervisory Administrators/Council and, where applicable, to the directors or to the members of the Directorate;

(p) Provisions relating to financial audit;

(q) Conditions of merger or division of Mutual Company;

(r) Secondary establishments of the mutual company, when established with the company, or the conditions for their subsequent establishment, if such establishment is envisaged;

(s) The conditions of the total or partial transfer of the portfolio;

(ş) the conditions and manner of dissolution and liquidation of the Mutual Company;

(t) ways of quarterly information of members on the situation of the mutual company, in compliance with the regulations issued by the F.S.A. in application of this Law on minimum information to be communicated;

(t) How to use the annual distributable surplus of the mutual company;

(u) The statutory bodies competent to approve the general conditions of the insurance contracts and their subsequent amendments, the conditions of approval and the effects of the approved modifications to the insurance contracts in force;

(v) Other information provided for in this law and the regulations issued by the F.S.A. in the application of this law;

(w) other information deemed relevant by members.

3. The identification data provided for in para. (2) letter k) and n) include:

(a) For individuals: the name, surname, personal number and, where applicable, its equivalent, according to applicable national law, place and date of birth, domicile and citizenship;

(b) For legal entities: name, premises, nationality, trade register number or single registration code, according to applicable national law.

4. Subsequent amendments to the Articles of Incorporation shall be subject to the F.S.A. approval under the regulations issued by the F.S.A. in application of this law.

5. The F.S.A. may reject the approval of amendments to the Articles of Incorporation if the interests of members in their capacity as insured or by Parties in insurance contracts concluded with the mutual company are not protected or the proposed amendments could lead to non-compliance with the solvency requirements and/or on the indicators of prudence under the legal provisions.

## **ARTICLE 7**

### Registration with the Trade Register

1. The mutual company acquires legal entity from the date of registration in the Trade Register, which is considered the date of incorporation of the company.

2. Mutual companies may register with the Trade Register Office only with the prior opinion of the F.S.A. provided for in art. 23 para. (3) letter a).

3. Mutual companies shall be subject to the procedures laid down in the legal provisions concerning the registration with the Trade Register of shares of undertakings, which are similarly applicable to them, and by the provisions of this law.

4. The application for registration in the trade register shall be accompanied by:

(a) The Articles of Incorporation of the Mutual Company;

(b) Proof that the initial fund should be carried out under the terms of the Articles of Incorporation;

(c) Proof of the declared seat and the availability of the name;

(d) The findings of the operations concluded on the mutual company account and approved by the members;

(e) The Declaration of responsibility of the founding members, the first administrators and, where applicable, the first directors, respectively the first members of the Directorate and of the Supervisory board, that they fulfil the conditions laid down in art. 11 para. (3) or art. 21 para. (3), where applicable;

(f) The prior opinion of the F.S.A. provided for in art. 23 para. (3) letter a);

(g) Other documents provided for by the legal provisions laid down in para. (3).

## **ARTICLE 8**

### The effects of the violation of the legal requirements for setting up the mutual company

(1) When the Articles of Incorporation does not include the stipulations provided by the law or it contains clauses that violate an imperative provision of the law or when a legal requirement for the

establishment of the mutual company has not been fulfilled, the director of the trade register office, ex officio or at the request of any person making a request for intervention, rejects, by resolution, motivated, the application for registration, unless the members remove such irregularities; the director of the trade register office takes note of the adjustments made in the resolution.

(2) In case of irregularities found after registration, the mutual company shall take measures to remove them within 10 days from the date of finding those irregularities.

(3) If the mutual company does not comply with the obligation stipulated in par. (2), any interested person may ask the court from the headquarters of the mutual company to oblige the bodies of the mutual company to regularize them, subject to the payment of damages according to the common law.

## **SECTION 2**

The members of the mutual companies

### **ARTICLE 9**

The minimum number of members and voting rights

(1) The number of the founding members, when constituted, is a minimum of 5, they are not conditioned by the acquisition of the quality of insured at the time of establishment; they conclude the insurance contract after obtaining the operating authorization.

(2) The number of members of the mutual companies is at least 5; if the mutual company has less than 5 members over a period of 12 consecutive months, the general meeting of its members shall decide immediately upon the dissolution and liquidation of the company, according to the provisions of art. 28 paragraph (1) letter a) and b), with information within 5 working days of the F.S.A. by the management of the mutual company concerned; the Articles of Incorporation provides for the organization of the general meeting of the members including in these situations.

(3) The mutual companies are not dissolved if, until the definitive stay of the dissolution court decision, the minimum number of members provided by this law is reunited.

(4) Each member has the right to vote.

### **ARTICLE 10**

Liability of members to mutual companies

(1) The members of mutual companies are responsible for the payment of all amounts due to them as contributions for which the payment obligation was born during the holding of membership.

(2) The members who join the mutual company or whose membership ceases during a financial year owes the additional contribution requested in the respective financial year in proportion to the time fraction in which they held this quality relative to the duration of the financial year in question, except unless the articles of incorporation provide otherwise.

(3) The members are not entitled to offset their own debt against the mutual company with the contributions due.

## **ARTICLE 11**

### Acquisition of membership

(1) The founding members of the mutual company are the signatories of the Articles of Incorporation.

(2) Subsequent to the authorization of the mutual company, the membership is acquired by the conclusion of at least one insurance contract with the mutual company.

(3) The founding persons cannot be persons who are incapable or unable to hold the capacity of associate, according to the law, or who have been convicted for offenses under the law applicable in the banking and non-banking field, fraudulent offenses, fraud or financial crimes, money laundering and terrorist financing, capital market manipulation, misuse of privileged information, unauthorized disclosure of privileged information, crimes against property, crime and corruption, offenses regarding the tax regime or other offenses provided by company law, bankruptcy, insolvency or protection to the consumer, unless the rehabilitation took place, according to the law.

(4) The mutual companies inform the persons who express their interest to become members, in writing and before acquiring the membership, about the relevant provisions of the articles of incorporation regarding the functioning of the company, the rights and obligations of the members, as well as, if applicable, regarding the right of the members who participated in the establishment of the initial fund, provided in art. 14 paragraph (5), to collect an interest and the amount of the annual interest rate established, in compliance with the regulations issued by the F.S.A. in applying this law regarding the minimum information to be communicated.

## **ARTICLE 12**

### Termination of Membership

1. The membership of the Mutual Company shall cease in the following situations:

a) by the death of the individual member;



- b) By the deletion from the Trade Register of the member of the legal entity or entity without legal personality;
  - c) by terminating the quality of the insured company or party in an insurance contract concluded with the mutual company, in accordance with the provisions of the Articles of Incorporation;
  - d) In other cases provided for in the Articles of Incorporation.
2. The insurance contract may continue to produce effects by the date laid down therein.

### **SECTION 3**

#### Financial resources

### **ARTICLE 13**

#### General provisions

1. The financial resources of mutual companies shall consist of:
- a) the original fund;
  - b) the balancing fund for unfavourable situations;
  - c) fixed and/or variable contributions;
  - d) additional contributions;
  - e) other resources provided for in the Articles of Incorporation.
2. All contributions by members shall be paid exclusively in cash, not admitting contributions in kind.

### **ARTICLE 14**

#### The initial fund

1. The original fund shall be made available to the mutual company by the cash intake of the founding members for the establishment of the company and used to cover the costs of incorporation and the financing of its activity after the operating authorization, as provided for in the Articles of Incorporation.
2. The original fund may be used, in accordance with the decision of the General Assembly of members, and for the total or partial coverage of the losses of the mutual company, if the Articles of Incorporation so provides, provided that the transaction is expressly accepted by the Members who have the right to return the original fund at that time under the provisions of para. (4) and (8) and whose contributions to the original fund shed are, cumulated, at least 51% of its value at the time of acceptance.

3. The Articles of Incorporation shall provide for the period for the payment of the remaining contributions payable to the original fund if it has not been fully deposited prior to the operating authorisation and the effects of the non-payment of the outstanding amounts due.
4. If the Articles of Incorporation so provides, the original fund shall be able to be repaid wholly or partly to the members who participated in the establishment, where the mutual company complies with the solvency requirements and/or on the indicators of prudence as required by law.
5. The Articles of Incorporation of the Mutual company may provide that, during the period in which the original fund is not repaid wholly or partly to the Members who participated in its establishment, the latter shall have the right to collect interest reported on the amount of their contribution paid to the original fund or, in the case of partial refunds, to the remaining amount of the contribution to the original fund.
6. The original fund may be refunded only from the annual distributable surplus of the mutual company; the amount returned in one year may not exceed the amount allocated in the same year to the balancing fund for adverse situations provided for in art. 15.
7. Mutual companies require the F.S.A. approval for the operation to repay contributions to the original fund; the F.S.A. may reject the partial or total refund operation of the original fund, if by this operation the solvency requirements and/or the prudence indicators of the mutual company are no longer fulfilled or there is a possibility to deteriorate in the near future.
8. The right to refund the contribution to the initial Fund provided for in para. (4) It may be transferred, in whole or in part, to other members of the mutual company, in accordance with the F.S.A. regulations, together with the related law referred to in para. (5) if the latter exists; the transferee shall, in turn, acquire the right to assign provided for in this paragraph.
9. Mutual undertakings shall inform the F.S.A. annually of the identity of the members who have the right to refund the contribution to the original fund, indicating the amounts relating to each of them.

## **ARTICLE 15**

### Balancing fund for unfavourable situations

1. In order to cover any losses resulting from the work carried out, mutual undertakings shall constitute a balancing fund for unfavourable situations by allocating part of the annual surplus achieved.
2. The Articles of Incorporation shall provide for the calculation of the amount to be allocated annually to the balancing Fund for unfavourable situations and the minimum level of it to be attained and maintained, a level which may not be lower than that provided for in art. 23 para. (4) For the Free reserve Fund spilled.

## **ARTICLE 16**

### Fixed, variable and additional contributions

1. Mutual undertakings shall provide in the constituent instruments the situations in which they may require their members to pay additional contributions and how to determine their maximum amounts by reference to the amount insured or the compensation limit and/or the fixed or variable contribution provided for in the insurance contracts.
2. For the purpose of applying the provisions para. (1) the Articles of Incorporation describes how to request additional contributions, collection and payment deadlines.
3. The amounts of additional contributions and fixed or variable contributions defined in article 2 letter (a) and (b) shall be calculated by an actuary and shall be determined by decision of the management of the mutual companies, as provided for in the Articles of Incorporation.

## **ARTICLE 17**

### Other financial resources

1. Mutual undertakings may provide in the instruments of incorporation and other financial resources, including statutory reserve funds constituting the annual distributable surplus and which may be used to cover accounting losses or other purposes other than those expressly provided for by this law.
2. Mutual companies may contract loans from private or public sources, in accordance with the conditions laid down between the Contracting Parties; In the situation of contracting loans from public sources, until the date on which all payment obligations relating to the loan are paid, mutual undertakings do not carry out refunds of contributions to the original fund, do not owe interest on contributions to the original fund and do not distribute to members.
3. For the strengthening of financial capacity, mutual companies may obtain resources from private or public entities, such as local and/or national funds, including resources from the multiannual financial chapters, according to the legal provisions in force.
4. Mutual companies may issue bonds, under the same conditions as stock companies, in accordance with the provisions of the Articles of Incorporation and in compliance with the provisions of company Law No. 31/1990, republished, with subsequent amendments and additions, and other normative acts, relating to the issue of bonds and rights of holders of bonds.

## **ARTICLE 18**

### Use of the annual distributed surplus

1. The annual distributable surplus recorded in the financial statements of the mutual companies remaining after the establishment of the balancing Fund for adverse situations provided for in art. 15 They shall be distributed to their members, in accordance with the provisions of the Articles of Incorporation, for the establishment, where appropriate, of other statutory reserve funds in accordance with art. 17 para. 1., shall be used for the repayment of contributions to the original fund and/or shall be restarted in the following financial year.
2. The distribution to members referred to in para. 1. It shall be carried out in the form of reducing fixed or variable contributions to the following insurance contract and only on condition that the original fund has been fully repaid or has been waived the right of refund.
3. The Articles of Incorporation of mutual companies also provides whether and to what extent the distribution may take place also to persons and entities whose membership has ceased during or after the end of the financial year for which the surplus in question was made; Exception to the provisions of para. (2) Distribution to former members may be carried out in the form of a fart.
4. Distribution to members may be decided only where mutual companies meet solvency requirements and prudence indicators and the operation does not lead to non-compliance or the possibility of deterioration in the near future; The provisions of art. 14 para. (7) It shall also apply as regards the distribution operation to members.

## **SECTION 4**

### General Assembly of Members

## **ARTICLE 19**

### General provisions

1. The General Assemblies of mutual companies shall, similarly, apply the following provisions of Law No. 31/1990, republish, with subsequent modifications and additions:
  - a) art. 111 and art. 113 letters a), b), d), e), i), k), l) and m);
  - b) The first and second sentences of art. 112 para. (1) as well as the first sentence of art. 112 para. (2);

c) Art. 117 para. (1), (6) and (7), art. 118 para. (1) and (2), art. 123 para. (2), art. 125-128, art. 130, art. 131 para. (2) to (5), art. 132, 133 and art. 1361;

d) Art. 117 para. (3) and/or (4), except for the period provided for in para. (4), which is the same as the term of assembly of the General Assembly, established by the Mutual company in accordance with the provisions of this section; The mutual company provides in the Articles of Incorporation if it applies the provisions of art. 117 para. (3), of art. 117 para. (4) or both of the provisions;

e) Art. 117<sup>1</sup>, 119 and 136, with the exception of the terms relating to the percentages, which shall be determined by the mutual company by means of the Articles of Incorporation by reference to the total number of votes of the members, and with the exception of the terms relating to the deadlines, which shall also be determined by the mutual undertaking, by the Articles of Incorporation;

f) Art. 129, except as stated in para. (2) concerning the indication of the share capital each and the minutes for the determination of the number of shares submitted;

g) Art. 131 para. (1) Except as stated in para. (1) on the number of shares.

2. In the articles referred to in para. (1):

a) references to company shall be deemed to be made at the Mutual Company;

b) References to 'shareholders' shall be deemed to be made to 'members';

c) References to 'share capital' shall be deemed to be made under the 'Free Reserve Fund';

d) References to 'dividend' and 'dividend distribution' shall be deemed to be made in 'use of the distributable surplus';

e) references to the Ordinary General Assembly and extraordinary General Assembly are considered to be made at the General Assembly of members.

3. In addition to the provisions of para. (1) letter A), the General Assembly of Members shall also meet for:

a) approving the proposal to practise new classes of insurance, to subscribe to new risks, to waive the practice of one or more classes of insurance and/or to waive the subscription of one or more risks;

b) Approval of the triggering of the action in liability provided for in article 22 para. (3).

4. By exception to the provisions of para. (1) letter (b), the decisions of the General Assembly of members concerning the change of legal form, merger, division or dissolution of the mutual company, as well as those relating to the operations referred to in para. (3) letter (a) shall be taken by a majority of at least two thirds of the voting rights held by the members present or represented at the meeting of the general meeting.

5. The mutual undertaking may provide in the Articles of Incorporation higher quorum requirements and majority than those provided for in para. (1) letter b) and para. (4).

6. The mutual Company shall provide in the Articles of Incorporation:

(a) The minimum term of assembly of the General Assembly of members, calculated from the date of the convening, which may not be less than 15 days;

(b) The minimum term of assembly of the second meeting, convened for the deliberation of the points on the agenda of the first Assembly which did not meet the quorum requirements, if that period was not mentioned in the convening of the first assembly.

7. The general Assemblies of members may be kept by correspondence; the Mutual Company establishes in the Articles of Incorporation the manner in which this right is exercised, in compliance with the requirements laid down in this section relating to quorums and majorities, rights conferred on members, deadlines and other matters.

## **ARTICLE 20**

### Council of Members

Mutual companies may provide in the Articles of Incorporation that members may be represented in the General Assembly by a Council of members, consisting of persons who are also members of the company; In this case, the Articles of Incorporation lays down rules on the composition of the Council and the procedure for appointing representatives thereto, which ensure compliance with the provisions of this section as regards quorum, majority and respect for the requirements of the rights.

## **SECTION 5**

### Leadership

## **ARTICLE 21**

### General provisions

1. Mutual companies shall organise their management in a similar manner to the insurance undertakings on shares referred to in art. 1 para. (2) point 56 letter a) of Law No. 237/2015, with subsequent amendments and additions, respectively in the uniform system or in the dualist system, the provisions of art. 137-158 of Law No. 31/1990, republish, with subsequent amendments and additions, applying to mutual companies, insofar as they do not contravene the legal provisions and this law.

2. By way of derogation from the provisions of art. 143 para. (1) of Law No. 31/1990, reapproved, with subsequent modifications and additions, the delegation shall be made to a minimum of two persons.

3. persons who, according to art. 11 para. (3), no founding members may be members of the management of mutual companies, and if they have been chosen, they shall be deprived of their rights.
4. The term of office of the first administrators, the first members of the supervisory board and the first members of the Directorate shall be 4 years.
5. Management members may make all the operations required to comply with the object of activity of mutual companies, except the restrictions referred to in the Articles of Incorporation and this law; They are obliged to take part in all general meetings of the members of the mutual companies.
6. Acts of provision on the assets of mutual companies may be concluded on the basis of the powers conferred on their legal representatives, as appropriate, by law, the Articles of Incorporation or the judgments of the statutory bodies of mutual companies, and no genuine special prosecutor's office is required for that purpose, even if the provisions must be completed in genuine form.
7. The administrator or the member of the Directorate entitled to represent the mutual company may not transmit it unless that possibility has been expressly granted.
8. In case of breach of provisions para. (7), the mutual company may claim from the substitute the benefits resulting from the operation.
9. The administrator or the member of the Directorate which, without entitlement, replaces another person shall be jointly and severally liable for any damage to the mutual company.

## **ARTICLE 22**

### Obligations and liability

1. The obligations and liability of members of the management of mutual companies shall be governed by the provisions of law 287/2009 on the Civil Code, republished, with subsequent amendments, relating to the mandate and the special ones provided for in this law and shall be supplemented by the provisions of common law in the matter of companies.
2. Management members shall be jointly and severally liable to the mutual Company for:
  - a) The reality of the vomiting carried out by the founding members at the original fund;
  - b) The existence of the registers required by law and their proper holding;
  - c) The exact fulfilment of the decisions of the members' general assemblies;
  - d) The strict fulfilment of the duties which this law, the regulations issued in its application, the legal provisions and/or the Articles of Incorporation of the Mutual Company impose.
3. The action for liability against members of the Board/members of the supervisory board, Directors/members of the Directorate referred to in article 155 of Law No. 31/1990, republish, with subsequent amendments and additions, also belongs to the creditors of the company, who will be able

to exercise it only in the event of opening the procedure governed by Law No. 85/2014 on insolvency and insolvency prevention procedures with subsequent amendments and additions.

### **CHAPTER III**

Specific provisions on the authorisation and functioning of mutual companies

#### **ARTICLE 23**

Authorisation process

1. The F.S.A. shall authorise the operation of mutual undertakings under the following provisions:

a) art. 20-22 of Law No. 237/2015, with subsequent modifications and additions, except for the provisions of art. 20 para. (2), (4), (6), para. (10) letter b), para. (13), (15) and (16), of art. 21 para. (1) letter b) and h), para. (2) and (6), in conjunction with the provisions of this law and of the regulations issued by the F.S.A. in application of this law-in the case of mutual companies supervised under part I of Law No. 237/2015, with subsequent modifications and additions, according to art. 2 of the same law;

b) Art. 173 para. (1) letter b) of Law No. 237/2015, with subsequent amendments and additions, in conjunction with the provisions of this law and of the regulations issued by the F.S.A. in application of this law-in the case of mutual companies supervised under part II of Law No. 237/2015, with subsequent modifications and additions, according to art. 172 of the same law.

2. For the approval of the founding members whose payments to the original fund represent at least 10% of the total amount spilled, according to the regulations issued by the F.S.A., mutual companies shall transmit the F.S.A. data and information about them.

3. The authorisation process and the assessment of the fulfilment of the conditions of authorisation laid down in para. (1) shall be carried out in two stages, as follows:

a) endorsement for registration at the Trade Register Office;

b) issue of the operating authorization.

4. In order to obtain the operating authorisation provided for in para. (3) letter b), the free Reserve Fund shall represent at least 80% of the values provided for in art. 95 para. (1) letter d) of Law No. 237/2015, with subsequent amendments and additions, for mutual companies referred to in para. (1) letter A), respectively from the Safety Fund provided for in art. 173 para. (1) letter (a) of the same law, where applicable, for the mutual companies referred to in para. (1) letter b).

5. At the time of the request of the prior opinion provided in para. (3) letter (a), the founding members shall prove that the minimum of 50% of the amount of the free reserve Fund provided for in para has



been paid. (4); the F.S.A. may update the minimum threshold provided for in this paragraph by regulation.

6. The operating authorization obtained by the mutual companies supervised under the provisions of part I of Law No. 237/2015 with subsequent amendments and additions, it shall be valid in all Member States, including the conduct of business under the right of establishment or freedom to provide services, and shall be published by the F.S.A. under the rules of publication established by its own regulations.

7. The F.S.A. shall not grant the opinion and/or operating authorization provided for in para. (3):

(a) Where the conditions laid down in para. (1) are not met;

(b) Where the terms of the Articles of Incorporation relating to the management, management, operation and control of the management of the Mutual company by the statutory bodies do not ensure the prudent and correct management of the company;

c) in the situation of the non-approval of the founding members according to para. (2).

8. In the case provided for in para. (7), the provisions of art. 24 para. (2) and (3) of Law No. 237/2015, with subsequent modifications and additions, shall be applied accordingly.

(9) The F.S.A. registers mutual companies in the register of insurers-reinsurers provided for in art. 8 para. (13) and art. 164 of Law No. 237/2015, with subsequent modifications and additions.

10. Fees for the authorisation of mutual undertakings shall be established by the F.S.A. regulations; The fees shall not be refunded in the situation provided for in para. (7).

(11) The use of Mutual Insurance Company is prohibited by legal entities who are not authorised by the F.S.A. unless such use is provided for by law or international agreements.

## **ARTICLE 24**

### Specific provisions on the operation

1. Mutual companies shall send to the F.S.A. amendments to the documents and information on the basis of which the operating authorization has been granted.

2. Mutual companies shall keep records, on individual accounts, of contributions payable, paid and remaining payable by its members.

3. Mutual companies shall issue to the members, on request, a document certifying the amount of their contribution to the original fund, paid and remaining to be paid, the amount returned from it and the amount remaining to be repaid.

4. The management of the mutual undertaking shall be responsible for correcting the records provided for in para. (2) and the documents provided for in para. (3).

(5) from the date of obtaining the operating authorisation, mutual companies owe the F.S.A. the fees provided for in art. 8 para. (14) of Law No. 237/2015, with subsequent modifications and additions.

6. In documents issued by mutual companies, such as invoices, tenders, orders, prospectuses, insurance contracts and other documents used in trade, the name, legal form, registered office, Trade Register number and tax registration code of the issuing companies shall be mentioned.

7. If the mutual company opts for a tier management system, the documents referred to in para. (6) They shall contain the wording 'Mutual Company administered in a dualist system'.

8. Where the documents referred to in paragraph (6) are issued by a branch of the mutual company, they also mention the office of the Trade Register to which the branch was registered and its registration number.

9. The mutual company publishes on its own website the information provided for in para. (6) and (7).

10. In the course of the activity, mutual undertakings shall be duly subject to the provisions applicable to joint ventures in respect of obligations to request the registration in the trade register of changes occurring, as provided for by Law No. 31/1990, republish, with subsequent amendments and additions, Law No. 26/1990 on the Trade register, reregistered, with subsequent modifications and additions, and other normative acts.

11. The withdrawal of authorisation shall be carried out in accordance with art. 110 of Law No. 237/2015, with subsequent amendments and additions, which apply to all mutual companies referred to in art. 23 para. (1).

12. Mutual companies shall include in insurance contracts clauses on additional contributions which they may require members, relating, at least, to situations in which they may be requested, how they are determined, their maximum amounts, the deadlines for payment and the liability of the members under the provisions of art. 10, the insurance contract also includes clauses to result in the quality of members of the Mutual company, their rights and obligations as members, by reference to the provisions of the Articles of Incorporation.

13. Mutual undertakings shall, on request, make available to members a copy of the updated Articles of Incorporation, in a Latvian and/or electronic format, according to their options.

## **ARTICLE 25**

### **Portfolio Transfer**

Mutual companies may decide to transfer all or part of the portfolio in accordance with the provisions of the Articles of Incorporation; The portfolio transfer operation is carried out only with the prior approval of the F.S.A., according to the legal provisions.

## **ARTICLE 26**

### Merger and Division

1. Mutual companies may decide to merge, under the conditions of quorum laid down in the Articles of Incorporations, only with another mutual company; the merger operation is carried out according to the provisions of the Articles of Incorporations and only with the prior approval of the F.S.A., according to the legal provisions.
2. Mutual companies may decide to divide themselves into the quorum conditions laid down in the Articles of Incorporations; The division operation is carried out according to the provisions of the Articles of Incorporations and only with the prior approval of the F.S.A., according to the legal provisions.
3. The conditions of Merger and division are established by mutual companies in their Articles of Incorporations, in a similar manner to the provisions of Law No. 31/1990, reissued, with subsequent modifications and additions, applicable to stock insurance undertakings, and of the regulations issued by the F.S.A. in application of this law.

## **ARTICLE 27**

### Modification of the form of mutual company in joint stock company

1. Mutual companies may amend their legal form in an action company, having as their object the activity of the insurance activity, in compliance with the provisions of this law, of the regulations issued in its application by the F.S.A., and, insofar as they do not contradict them, of the Law No. 31/1990, republished, with subsequent amendments and additions, with prior approval of the F.S.A.
2. In applying the provisions of para. (1), the general meeting of the members of the Mutual company shall approve the modification of the legal form of the mutual company, as well as:
  - (a) The level of the share capital, which may not exceed the net asset value of the mutual company resulting from an independent assessment by a legal entity, endorsed by the F.S.A. to carry out financial audit activity in insurance undertakings, in accordance with the legal provisions; The assessment in question will be carried out in accordance with the International Accounting standards adopted by the Commission under Regulation (EC) No 1.606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of International Accounting standards and published in the Official Journal of the European Union Nr. L 243/1 of 11 September 2002;
  - (b) The level of participation in the share capital for each member;
  - (c) The nominal value of an action; and
  - (d) The Articles of Incorporation corresponding to the new legal form of company.

3. In applying the provisions of para. (2), the management board or, where applicable, the Directorate of Mutual Company shall submit to the general meeting of members the proposal to amend the legal form, accompanied by the independent evaluation report carried out by the financial auditor according to para. (2) letter a).

4. Prior to the fulfilment of the requirements laid down in para. (2) and (3), the General Assembly of Members shall designate the financial auditor for the purposes set out in para. (2) letter (a) or mandate the management Board or, where appropriate, the Directorate of the company to contract a financial auditor for that purpose and shall determine the reference date on which the assessment is carried out; The Mutual Company provides in the Articles of Incorporation the procedure for modifying the legal form.

5. The members of the Mutual company become shareholders of the stock insurance company, except those members who voted against the modification of the legal form, have manifested their right to withdraw from company and the right to request the acquisition by the company of the shares which would have returned to them in the event that they had remained shareholders in the company; The company pays the consideration of the shares of the withdrawn members at the price fixed by applying the participation quotas, determined according to the provisions of para. (7) thesis I, at the value of the share capital.

6. Members of the Mutual Company who do not become shareholders, because their contribution is less than the nominal value of an action, will be excluded from the company by shares provided compensation, by reporting the quota obtained in accordance with para. (7) to the value of the share capital of the stock company.

7. Shares of participation in the share capital shall be determined on the basis of the size of all contributions paid by existing members on the date of adoption of the decision amending the legal form of the company for the duration of membership, from which any contributions returned are deducted; The participation quota from which a whole number of shares does not result is rounded down and the total amount resulting from these rounding remains available to the company.

## **ARTICLE 28**

### **Dissolution and liquidation of mutual companies**

1. Mutual companies shall be dissolved and entered into liquidation in the following situations:

a) by the decision of the members' assembly;

b) by decreasing the number of members below the limit laid down in this law, under the conditions laid down in art. 9 para. (2) and (3);

- c) In case of failure to grant the operating authorization, according to art. 23 para. (7);
- d) In case of withdrawal of the operating authorization;
- e) Declaring the bankruptcy of the Mutual Company;
- f) In other cases provided for in this law and/or by the Articles of Incorporation.

2. The mutual undertakings shall establish in the Articles of Incorporation the situations, conditions and manner of dissolution and winding up, in compliance with the legal provisions, of this Law and the regulations issued by the F.S.A. in its application, of Law No. 503/2004 on financial recovery, bankruptcy, dissolution and voluntary liquidation in the insurance activity, republish, with subsequent amendments, and, insofar as they do not contravene, the provisions of Law No. 31/1990, republished, with subsequent modifications and additions, and other incident normative acts applicable to stock insurance companies.

3. In applying the provisions of para. (2), the Articles of Incorporation also contain provisions on the rights and obligations of members of the Mutual company during the liquidation period, its effects on insurance contracts, the order of priority of claims and other specific aspects.

4. Following the opening of the winding-up procedure, the acceptance of new members, the conclusion of new insurance contracts, and the increase in the insured amount or the compensation limit or the risk supplementation provided by the insurance contracts in force shall be prohibited.

## **CHAPTER IV**

### Contraventions and offences

## **ARTICLE 29**

### Contraventions

(1) The following acts are contraventions:

- a) non-compliance by mutual companies and persons who are part of their management or by those holding key functions or other critical functions of this law and regulations issued by the F.S.A. in the application of this law;
- b) Non-compliance by mutual companies and persons who are part of their management or by those holding key functions or other critical functions, in any way, of individual administrative acts issued by the F.S.A.;
- c) Non-compliance by persons who are part of the management of mutual companies with the obligation to information the F.S.A., provided for in art. 9 para. (2);

- d) Non-compliance by mutual companies and persons who are part of their management of the obligation of written information of persons expressing interest in becoming members, provided for in art. 11 para. (4);
  - e) Non-compliance by the mutual companies with the provisions of art. 14 para. (6) on the maximum number of amounts repaid in one year of contributions to the original fund, with art. 14 para. (7) on the obligation to request the F.S.A.'s approval for the operation to repay contributions to the original fund, as well as of art. 14 para. (9) on the obligation to notify the F.S.A. of the identity of members who have the right to refund the contribution to the original fund;
  - f) Non-compliance by mutual companies and persons who are part of their management of the provisions of art. 15 on the setting-up of the balancing fund for adverse situations;
  - g) Non-compliance by mutual companies and persons who are part of their management of the provisions of art. 18 para. (4) on the distribution to members of the annual distributable surplus;
  - h) Non-compliance by mutual companies and persons who are part of their management of the provisions of art. 24 para. (1) on the transmission of amendments to documents and information on the basis of which the operating authorization was granted;
  - i) Non-compliance by mutual companies and persons who are part of their management of the measures established by the acts of authorisation, supervision and control or following them, issued under this Law and the regulations issued by the F.S.A. in application of this law;
  - j) Non-compliance by mutual companies and persons who are part of their management of the provisions of art. 24 para. (2) on keeping records of members' contributions;
  - k) The conduct by mutual companies and persons forming part of their management of amendments to the Articles of Incorporation without the F.S.A. opinion, as provided for in art. 6 para. (4);
  - l) Non-compliance by the mutual companies of the provisions of art. 24 para. (12) on the inclusion in contracts for the provision of supplementary contributions;
  - m) making the portfolio transfer without the F.S.A. approval, as provided for in art. 25.
- (2) Depending on the nature and seriousness of the offence, for the offences referred to in para. (1), by the mutual Companies, the Council of the F.S.A. may apply to them one or more of the following main contravention penalties, by way of derogation from the provisions of art. 5 para. (7) of the Government Ordinance No. 2/2001 on the legal regime of contravention, approved with amendments and additions by Law No. 180/2002, with subsequent modifications and additions:
- a) written warning;
  - b) fine from 10,000 lei to 1 million lei, by way of derogation from the provisions of art. 8 para. (2) of Government Ordinance No. 2/2001, approved with amendments and additions by Law No. 180/2002, with subsequent amendments and additions;
  - c) Limitation of operations;

d) Temporary or definitive prohibition of the exercise of the partial or total insurance activity, for one or more categories of insurance practised;

e) Withdrawing the authorisation of the Mutual Company.

(3) Committing the offences referred to in para. (1) letter (a)-C), E)-K) by the management of mutual companies and/or persons holding key functions or other critical functions within them shall be sanctioned, as appropriate, with:

a) written warning;

b) fine from 10,000 lei to 1 million lei, by way of derogation from the provisions of art. 8 para. (2) of Government Ordinance No. 2/2001, approved with amendments and additions by Law No. 180/2002, with subsequent modifications and additions.

4. In addition to the main contravention penalties provided for in para. (3), depending on the nature and seriousness of the offence, the F.S.A. Council may apply to the management of mutual companies and/or to persons holding key functions or other critical functions one or both of the following complementary contravention penalties:

a) withdrawal of approval granted by the F.S.A.;

b) Prohibition of the right to occupy functions requiring the F.S.A. approval for a period between one and five years from the notification of the sanction decision or from another date expressly mentioned therein.

(5) The provisions of art. 163 para. (11), (12) and (14) to (19) and art. 165 para. (1) and (2) of Law No. 237/2015, with subsequent amendments and additions, shall be duly applied in respect of the contravention and penalties provided for in this law.

(6) The decision establishing and individualizing the payment obligation drawn up or issued by the F.S.A. under the law shall constitute a claim; on the maturity date, the title of claim becomes enforceable, under which the F.S.A. triggers the enforcement procedure, in accordance with the provisions of Law No. 134/2010 on the Code of Civil Procedure, reprocessed, with subsequent amendments and additions.

## **ARTICLE 30**

### Offences

The use of the wording 'Mutual Insurance company' by legal entities not authorised by the F.S.A., unless such use is provided for by law or international agreements, in order to obtain for himself or another an unfair patrimonial use and if a damage is caused constitutes the offence of deception and is punishable under the provisions of art. 244 para. (2) of Law No. 286/2009 on the Criminal Code, with subsequent amendments and additions.

## **CHAPTER V**

### Final provisions

#### **ARTICLE 31**

##### The supervisory process

1. The F.S.A. shall supervise mutual companies in such a way as to ensure the protection of policyholders and to contribute to maintaining the stability of the insurance market.
2. The supervisory process shall be carried out by the F.S.A. under the legal provisions, this law and the Regulations of the F.S.A.
3. In the supervisory process, the F.S.A. shall check the periodic reports and the additional information submitted by mutual companies and carry out checks at their premises.
4. This law is supplemented by legislation on the authorisation and supervision of insurance and reinsurance activities, with that concerning companies, insurance legislation, insolvency law, the provisions of Law No. 287/2009, republish, with subsequent amendments, as appropriate.
5. The F.S.A. shall adopt regulations in the application of this law.

#### **ARTICLE 32**

##### Entry into force

This law enters into force 3 days after publication in the Official Journal of Romania, part I, except art. 29, which enters into force 30 days after publication.

#### **ARTICLE 33**

##### Completing the Law No. 236/2018 on the distribution of insurance

In article 4 of Law No. 236/2018 on the distribution of insurance, published in the Official Journal of Romania, part I, Nr. 853 from 8 October 2018, a new paragraph (111) shall be inserted after paragraph 11, as follows:

“(11<sup>1</sup>) The F.S.A. coordinates the Institute for Financial Studies.”



## ARTICLE 34

Amendment of the Law of Notaries Public and notary activity No. 36/1995, republished

The Law of Notaries Public and notary activity Nr. 36/1995, republished in the Official Journal of Romania, part I, Nr. 237 of 19 March 2018, is amended as follows:

1. Throughout the Law No. 36/1995, republished, the phrase "Notaries Public Insurance Fund" is replaced by the words "Notaries Public Civil Liability Fund", the term "civil liability insurance" shall be replaced by the words "liability contract", the term "insurance contract" shall be replaced by the words "civil liability contract", the term "minimum amount of the insurance value" shall be replaced by the words "minimum guaranteed value of civil liability", the term "insurance premium" shall be replaced by the phrase "civil liability contribution", and the phrase "level of insurance premium" is replaced by the phrase "level of contribution amount".
2. Law No. 36/1995, republished in the Official Journal of Romania, part I, Nr. 237 of 19 March 2018, with the amendments made by this Law, will be republished in the Official Journal of Romania, part I.

This law was adopted by the Romanian Parliament in compliance with the provisions of art. 75 and art. 76 para. (1) of the Romanian Constitution, republished.

For the PRESIDENT OF THE CHAMBER OF  
DEPUTIES,  
FLORIN IORDACHE

PRESIDENT OF THE SENATE  
CĂLIN-CONSTANTIN-ANTON POPESCU-  
TĂRICEANU

Bucharest, April 22, 2019.

No. 71.