

**Law no. 503/2004**  
**on the financial recovery and bankruptcy of insurance undertakings**

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The Parliament of Romania hereby passes this law.

**CHAPTER I**  
**General provisions**

Article 1 - (1) The financial recovery and bankruptcy proceedings set out in this law shall apply to insurance and/or reinsurance undertakings, as defined in article 2 of Law. No. 32/2000 on insurance undertakings and insurance supervision, as amended and supplemented, including their branches outside Romania, as well as to branches and subsidiaries of insurance undertakings of Non-Member States having their office in Romania.

(2) The provisions of this law shall not apply to insurance intermediaries, as defined in Law no. 32/2000, as amended and supplemented, as they observe the provisions laid down in Law no. 64/1995 on legal reorganization and bankruptcy, recast, as amended and supplemented.

Article 2 - (1) This law shall regulate the financial recovery proceedings applicable to insurance undertakings, as well as the bankruptcy proceedings applicable in case of insolvency.

(2) The measures implemented by means of the proceedings regulated by this law shall aim at the protection of the lawful interests and rights of insurance creditors.

Article 3 – For the purposes of this law, the terms and expressions below shall have the following meaning:

a) insurance undertaking – insurance and/or reinsurance undertaking as defined in article 2 of Law no. 32/2000, as amended and supplemented;

b) financial recovery proceedings – all the administrative methods and measures decided by the Insurance Supervisory Commission, in its capacity of competent authority, which shall aim at maintaining or recovering the financial position of insurance undertakings;

c) bankruptcy proceedings – proceedings which involve any measures required for the realization of the assets held by insolvent insurance undertakings and for the payment of creditors, shareholders and associates;

d) competent authority – the Insurance Supervisory Commission, as autonomous specialized administrative authority, any other legal authorities, as well as other authorities under the law, which are competent with regard to the enforcement of financial recovery and bankruptcy proceedings, in the case of insurance undertakings;

e) supervisory authorities – national authorities which are competent to supervise insurance undertakings, by law or other regulations;

f) trustee – any individual or legal entity appointed by the Insurance Supervisory Commission, who shall be in charge of the implementation of administrative measures for the financial recovery of insurance undertakings;

g) liquidator – any individual or legal entity appointed by the competent legal authority, who shall be in charge of the management of bankruptcy proceedings applicable to insurance undertakings;

h) insurance creditors – insured persons, policyholders, beneficiaries of insurance contracts, as well as any other injured third parties, according to the terms and conditions of insurance contracts, which are secured creditors and whose claims over insurance undertakings have not been settled;

i) insurance claims – amounts due to insurance creditors, arising from insurance contracts, including the amounts set up as provisions, when certain debt items are not identified. The following shall also be deemed insurance claims: the claims of the Guarantee Fund, as well as the premiums owed by debtor insurance undertakings as a result of the termination or cessation of insurance contracts or insurance business carried out prior to the initiation of bankruptcy proceedings, in accordance with applicable legal provisions;

j) insolvency – status of insurance undertakings characterized by one of the following:

1. obvious inability to pay the debts with the funds available;

2. decrease of the solvency margin below half the minimum amount set out in the applicable legal regulations concerning the safety fund;

3. inability to recover during financial recovery proceedings;

k) creditors' settlement agreement – agreement concluded before or after the initiation of bankruptcy proceedings between debtor insurance undertakings and insurance creditors, with respect to the means and terms of insurance claims' settlement;

- i) Member State – Member State of the European Union or of the Economic European Area;
- m) home Member State – Member State where insurance undertakings are authorized;
- n) host Member State – Member State, other than the home Member State, where insurance undertakings have established branches;
- o) non-Member State – State which is not a member of the European Union or of the European Economic Area;
- p) subsidiary – operational unit with legal personality, established in accordance with the provisions of the law, where insurance undertakings hold, directly or indirectly, the majority of voting rights;
- r) branch – entity without legal personality which carries out, within the limits of authority, direct insurance business on the territory of a Member State, other than the home Member State;
- s) significant persons – directors and/or executive officers of insurance undertakings;
- t) significant shareholder – any person who, directly and by herself/himself or, as appropriate, through or in connection with other persons, exercises rights resulting from owning shares which cumulatively account for at least 10% of the share capital of insurance undertakings or at least 10% of total voting rights in the Annual Shareholders Meeting or which, as appropriate, give the aforementioned person the possibility to exercise significant influence over the management of the insurance undertakings where significant positions are held;
- u) Guarantee Fund – protection fund defined in article 60 of Law no. 136/1995 on insurance and reinsurance in Romania, as amended and supplemented.

## CHAPTER II

### Financial recovery proceedings. General rules

Article 4 - (1) When exercising the duties set out in Law no. 32/2000, as amended and supplemented, as well as in the norms issued for the implementation thereof, the Insurance Supervisory Commission shall regularly verify the financial position of insurance undertakings, either based on the documents and reports submitted, or following the reviews, guidance and examinations carried out by its specialized bodies.

(2) Such verification may be carried out by the Insurance Supervisory Commission at any time, also as a result of notifications made by insurance creditors concerning the financial position of insurance undertakings, in order to prevent insolvency and/or initiate financial recovery proceedings.

Article 5 - (1) Financial recovery proceedings shall involve any intervention by the Insurance Supervisory Commission to the purpose of implementing the measures required for the financial recovery of insurance undertakings, in order to prevent insolvency and avoid initiation of bankruptcy proceedings.

(2) The Insurance Supervisory Commission shall be the only competent authority authorized to decide on the financial recovery proceedings concerning insurance undertakings, including the branches thereof in other Member States, as well as the branches and subsidiaries in Romania of insurance undertakings of non-Member States. Financial recovery proceedings shall not prevent the initiation of bankruptcy proceedings by the home Member State.

(3) The Insurance Supervisory Commission shall immediately inform the supervisory authorities of all the other Member States of its decision to implement financial recovery proceedings against insurance undertakings, including the potential consequences of such proceedings.

Article 6 - (1) In any case, insurance undertakings shall make available to the Insurance Supervisory Commission all the documents and information requested for verification in order to ensure immediate and appropriate review and examination.

(2) At the request of the Insurance Supervisory Commission, insurance undertakings shall establish and communicate their financial position, as well as the minimum solvency margin held, within 48 hours of such request.

Article 7 – Insurance undertakings shall be subject to financial recovery proceedings under this law whenever:

a) they breach in any manner the provisions of article 6 paragraph (2), as well as any other legal provisions concerning insurance business, and thus jeopardize fulfillment of the obligations taken with respect to insurance creditors;

b) the value of the available solvency margin falls below the minimum limit set out in the regulations issued by the Insurance Supervisory Commission;

c) the value of the available solvency margin falls below the minimum limit set out in the legal applicable provisions concerning the safety fund.

Article 8 - (1) Pursuant to the provisions laid down in article 7, the Insurance Supervisory Commission shall motivate its decision to initiate financial recovery proceedings, in one of the following manners:

- a) financial recovery on the basis of a financial recovery plan;
- b) financial recovery on the basis of trustee management.

(2) In the decision to initiate such proceedings, the Insurance Supervisory Commission may authorize insurance undertakings to implement one or several of the following basic prudential measures:

a) the establishment of a maximum limit to the amount of gross or net written premiums for a period between 3 months and one year, so that such amounts shall not exceed the amounts established in the decision to initiate recovery proceedings;

b) the prohibition to renew insurance contracts at maturity or, as appropriate, the prohibition to renew certain types of insurance contracts, as set out in the decision to initiate financial recovery proceedings;

c) the prohibition to write new insurance contracts and receive related premiums, during the period expressly set out in the decision to initiate financial recovery proceedings;

d) the transfer of the insurance portfolio, either in full or in part, in accordance with applicable legal provisions; upon such decision, insurance undertakings shall transfer the insurance portfolio thereof, within 60 days from the date when the aforementioned prudential measure was decided;

e) the mandatory requirement for the directors of insurance undertakings to immediately convene an Extraordinary Shareholders Meeting, having as topic the recommendation to increase share capital or, as appropriate, the effective initial fund; the date of the meeting shall be no later than 5 days from the date when the meeting was called and the increase of the share capital shall be conducted within 30 business days from the date of the decision to initiate financial recovery proceedings;

f) the prohibition for insurance undertakings to make certain investments;

g) the implementation of restrictions concerning the territorial network of insurance undertakings by way of winding-up certain subsidiaries and branches, representative offices and /or other secondary business venues, as well as/or the replacement of the significant persons who are held liable for the initiation of financial recovery proceedings;

h) the verification, review and management, as appropriate, of claim files which are registered in the records of insurance undertakings, in order to measure actual losses

and establish payment obligations to insurance creditors; the verification, review and management of claim files shall be carried out immediately, within 30 days from the date of receipt of the decision to initiate financial recovery proceedings.

(3) In the decision to initiate financial recovery proceedings, the Insurance Supervisory Commission may decide on the following, as appropriate:

a) the implementation of measures regarding the property and/or assets of insurance undertakings, i.e. the establishment and maintenance of the aforementioned during the entire period of the financial recovery proceedings; the significant persons of insurance undertakings shall be held liable for the failure to implement or for the inadequate implementation of the measures decided by the Insurance Supervisory Commission;

b) the appointment of one or several persons who shall supervise preparation and observance of the financial recovery plan;

c) any other prudential measures required for the financial recovery of insurance undertakings, in order to secure protection of lawful rights and interests of insurance creditors.

(4) When appropriate, the Insurance Supervisory Commission may request that competent courts accept foreclosure of the property and/or assets of insurance undertakings, in compliance with the law.

Article 9 - (1) The decision to initiate the financial recovery proceedings set out in article 8 shall be published in the Official Gazette of Romania, Part I, as well as in two national newspapers, in compliance with the legal provisions in force.

(2) The effects of financial recovery proceedings on pending civil court cases concerning a property or right of which the insurance undertaking has been dispossessed shall be regulated by the law of the Member State where the respective court case is pending.

(3) Following publication of the decision, pursuant to paragraph (1), the Insurance Supervisory Commission shall immediately publish in the Official Journal of the European Communities an excerpt of its decision regarding the measures to enforce financial recovery proceedings. When the Romanian State, through the Insurance Supervisory Commission, is informed of the implementation of reorganization measures decided by competent authorities of other Member States, the supervisory authority shall ensure publication of such measures in accordance with the provisions laid down in paragraph (1).

(4) The communication referred to in paragraph (3) shall comprise: the name of the competent authority, the applicable law concerning financial recovery proceedings, as

well as the appointed trustee, when appropriate. The excerpt from the decision to implement financial recovery proceedings shall be published in the Romanian language or in any other official language of the Member State where such information is published.

(5) Financial recovery measures shall apply regardless of the provisions laid down in paragraphs (3) and (4) and shall produce effects with respect to insurance creditors, including shareholders or associates and employees of insurance undertakings, whose rights are subject to the implementation of the said measures.

(6) The effects of the initiation of financial recovery proceedings shall be governed by the Romanian law, save for the effects on the following contracts and rights, which shall be governed by the legal provisions below:

a) employment contracts and relationships shall be solely regulated by the law of the Member State which governs such employment contracts/relationships;

b) contracts which grant the right to use or acquire property shall be solely regulated by the law of the Member State where the property is located;

c) the rights of insurance undertakings over real estate, ships or aircraft, subject to registration with public registries, shall be solely regulated by the law of the Member State which regulates the aforementioned registries.

(7) Initiation of financial recovery proceedings shall not affect the actual rights of creditors or third parties regarding tangible and intangible assets, securities or real estate – either individually or jointly identified – which belong to insurance undertakings and are located on the territory of another Member State when financial recovery proceedings are initiated. The actual rights of creditors or third parties shall refer, in particular, to:

a) the right to sell or realize assets and benefit from the generated profit or income, particularly against collateral or mortgage;

b) the exclusive right to collect claims, particularly with respect to a right secured by collaterals or assignment of claims as security;

c) the right to claim assets and/or take possession thereof from any other person who possesses and/or uses such assets against the will of rightful owners;

d) the actual right to enjoy property; this actual right shall be assimilated to the rights recorded in public registries which are binding upon third parties and allow the acquisition of the aforementioned real right.

(8) The provisions laid down in paragraph (7) shall not prevent the carrying out of legal actions concerning the nullity, annulment and/or non-enforcement of the documents which constitute prejudice for all creditors, in accordance with the legal provisions of the home Member State. However, the law of the home Member State shall not apply when

the persons who hold legal documents which constitute prejudice for all creditors present evidence of the cumulative fulfillment of the following conditions:

a) the law of another Member State other than the home Member State governs the respective documents;

b) the law of the home Member State does not establish legal actions which may be taken against the respective documents.

Article 10 - (1) Financial recovery proceedings initiated against insurance undertakings which purchase assets shall be without prejudice to secured rights of the sellers provided that, at the time when the respective proceedings were initiated, the said assets are located on the territory of another Member State, other than the State where proceedings were initiated.

(2) Financial recovery proceedings initiated against insurance undertakings which sell assets, shall not be construed as reasons for the termination or revocation of the sale-purchase agreement and shall not prevent the purchasing of the property by the buyers, provided that the assets have already been delivered and that assets are located on the territory of a Member State other than the Member State where the respective proceedings were initiated. When, by virtue of documents signed after the implementation of recovery measures, insurance undertakings proceed to the sale of real estate, ships or aircraft registered with public registries or securities or title deeds recorded in registries or accounts, under the law, or placed with central depository systems regulated by the law of a Member State, the validity of such documents shall be established in accordance with the law of the Member State where the property is located or the law which governs the aforementioned registries, accounts or systems.

(3) The provisions of paragraphs (1) and (2) shall not prevent the carrying out of legal actions concerning the nullity, annulment and/or non-enforcement, in accordance with the law of the home Member State.

(4) Financial recovery proceedings shall not prevent or affect the exercise of the insurance creditors' right to offset the claims thereof against the claims of insurance undertakings subject to the aforementioned proceedings, in accordance with the law. The provisions of paragraph (3) shall apply accordingly.

(5) Without prejudice to the provisions laid down in article 9 paragraph (7) and (8), the effects of the initiation of financial recovery proceedings on the rights and obligations of participants on a regulated market shall be solely subject to the law applicable on the respective market. This shall not prevent the right to carry out legal actions concerning nullity, annulment and/or non-enforcement, as regulated by the law of the home Member

State, which may be exercised irrespective of the payments or transactions carried out in compliance with the law applicable on the respective market.

Article 11 - (1) Financial recovery proceedings shall produce effects in the entire European Community as of the time when effects are produced in the Member State where such proceedings were initiated.

(2) Financial recovery proceedings shall produce effects in the entire European Community, in compliance with Romanian legislation, without any other formalities, including with respect to third parties of other Member States, even when the legislation of the said Member States does not provide for such financial recovery measures or the same financial recovery proceedings are implemented subject to conditions which are not met. Financial recovery measures adopted in compliance with the legislation of a Member State shall correspondingly apply on the territory of Romania.

(3) The Insurance Supervisory Commission, as competent and supervisory authority, shall immediately notify the supervisory authorities of all the other Member States regarding its decision to initiate financial recovery proceedings, including the potential actual effects of such proceedings. The aforementioned notification shall be given before or immediately after adopting the said decision.

## SECTION 1

### The financial recovery of insurance undertakings on the basis of a financial recovery plan

Article 12 - (1) In the case of financial recovery proceedings on the basis of a recovery plan, the Board of Directors or, as applicable, the sole director of the insurance undertaking, shall prepare and submit to the Insurance Supervisory Commission a financial recovery plan, within maximum 20 days from the date when the insurance undertaking is notified of the decision referred to in article 8 paragraph (1) letter a.

(2) The financial recovery plan shall mandatory contain the prospective financial recovery of the company, as well as the actual means and terms to implement the measures and provisions set out in the financial recovery decision issued by the Insurance Supervisory Commission.

(3) The plan shall also include, for the following 3 financial years, at least the following information:

- a) estimates of acquisition and administrative costs;

- b) the revenues and expenses for direct insurance, reinsurance ceded and accepted;
- c) annual budgets;
- d) an estimate of the financial resources which shall be employed to meet obligations taken which are considered when establishing the minimum solvency margin;
- e) the reinsurance program;
- f) debt repayment schedule.

Article 13 – Following review of the financial recovery plan, the Insurance Supervisory Commission shall issue a decision which may decide, as appropriate:

- a) to approve the financial recovery plan;
- b) the request the supplementation and/or amendment of the financial recovery plan, within maximum 5 days from the date of the said decision;
- c) to reject the financial recovery plan.

Article 14 - (1) As of the date of communication of the decision to approve the financial recovery plan, insurance undertakings shall observe in an appropriate manner the plan's measures, terms and conditions, as decided and approved by the Insurance Supervisory Commission. Insurance undertakings shall also notify all their known creditors, within maximum 5 days of the date of receipt of the decision, with respect to the measures and provisions established by the Insurance Supervisory Commission.

(2) The provisions of paragraph (1) shall also apply to subsequent amendments and/or supplementations of the financial recovery plan, in accordance with article 13 b).

Article 15 – Provided that the financial recovery plan is rejected, the Insurance Supervisory Commission shall issue a motivated decision which may request implementation of one of the following measures:

- a) the immediate preparation by the insurance undertaking of a financing program; in this case, the provisions laid down in articles 12-14 shall apply;
- b) the application of the provisions laid down in article 8 paragraph (1) letter b) and the appointment of a trustee;
- c) closing of the financial recovery proceedings; in this case, the Insurance Supervisory Commission shall withdraw the authorization of the insurance undertaking and, provided that the insurance undertaking is insolvent, it shall notify the Court to immediately initiate bankruptcy proceedings, in accordance with article 3 letter j) point 3.

## Section 2

The financial recovery of insurance undertakings through trustee management

Article 16 – When implementing the financial recovery methods set out in article 8 paragraph (1) letter b), the Insurance Supervisory Commission shall appoint a person who shall act as trustee and who shall mainly set out and implement all the necessary measures to recover the sound financial position of the insurance undertaking, in accordance with the terms and conditions set out in the financial recovery decision.

Article 17 - (1) Irrespective of the situation, the directors of the insurance undertaking shall immediately inform the trustee of all the measures for which the same directors shall be liable in accordance with the financial recovery decision issued by the Insurance Supervisory Commission.

(2) The rights, obligations, as well as the authorities of the trustee shall be set out in the norms of the Insurance Supervisory Commission.

Article 18 - (1) Once the trustee is appointed in accordance with this law, the following shall be suspended:

a) the legal duties of the significant shareholders and significant persons of the insurance undertaking; these duties shall be transferred to the trustee for the entire period of trustee management;

b) the voting rights concerning the appointment and dismissal of the directors of the insurance undertaking, the shareholders' right to collect dividends, as well as the right of the members of the Board of Directors or of the sole directors, as appropriate, to be rewarded.

(2) The aforementioned suspension shall be valid for the entire period of trustee management.

Article 19 - (1) The decision of the Insurance Supervisory Commission referred to in articles 8, 13 and 15 shall be final and binding.

(2) The insurance undertaking may file an appeal against the abovementioned decision with the Bucharest Court of Appeal, within no more than 10 days of relevant notification.

(3) The appeal shall find resolution without any undue delays; the appeal shall not suspend the enforcement of the decision of the Insurance Supervisory Commission. The subsequent court decision shall be deemed final and may be subject to appeal, in accordance with the law.

### Section 3

Closing financial recovery proceedings. The legal effects of closing financial recovery proceedings. Rights and obligations of insurance creditors

Article 20 – The closing of financial recovery proceedings with respect to an insurance undertaking shall be decided by means of a motivated decision issued by the Insurance Supervisory Commission, in accordance with the law:

a) when the sound financial position of the insurance undertaking is reinstated as a result of the appropriate implementation of the means and measures of financial recovery;

b) when the measures implemented during financial recovery proceedings were not carried out in an appropriate manner, within the terms and conditions established, or the purpose thereof was not achieved and the underlying causes were not eliminated.

Article 21 - (1) In the decision to close financial recovery proceedings, the Insurance Supervisory Commission shall decide, as applicable:

a) to annul the decision set out in article 6, for the situation referred to in article 20 litter a);

b) to withdraw the license of the insurance undertaking and, provided that the insurance undertaking is insolvent, to request immediate initiation of bankruptcy proceedings, in accordance with the provisions laid down in article 20 lit. b).

(2) Through the decision to close financial recovery proceedings, the Insurance Supervisory Commission may decide, when appropriate, to dismiss the trustee appointed in accordance with this law and the cessation of the duties of the said trustee.

(3) The provisions of article 9 paragraph (1) and article 19 shall also apply in the case of the decision to close financial recovery proceedings.

Article 22 – For the situation referred to in article 21 paragraph (1) letter b), the right of insurance creditors to claim amounts owed to them from the Guarantee Fund shall become effective as of the date of publishing the decision to close financial recovery proceedings and establishing the insolvency of the insurance undertaking.

Article 23 - (1) Within 10 days from the date of publishing the decision to close financial recovery proceedings, the insolvent insurance undertaking shall make available to the manager of the Guarantee Fund all records of claim files, as well as the technical, operational and accounting records related to those files, to the purpose of publishing the

list of potential insurance creditors, i.e. the beneficiaries of the amounts payable by the Guarantee Fund. Responsibility for the failure to meet or for the inappropriate fulfillment of this obligation shall lie with the insurance undertaking's significant persons.

(2) Under the circumstances set out in paragraph (1), the manager of the Guarantee Fund shall appoint a designated commission, comprising experts of the same Fund, having the following membership:

- a) 2 members with management positions, of which one shall be appointed chairman of the commission;
- b) the head of the financial department or the legal substitute thereof, when appropriate;
- c) 2 representatives of the technical department, who are experienced in claim settlement;
- d) 2 representatives of the legal department, with at least 3 years experience in the legal area.

(3) After expiration of the term set out in paragraph (1), the abovementioned designated commission shall take all the necessary measures to publish the list of insurance creditors with certain, liquid and payable claims, as established from the records made available by the insurance undertaking in accordance with paragraph (1).

Article 24 - (1) Within 60 days from publishing the list of insurance creditors referred to in article 23 paragraph (3), any person whose name does not appear on the list of creditors with certain claims and who is claiming rights against the insurance undertaking may file a motivated petition with the manager of the Guarantee Fund, or otherwise such rights shall be terminated.

(2) The petition referred to in paragraph (1) shall be filed in writing by each potential creditor and submitted to the office of the manager of the Guarantee Fund, or shall be delivered via registered mail, with confirmation of receipt. The respective person shall attach the documents and documents of evidence to the petition and shall make reference to all the necessary items of information to the purpose of establishing the exact amount of the claims; when documents of evidence are not available, the petition shall specify the reason for the impossibility to file such documents.

(3) The following items of information shall be mentioned in the petition: the nature of the claims, and the moment when claims have been originated, the actual or estimated value thereof, the privilege or security interest attached to the claims, if any, as well as the insured property.

(4) The motion, as well as the documents and information requested under paragraph (2) and (3) shall be filed in the Romanian language; translations shall be accepted solely from certified translators, in accordance with the law.

(5) After receipt of each motion, in accordance with paragraph (1)-(4), the designated commission appointed in compliance with article 23 paragraph (2) shall record and review all the documents attached to the motion. Pursuant to the commission's recommendations, the manager of the Guarantee Fund shall issue a decision to approve or, as appropriate, reject the amounts claimed from the Guarantee Fund. Complaints may be filed against the decision, in accordance with the provisions laid down in article 19.

(6) After expiration of the term set out in paragraph (1), the commission shall publish the list of insurance creditors whose claims shall be settled by the Guarantee Fund. In the case of creditors whose claims shall be settled by means of a court order, the same list shall be published after the said order is deemed final and binding.

Article 25 - (1) When, after expiration of the term set out in article 24 paragraph (1), a person files claims against the debtor insurance undertaking as a result of the subsequent occurrence, which shall be no later than the date of initiating bankruptcy proceedings, of the risks covered by an insurance policy which is valid as at the date of closing financial recovery proceedings, the same person may file a petition within maximum 30 days from the date when the insured risk occurred, in accordance with the provisions laid down in article 24 paragraphs (2)-(4), or otherwise, any rights thereof shall be terminated.

(2) In the case of motor liability insurance, when the insurance portfolio was not transferred until the date of closing financial recovery proceedings, the Insurance Supervisory Commission shall decide on the implementation of all the necessary measures to inform policyholders both with regard to their obligation to terminate, within maximum 90 days from the date of declaring bankruptcy proceedings, the insurance contracts concluded with the debtor insurance undertaking and with regard to their right to recover the insurance premiums for the period between the time when the insurance contract was terminated and the time when the same insurance contract was deemed to expire.

(3) When the risks covered by the contracts referred to in paragraph (2) occur between the time of initiating bankruptcy proceedings and the time when the same contracts are terminated, but no later than 90 days from the date of declaring bankruptcy proceedings, the Insurance Supervisory Commission shall appoint an insurance undertaking authorized to pursue motor liability insurance which shall establish and assess

claims. Claims owed to policyholders, as established by the aforementioned insurance undertaking and accepted for payment by the designated commission referred to in article 23 paragraph (2) shall be paid by the Guarantee Fund, in accordance and in compliance with the provisions of this law and the norms issued for the implementation hereof by the Insurance Supervisory Commission.

(4) The provisions of article 24 paragraph (2)-(6) shall also apply to the petitions filed by the persons referred to in paragraph (1).

Article 26 – Whenever deemed necessary by the designated commission referred to in article 23 paragraph (2), the said commission may request the persons referred to in article 24 and 25 to file and or provide additional documents and/or information concerning the claims of insurance creditors. The information requested shall be submitted to the commission, within maximum 10 days from the receipt of relevant request, or shall otherwise be rejected.

Article 27 - (1) The manager of the Guarantee Fund shall be subrogated to all rights of insurance creditors, for amounts equal to the payments made by the Fund.

(2) By way of derogation from the provisions of article 37 of Law no. 64/1995, recast, as amended and supplemented, the manager of the Guarantee Fund may be included in the creditors' list during bankruptcy proceedings, so that the same manager shall be allowed to recover any amounts, interests and/or expenses paid by the Fund.

(3) In accordance with paragraphs (1) and (2), the manager of the Guarantee Fund shall be entitled to record and recover, during bankruptcy proceedings against the debtor insurance undertaking, all the amounts paid to creditors, as payments arise as a result of the occurrence of insured risks after the initiation of bankruptcy proceedings.

## CHAPTER III

### Bankruptcy proceedings against insurance undertakings

#### Section 1

##### Filing for bankruptcy

##### Competent bodies and their duties

Article 28 - (1) Bankruptcy proceedings are initiated pursuant to a petition filed either by the Insurance Supervisory Commission or by the debtor insurance undertaking or its creditors, as appropriate.

(2) Bankruptcy proceedings against an insurance undertaking authorized in Romania, as well as against its branches established in other Member States, shall be governed by the Romanian law concerning bankruptcy proceedings, in particular:

- a) the property subject to such proceedings, as well as the property acquired by the debtor insurance undertaking after initiating the proceedings;
- b) the duties of the debtor insurance undertaking and of the trustee in bankruptcy;
- c) the terms under which damages may be claimed;
- d) the effects of the bankruptcy proceedings over in force contracts, where the debtor insurance undertaking is a party;
- e) the effects of the bankruptcy proceedings over individual enforcement procedures by insurance creditors, save for pending cases with courts of other Member States;
- f) the claims against the debtor insurance undertaking and the treatment of claims arising after initiating bankruptcy proceedings;
- g) the rules concerning the manner in which claims shall be stated, assessed and accepted for settlement;
- h) the rules regarding the distribution of incomes gained from the sale of assets, the priority ranking of insurance claims and the rights of insurance creditors who were awarded partial payments after initiating bankruptcy proceedings pursuant to a security interest or by way of claiming damages;
- i) the terms and effects of closing bankruptcy proceedings, in particular by means of creditors' settlement agreements;
- j) the rights of creditors after closing bankruptcy proceedings;
- k) the costs and expenses which shall be borne in relation with bankruptcy proceedings;
- l) the rules concerning the nullity, annulment or non-enforcement of the legal documents which cause prejudice to the rights and interests of all insurance creditors.

Article 29 - (1) Under this law, the insolvent debtor insurance undertaking, as defined in article 3 letter j) point 1, shall file for bankruptcy with competent courts. The petition shall be submitted within maximum 20 days from the date when insolvency was established or declared.

(2) Prior to filing the petition referred to in article (1), the same petition shall be submitted to the Insurance Supervisory Commission together with the instruments and documents of evidence, for review and subsequent preparation of defense under article 31 paragraph (1). The debtor insurance company shall attach the specific registry of assets

admitted to cover technical reserves referred to in annex no. 2 of Law no. 32/2000, as amended and supplemented.

Article 30 - (1) The creditors of the debtor insurance undertaking, other than the insurance creditors referred to in article 23 paragraph (3), article 24 paragraph (6) and article 25 paragraph (1), whose claims are paid by the Guarantee Fund, may file a court petition to initiate bankruptcy proceedings against the debtor insurance undertaking, in accordance with this law.

(2) The provisions of article 29 paragraph (2) shall correspondingly apply with respect to the submission to the Insurance Supervisory Commission of the petition, instruments and documents of evidence.

Article 31 - (1) The petition referred to in article 29 paragraph (1) and article 30 paragraph (1) shall be recorded by the court at the same time with the defense statement prepared by the Insurance Supervisory Commission, which shall notify whether the debtor insurance undertaking is subject to financial recovery proceedings, in accordance with this law, in order to either reinstate its sound financial position or, as appropriate, to meet payment obligations to creditors within certain financial recovery administrative measures.

(2) The initiation of bankruptcy proceedings shall be decided by the court when:

a) The Insurance Supervisory Commission has notified in the defense statement that, as at the date of initiating bankruptcy proceedings, no financial recovery proceedings are ongoing with respect to the debtor insurance undertaking, in accordance with this law; or

b) The Insurance Supervisory Commission has notified in the defense statement that there is no real possibility to reinstate the sound financial position of the undertaking or to settle all the claims of its creditors within financial recovery proceedings.

Article 32 - (1) Pursuant to the provisions laid down in this law, the Insurance Supervisory Commission may file a petition to initiate bankruptcy proceedings against a debtor insurance undertaking, under any of the circumstances referred to in article 3 letter j) points 2 and 3.

(2) The petition shall be accompanied by the following documents, as appropriate:

a) the decision of the Insurance Supervisory Commission regarding the withdrawal of the authorization of the debtor insurance undertaking and the initiation of bankruptcy proceedings;

b) the decision of the Insurance Supervisory Commission regarding the closing of financial recovery proceedings, the establishment of insolvency, and the immediate initiation of bankruptcy proceedings;

c) any other instruments or documents required to motivate the filing of the petition with the court.

Article 33 - (1) After the petition is filed, in accordance with articles 29-32, the court shall immediately notify the parties referred to in these articles. The said notification shall also be sent to the manager of the Guarantee Fund.

(2) The insurance undertaking may file an appeal against the petition referred to in article 30 and 32, within maximum 5 days from the date of relevant notification receipt. The appeal shall find resolution without any undue delays; the decision of the court may be subject to appeal within 10 days from relevant notification.

(3) On the first day of the court case, the court shall review the petition filed and the related documents and, provided that the debtor insurance undertaking has not filed an appeal against insolvency proceedings, in accordance with paragraph (2), a decision to initiate bankruptcy proceedings shall be passed.

Article 34 - (1) Following the passing of the decision to initiate bankruptcy proceedings, the court shall immediately notify the parties involved, the manager of the Guarantee Fund, as well as the trade register office where the debtor insurance undertaking is registered, in order for the latter to record the mention "insurance undertaking subject to bankruptcy". The decision shall also be published by the Insurance Supervisory Commission in at least two national newspapers, in accordance with the legal provisions in force.

(2) When the debtor insurance undertaking has branches and/or subsidiaries in other countries, the Insurance Supervisory Commission shall notify immediately the insurance authorities of the host country of the branch/subsidiary with respect to the decision to initiate bankruptcy proceedings, in accordance with the legal provisions in force.

(3) All the expenses related to the abovementioned measures shall be borne by the debtor insurance undertaking; when necessary funds are not available, the liquidation fund, as defined in Law no. 64/1995, as amended and supplement, shall be used.

(4) As of the date of initiating bankruptcy proceedings, all the documents of the debtor insurance undertaking shall bear the mention referred to in paragraph (1).

Article 35 - (1) Following initiation of bankruptcy proceedings, the disposal by the significant shareholders of the debtor insurance undertaking or by the persons in

management positions of shares held in the debtor insurance undertaking, without approval from the Insurance Supervisory Commission and from the bankruptcy judge shall be prohibited, or otherwise, shall be deemed null and void.

(2) The bankruptcy judge shall decide on the prohibition to sell shares, in accordance with paragraph (1), and mention shall be made of such decision in the records kept by the debtor insurance undertaking or in other independent records.

Article 36 – Bankruptcy proceedings under this chapter, save for the appeal referred to in article 38, paragraph (2), shall be subject to the exclusive competence of the court under the jurisdiction of which the head office of the debtor insurance undertaking is located and registered in the records of the Trade Register Office; bankruptcy proceedings shall be conducted by a bankruptcy judge appointed in accordance with the law.

Article 37 – Following the decision to initiate bankruptcy proceedings, the court shall cancel the right of the directors of the debtor insurance undertaking to represent the undertaking, to manage and dispose of its assets.

Article 38 - (1) In accordance with the provisions of this law, the main duties of the court shall be as follows:

- a) to pass the decision to initiate bankruptcy proceedings against the debtor insurance undertaking;
- b) to appoint, by way of court decision, of the bankruptcy judge, and establish the duties and substitute thereof, when appropriate;
- c) to notify the manager of the Guarantee Fund, as well as the Insurance Supervisory Commission concerning the filing of the petition, and the passing of the decisions to initiate bankruptcy proceedings against the debtor insurance undertaking;
- d) to make decisions with respect to actions notified by the bankruptcy judge concerning the annulment of certain transfers performed prior to the decision to initiate bankruptcy proceedings;
- e) to confirm the distribution of the amounts resulting through liquidation;
- f) to pass decision concerning the claims filed by the insurance undertaking or insurance creditors, as appropriate, with the approval of the Insurance Supervisory Commission;
- g) to establish the liability of the management bodies, financial revisers, financial auditors and the personnel with compliance or control functions within the debtor insurance undertaking;
- h) to approve the liquidation plan and confirm the transactions to purchase assets and undertake liabilities;

i) to confirm the creditors' settlement agreement, with the prior approval of the Insurance Supervisory Commission and with the approval of the bankruptcy judge;

j) to pass the decision to close bankruptcy proceedings.

(2) The decisions of the court shall be final and binding and may be subject to appeal within 10 days from relevant notification.

(3) The appeal shall be judged by the Bucharest Court of Appeal without any undue delays. The provisions of article 6<sup>1</sup> paragraphs (1) and (2) of Law no. 64/1995, recast, as amended and supplemented, shall apply accordingly.

Article 39 - (1) In accordance with this law, the bankruptcy judge shall have the following main duties:

a) to notify the court of any issue which requires resolution;

b) to establish the obligations of the debtor insurance undertaking, as well as the terms of fulfillment thereof;

c) to appoint the liquidator, to review the activities thereof as well as the activities of the substitutes thereof, when appropriate;

d) to establish the schedule of the meetings of insurance creditors whenever deemed necessary, as well as to preside over such meetings;

e) to take the necessary measures concerning the liquidator's reports, including the resolution of disputes with respect to the said reports;

f) to approve the distribution of amounts resulting from liquidation and to request the confirmation of the court with respect thereto;

g) to accept the liquidation of certain assets held by the debtor insurance undertaking, with the approval of the Insurance Supervisory Commission, in order to meet the undertaking's liabilities;

h) to approve the creditors' settlement agreement, with the prior approval of the Insurance Supervisory Commission;

i) to carry out any procedures required by this law;

j) to pass a decision concerning the appeal filed by the debtor insurance undertaking against the petition filed by the Insurance Supervisory Commission or the insurance creditors, as appropriate, with respect to initiating bankruptcy proceedings;

k) to pass a decision concerning the appeal filed by the Insurance Supervisory Commission, the debtor insurance undertaking or insurance creditors, as appropriate, against the measures established by the liquidator;

l) to pass a decision with respect to the requests of the Insurance Supervisory Commission regarding the nullity or annulment of documents which cause prejudice to the interests and rights of insurance creditors, prior to the initiation of bankruptcy proceedings;

m) to authenticate of legal documents signed by the liquidator;

n) to request the closing of bankruptcy proceedings.

(2) Whenever performing duties which involve the implementation of regulations specific to the insurance activity carried out by the debtor insurance undertaking, the bankruptcy judge may also request the opinion of the Insurance Supervisory Commission, as autonomous administrative specialized authority.

Article 40 – In accordance with this law, the main duties of the liquidator shall be as follows:

a) to review the business of the debtor insurance undertaking and to prepare a detailed report regarding the causes and circumstances which lead to the insolvency thereof, including reference to the persons which may be held liable for the bankruptcy of the insurance undertaking. The report shall be prepared and submitted for approval by the bankruptcy judge, within maximum 30 days of relevant appointment; a copy of the said report shall also be sent to the Insurance Supervisory Commission. At the request of the liquidator, for motivated reasons, the bankruptcy judge may extend the term for the submission of the report;

b) to record the claims of the manager of the Guarantee Fund administrator, as well as any other amounts owed to the Fund, in accordance with the law, in consideration of all the rights, privileges and/or legal guarantees;

c) to maintain, cancel or terminate certain contracts signed by the debtor insurance undertaking, with the approval of the Insurance Supervisory Commission and with the approval of the bankruptcy judge;

d) to manage and supervise the business of the debtor insurance undertaking, to carry out actions with respect to bankruptcy proceedings, including the recovery of overdue insurance premiums arising from insurance contracts which are valid as at the date of initiating bankruptcy proceedings;

e) to take loans, as well as to sign creditors' settlement agreements, as appropriate, with the approval of the Insurance Supervisory Commission and with the approval of the bankruptcy judge, with or without pledging the assets of the debtor insurance undertaking;

f) to affix seals, to make an inventory of the property of the debtor insurance undertaking and take all the appropriate measures to preserve the said property, until bankruptcy proceedings are initiated;

g) to employ the required experts who shall carry out the liquidation, as well as to supervise and manage the activities thereof. The scope of employment, the duties and salaries of the said experts shall be submitted for approval by the bankruptcy judge;

h) to take action for the annulment of documents which are illegal or prejudicial to the legitimate interests and rights of insurance creditors and which have been signed by the debtor insurance undertaking in the 3 years prior to initiating bankruptcy proceedings;

i) to take action to cancel any awarding or transfer of rights to third parties and to recover such transferred assets and the consideration of services provided by the debtor insurance undertaking by means of:

1. free deeds, save for charity sponsorships, entered into in the 3 years prior to the initiation of bankruptcy proceedings;

2. deeds entered into with a shareholder who holds at least 5% of the shares of the debtor insurance undertaking;

3. deeds signed by a director, officer or any other member of the management and supervisory bodies of the debtor insurance undertaking; ;

4. deeds entered into with any other individual or legal person with close links to the debtor insurance undertaking. A person shall be deemed person with close links to the undertaking when:

- the person holds direct participation or control of at least 20% of the share capital or voting rights of the debtor insurance undertaking;

- the person is permanently linked to the debtor insurance undertaking through control or, as appropriate, through the implementation of some joint policy;

- the person carries out control duties over the debtor insurance undertaking;

j) to take action to cancel any awarding or transfer of rights to third parties which cause prejudice to insurance creditors and to recover such transferred assets and the consideration of services provided by the debtor insurance undertaking by means of:

1. deeds signed 3 years prior to the initiation of bankruptcy proceedings, whereby the parties involved seek to conceal assets from insurance creditors or to jeopardize the legal interests and rights thereof;

2. any transaction carried out in the 3 years prior to the initiation of bankruptcy proceedings, where the services provided by the debtor insurance undertaking exceed by far the consideration received;

3. title deed transfers to a creditor in favor thereof or in consideration of debt, carried out in the 180 days prior to the initiation of bankruptcy proceedings, provided that the amount the same creditor might obtain following the proceedings is lower than the value of the transfer;

4. the conclusion of security agreements in favor of unsecured creditors, in the 120 days prior to the initiation of bankruptcy proceedings;

5. free deeds, save for charity sponsorships, entered into in the 3 years prior to the initiation of bankruptcy proceedings;

6. deeds entered into with the significant persons or significant shareholders of the debtor insurance undertaking, in the year prior to the initiation of bankruptcy proceedings;

k) to examine claims filed against the debtor insurance undertaking and, when appropriate, to dispute such claims;

l) to collect the amounts accounting for overdue insurance premiums of the debtor insurance undertaking, and to record the same within 24 hours to the accounts of the Guarantee Fund, for the exclusive use of the fund's manager;

m) to monitor the payment of any claims by the debtor insurance undertaking, arising from the transfer of assets or amounts of money prior to filing the petition concerning the initiation of bankruptcy proceedings;

n) to prepare a monthly report concerning the stage of completion of bankruptcy proceedings, which shall be submitted for approval by the bankruptcy judge and transmitted to the Insurance Supervisory Commission as well as to the manager of the Guarantee Fund;

o) to notify the bankruptcy judge of any issue which may require settlement;

p) to sign any documents on behalf of the debtor insurance undertaking, and to initiate and supervise any legal action or proceedings on behalf of the same debtor insurance undertaking;

r) to prepare the balance sheet for liquidation purposes. When the liquidation process exceeds the span of one financial year, the liquidator shall prepare the annual balance sheet and shall file the same with the competent bodies and within the terms set out in the financial and accounting statement templates applicable to companies;

s) to enforce any provisions issued by the Insurance Supervisory Commission as competent specialized autonomous administrative authority, in the situations expressly provided by law, with the approval of the bankruptcy judge, in order to secure and protect the interests and rights of insurance creditors;

t) to liquidate the assets and rights of the debtor insurance undertaking, with the prior approval of the Insurance Supervisory Commission and the notification of the manager of the Guarantee Fund and with the approval of the bankruptcy judge, to make all the efforts for the realization of such assets and rights to the purpose of paying the claims of insurance creditors, by means of:

1. transactions regarding the purchasing of assets and undertaking of liabilities, whereby an insurance undertaking with sound or very sound financial position purchases, either in full or in part, the assets of the debtor insurance undertaking and undertakes, either in full or in part, the liabilities thereof;

2. sale of assets such as: buildings, land, equipment, securities;

3. any other proceedings for the realization of the assets of the debtor insurance undertaking, such as claims assignments or novations entered into for the purpose of bankruptcy proceedings at pre-established values;

u) to prepare a monthly report concerning the stage of completion of liquidation process, which shall be submitted for approval by the bankruptcy judge and transmitted to the Insurance Supervisory Commission as well as to the manager of the Guarantee Fund;

v) to carry out any procedures required by this law.

Article 41 - (1) The debtor insurance undertaking and/or any of the insurance creditors, the Insurance Supervisory Commission, as well as the manager of the Guarantee Fund, as appropriate, may file appeals against the measures taken by the bankruptcy judge and/or the liquidator. Appeals shall be filed within maximum 5 days from the date of when the disputed measures are acknowledged.

(2) Appeals shall be resolved by the court without any undue delays. Whenever deemed necessary, the court shall hold a meeting with the appellant, the Insurance Supervisory Commission, the insurance creditors and/or the manager of the Guarantee Fund, as appropriate, with the mandatory presence of the bankruptcy judge.

Article 42 – For substantiated reasons, the court may replace the bankruptcy judge at any time during the proceedings, by means of a final and binding closing statement issued in the meeting of the court council. The liquidator may be replaced by the bankruptcy judge, with prior approval by the Insurance Supervisory Commission.

Article 43 – The reports which the liquidator shall mandatorily prepare in accordance with the legal provisions in force shall be sent to the Insurance Supervisory Commission and to the manager of the Guarantee Fund. Non-compliance with any of the abovementioned obligations, shall be deemed substantiated reason to accept any request to replace the liquidator, in accordance with the provisions laid down in article 42.

## SECTION 2

### Initiation of bankruptcy proceedings

#### Legal effects of initiating bankruptcy proceedings

Article 44 - (1) In accordance with this law, the initiation of bankruptcy proceedings against the debtor insurance undertaking shall be implemented by court decision.

(2) The decision to initiate bankruptcy proceedings shall result in the withdrawal by the Insurance Supervisory Commission of the authorization granted to the debtor insurance undertaking, unless such withdrawal was authorized prior to the abovementioned decision. The liquidator or any other person appointed to this purpose by the competent authority shall publish the court decision in the Official Gazette of Romania, Part IV, in accordance with the requirements set out in the law on publication, as well as in at least two national newspapers. At the same time, the decision shall be communicated both to the Insurance Supervisory Commission and to the manager of the Guarantee Fund.

(3) Withdrawal of the authorization shall not prevent the liquidator or any other person authorized by the said liquidator to this purpose to carry out some of the insurance business of the debtor insurance undertaking, when necessary or appropriate, in order to complete bankruptcy proceedings. Such business shall be carried out solely with the prior approval of the Insurance Supervisory Commission.

(4) The decision to initiate bankruptcy proceedings shall result in the suspension of all legal or non-legal actions and individual enforcement procedures against the debtor insurance undertaking. All claims shall be recorded in the bankruptcy file of the court and shall be examined and registered in the creditors' list, in accordance with the law. The legal effects of bankruptcy proceedings over a pending civil case concerning an asset or right of which the insurance undertaking was dispossessed shall be regulated by the law of the Member State where the said court case is pending.

(5) Insurance claims arising from enforceable title deeds obtained after the date of the bankruptcy decision, shall be recorded with the court, within maximum 10 days from the date of obtaining the relevant title deed, or otherwise, any attached rights shall be terminated. The liquidator shall examine and, when appropriate, record such claims in the creditors' list, in accordance with the rank of any pre-emptive rights, and/or privileges or

legal guarantees. Irrespective of circumstances, the request to record claims shall be filed no later than the date of the final creditors' list, in accordance with the law.

Article 45 - (1) After the issuance of the decision to initiate bankruptcy proceedings against a debtor insurance undertaking, the liquidator shall prepare the report referred to in article 40 letter a), including, inter alia, information concerning the actual manner of liquidating the assets and rights of the debtor, in accordance with article 40 letter t).

(2) Provided that the court approves the manner of liquidation referred to in article 40 letter t) point 1, the liquidator shall immediately organize, when appropriate, the negotiation process whereby the assets and liabilities of the debtor insurance undertaking shall be taken over. The liquidator shall hold a meeting with all the insurance undertakings deemed eligible by the Insurance Supervisory Commission, in order to present the terms and conditions of the negotiation process. Prior to the meeting, the liquidator shall sign a non-disclosure agreement with each of the respective insurance undertakings, whereby the latter undertake, in accordance with the law, to keep the confidentiality of the information concerning the debtor insurance undertaking subject to the negotiation process.

Article 46 - (1) The liquidator shall prepare and submit to the insurance undertakings which are interested in carrying out a transaction in accordance with article 45, and attended the meeting, an offer regarding the transfer of assets and liabilities; the said offer shall not be disclosed to any other parties.

(2) Depending on the interest of the insurance undertakings which attend the meeting, the offer shall mainly include the following:

- a) the categories of assets and liabilities subject to the transaction and the amount thereof, in accordance with the liquidity and maturity thereof;
- b) the liquidation value for each category of assets;
- c) the end-date for submitting to the liquidator the offers of the respective insurance undertakings regarding the proposed transactions to purchase assets and undertake liabilities;
- d) information from the registry referred to in annex no. 2 of Law no. 32/2000, as amended and supplemented;

(3) The offers of the insurance undertakings shall be sent to the liquidator in a sealed envelope within maximum 10 days from the date when the relevant offer request is received; the liquidator shall review the offers as soon as possible and shall chose the

offer of the insurance undertaking/s which observes the principle of minimum transaction costs.

Article 47 – When no offers are received within the term set out in article 46 paragraph (3), or the offers received fail to observe the requirements of the proposed transaction or the said transaction is not approved by the Insurance Supervisory Commission or the court, as appropriate, the liquidation of the assets and rights of the debtor insurance undertaking shall be performed through other methods/proceedings/manners set out in the applicable legal provisions.

Article 48 - (1) As of the date when the decision to initiate bankruptcy proceedings is deemed final and irrevocable in accordance with this law, the manager of the Guarantee Fund shall be entitled to make payments from the fund, in order to settle the claims of insurance creditors, in accordance with the law.

(2) Insurance creditors whose claims were settled by the Guarantee Fund shall be prohibited to file other petitions and/or to request the realization of claims and/or the payment of any amounts claimed during the bankruptcy proceedings against the debtor insurance undertaking. The manager of the Guarantee Fund shall be entitled to request competent authorities to establish the liability of creditors which collected claims in bad faith and to oblige such creditors to repay any undue amounts received.

Article 49 - (1) Insurance claims shall rank first before any other claims over the assets admitted to cover the technical reserves of the insurance undertaking subject to bankruptcy proceedings. Such claims shall be paid in lei, immediately after the payment of the claims referred to in article 108 point 1 of Law no. 64/1995, recast, as amended and supplemented.

(2) The claims of the manager of the Guarantee Fund shall be deemed insurance claims for the purposes of this law and shall be paid in accordance with the provisions laid down in paragraph (1) above, with all rights and/or guarantees or legal privileges attached, as a result of subrogation to the rights of insurance creditors whose claims were paid by the Fund.

### SECTION 3

The liability of management bodies, financial revisers and financial auditors, internal control bodies and employees of insolvent insurance undertakings

The closing of bankruptcy proceedings

Article 50 - (1) The court may decide that part of the liabilities of the insolvent insurance undertaking shall be incurred by the members of management bodies, financial revisers and financial auditors, the employees with compliance and/or control duties, who held the respective positions in the 3 years before the initiation of bankruptcy proceedings, provided that such persons can be held liable for the position of the insurance undertaking as follows:

- a) such persons have executed transactions to their own account;
- b) such persons have decided to continue business, despite material evidence of imminent default;
- c) such persons have misappropriated the assets and/or loans of the insurance undertaking;
- d) such persons have maintained bogus accounting records, have concealed accounting documents or failed to keep accounting records in compliance with applicable regulations;
- e) such persons have misappropriated or concealed part of the assets of the insurance undertaking or have unduly increased the amount of liabilities;
- f) such persons have engaged in highly onerous business in order to procure funds for the insurance undertaking to the purpose of avoiding default;
- g) in the 60 days prior to the undertaking's becoming insolvent, such persons have paid or decided on the preferential payment of one creditor against the interest of other insurance creditors;
- h) such persons have prepared annual financial statements, other accounting statements or reports, which do not observe the legal provisions in force;
- i) such persons have failed to implement or have implemented in an inappropriate manner the administrative measures concerning financial recovery, as decided by the Insurance Supervisory Commission or, the same persons have made decisions without the approval of the said authority, which lead to insolvency and the initiation of bankruptcy proceedings against the insurance undertaking;
- j) during internal audit missions, the same persons have failed to identify and/or notify the deeds which constitute fraud and/or mismanagement.

(2) The provisions of paragraph (1) shall also apply to those persons who carry out the abovementioned duties as of the say when this law becomes effective.

Article 51 – The amounts paid by the persons referred to in article 50 paragraph (1) shall be deemed assets of the insurance undertaking and shall be employed for the payment of claims, in accordance with the law.

Article 52 - (1) In order to adopt the decision concerning the liability of the persons referred to in article 50 paragraph (1) to make partial payments of the liabilities of the insolvent insurance undertaking, the court may be notified by the bankruptcy judge, the liquidator or by any of the insurance creditors, as well as by the Insurance Supervisory Commission. Based on the evidence in the case file, the court may accept to freeze the assets of the insurance undertaking subject to bankruptcy proceedings.

(2) The provisions laid down in paragraph 50 paragraph (1) shall be enforced in accordance with the provisions of the Code of Civil Proceedings, unless otherwise established by law.

Article 53 - (1) In accordance with this law, bankruptcy proceedings shall be closed by the court, by means of a court decision, at the request of the bankruptcy judge, under one of the following circumstances, as appropriate:

- a) the final report was approved;
- b) all the funds and/or assets of the debtor insurance undertaking were distributed;
- c) the claims of insurance creditors were paid pursuant to creditors' settlement agreements or other similar measures;
- d) all the amounts due to the Guarantee Fund were recovered.

(2) The court decision shall be notified by the bankruptcy judge to all the parties involved, in accordance with this law and the provisions of Law 64/1995, recast, as amended and supplemented. The amounts remaining following payments to all legally entitled persons, in accordance with the law, shall be transferred to the Guarantee Fund, for safekeeping and management, in accordance with applicable legal provisions.

Article 54 – At any stage during bankruptcy proceedings, the court may decide to close such proceedings provided that the debtor insurance undertaking has no assets or such assets are insufficient to cover related administrative costs and no creditors submit offers to take over the assets and liabilities of the insurance undertaking subject to bankruptcy proceedings.

Article 55 – The provisions laid down in this chapter shall be supplemented, with respect to bankruptcy proceedings against insurance undertakings, with the provisions of Law no. 64/1995, recast, as amended and supplemented, as well as with the provisions of the Code of Civil Proceedings.

## CHAPTER IV

### The regulatory framework of international private law relations concerning insolvent insurance undertakings

#### SECTION 1

##### Scope. Authorities and applicable law

Article 56 – The provisions laid down in this chapter shall regulate:

- a) bankruptcy proceedings against Romanian legal person insurance undertakings, and the insolvent branches thereof, located on the territory of other Member States;
- b) the terms and conditions under which relevant authorities shall engage in consultations concerning the bankruptcy of insurance undertakings.

Article 57 - (1) The court established in accordance with Romanian law shall be the only competent authority which shall decide on the enforcement of bankruptcy proceedings against Romanian legal person insurance undertakings, including the branches thereof in other Member States. Relevant court decisions may be passed in the absence or after the implementation of financial recovery measures. The decision to initiate bankruptcy proceedings, as well as the legal effects thereof shall be subject to the laws of Romania. The provisions laid down in articles 9 and 10 shall apply accordingly.

(2) The decision of the competent authority referred to in paragraph (1) regarding the initiation of bankruptcy proceedings against Romanian legal person insurance undertakings, including the branches thereof in other Member States, shall be accepted, without any other formalities, on the territories of all other Member States and shall also produce legal effects in such States, as soon as the same decision becomes effective in Romania.

(3) The competent authority referred to in paragraph (1) shall immediately inform the Insurance Supervisory Commission of the decision to initiate bankruptcy proceedings, including the actual effects of such proceedings; such information shall be given prior to the adoption of the decision or immediately afterwards. The Insurance Supervisory Commission shall immediately inform the supervisory authorities of all other Member States of the decision to initiate bankruptcy proceedings, including the actual effects of such proceedings.

(4) The provisions laid down in paragraphs (1)-(3) shall not prevent the implementation of the provisions regarding financial recovery proceedings.

Article 58 - (1) Following the communication referred to in article 57 paragraph (3), the Insurance Supervisory Commission shall take all the necessary measures to publish an excerpt of the same decision to initiate bankruptcy proceedings in the Official Journal of the European Communities.

(2) The provisions laid down in article 9-11 shall apply accordingly.

Article 59 - (1) The court established in accordance with the Romanian legislation shall be entitled and may request registration of the decision to initiate bankruptcy proceedings against debtor insurance undertakings with the land registry, the trade register, as well as with any other public registry maintained in other member States.

(2) In all the situations where the registration referred to in paragraph (1) is mandatory in accordance with the legislation of the respective Member State, the court shall decide on all the necessary related measures. All expenses incurred with the registration shall be deemed legal expenses.

Article 60 - (1) The liquidator appointed in accordance with article 39 paragraph (1) letter c) may act on the territory of host Member States without any other formalities, either on the basis of a certified copy of the decision whereby the competent court has appointed the said liquidator, or on the basis of a certificate issued by the same court. The relevant document may be translated in the official language or in one of the languages of the Member State where the liquidator shall act, without legalization or any other similar certifications.

(2) The liquidator may exercise on the territory of host Member States all the duties established in accordance with the Romanian law and may appoint any person as representative in the aforementioned states, particularly in order to surpass the difficulties faced by insurance creditors in the respective states. Under the same conditions, the liquidator appointed in accordance with the law of another Member State may act on the territory of Romania, when Romania is the host Member State.

(3) In exercising his/her duties, the liquidator shall comply with the laws of the respective Member State, particularly regarding the sale of assets and the provision of information to the employees of the insurance undertaking in the respective Member State; the duties of the liquidator shall exclude the use of force or the right to settle litigations or disputes of any kind.

Article 61 – When, after the initiation of bankruptcy proceedings, an insurance undertaking sells a property, ship and/or aircraft registered in a public register or, as

appropriate, securities and/or title deeds whose establishment or transfer involves recording with a registry or account under the law or which are placed with a central depository system regulated by the law of a Member State, the validity of such transactions shall be subject to the provisions of the law of the member State where the property is located or under whose jurisdiction the respective registry/account/system is maintained.

## SECTION 2

### Disclosure and rights of insurance creditors

Article 62 - (1) After initiation of financial recovery or bankruptcy proceedings against a Romanian legal person insurance undertaking, the Insurance Supervisory Commission shall immediately inform all known insurance creditors, having their residence or registered office in Romania or in another Member State.

(2) Such disclosure shall be made in the form of notification in writing given to each insurance creditor, with particular reference to end-dates, the sanctions enforced whenever such end-dates are missed, the competent body or authority which shall accept the claims filed or information concerning claims and other legal measures, legal requirements concerning the filing of such claims with the competent court. The said notification shall also mention whether preferential claims or security interests in real property shall be subject to examination. In the case of insurance claims, the notification shall also refer to the general effects of the liquidation process over insurance contracts, particularly the date when insurance contracts or insurance activities shall be terminated, as well as the rights and duties of policyholders concerning such contracts or activities.

(3) The information referred to in paragraph (2) shall be given in the Romanian language. The following forms may be used: "Invitation to lodge a claim; time limits to be observed" or "Invitation to submit observations relating to a claim; time limits to be observed", with headings written in all the official languages of the European Union. When a creditor informs that it holds an insurance claim, the information in the notification shall be provided in the official language or in one of the official languages of the Member States where the said creditor usually has its residence, domicile or head office, as appropriate.

Article 63 - (1) Insurance creditors who have their permanent residence, domicile or head office, as appropriate, on the territory of a Member State, including public

authorities of said State, shall be entitled to submit and lodge insurance claims or submit observations relating to such claims, in accordance with this law.

(2) The statement of claims and/or the observations relating to such claims, as appropriate, shall be submitted to the manager of the Guarantee Fund and/or the liquidator in the official language or in one of the official languages of the Member State, and shall mandatorily include the heading "Statement of claims" or "Observations relating to claims" in the Romanian language.

(3) The claims of insurance creditors who usually have their residence or registered office in a Member State shall be treated similarly with the claims lodged by insurance creditors having their residence or head office in Romania.

(4) The insurance creditors who exercise the rights set out in paragraph (1) shall provide copies of the documents of evidence for such claims, indicating the nature of the claims, the time when such claims originated and the value thereof, the establishment of legal privilege, security interest in real property and other rights attached to specific claims. Insurance creditors shall not be entitled to establish the priority ranking of insurance claims under article 49.

(5) The manager of the Guarantee Fund and/or the liquidator, as appropriate, shall periodically inform insurance creditors in accordance with the law, particularly regarding the progresses made in selling the assets of the debtor insurance undertaking.

(6) The supervisory authorities of the Member States may request information from the Insurance Supervisory Commission concerning the stage of completion in bankruptcy proceedings.

### SECTION 3

#### Rules on financial recovery and bankruptcy proceedings applicable to branches in Romania of insurance undertakings of other Member States

Article 64 – The administrative or legal authorities of the home Member State shall be solely responsible for the decision to initiate financial recovery proceedings or bankruptcy proceedings against an insurance undertaking, including branches established in Member States. The law of the home Member State shall apply in accordance with the provisions of article 9-11 and article 61.

Article 65 - (1) The financial recovery or bankruptcy proceedings decided against an insurance undertaking of another Member State which carries out business in Romania, shall apply without any other formalities and shall become effective under the

conditions and as of the date set out in the legislation of the respective Member State. Under the same conditions, the proceedings referred to in this law shall apply on the territory of Member States with respect to a Romanian legal person insurance undertaking, including the branches thereof established on the territory of the respective Member States.

(2) Bankruptcy proceedings shall apply in accordance with the legislation of the home Member State, unless otherwise established by law.

(3) Upon receipt of relevant notification from the competent authority of the home Member State, the Insurance Supervisory Commission shall immediately inform insurance creditors of the decision to initiate bankruptcy proceedings, by way of publishing such notification in the Official Gazette of Romania, Part I.

Article 66 - (1) The persons authorized to implement the measures decided by the competent authorities of the home Member State may act without any other formalities on the territory of Romania, on the basis of a certified copy of the decision whereby the said authority has appointed the respective persons, or on the basis of a certificate issued by the same authority, accompanied by the Romanian translation.

(2) The persons referred to in paragraph (1) may exercise in Romania all their duties in accordance with the legislation of the home Member State; such persons shall be able to appoint other persons to act as representatives in Romania, also for the purpose of providing assistance to insurance creditors during implementation of the respective measures.

(3) In exercising their duties in Romania, the persons referred to in paragraph (1) shall comply with the Romanian legislation, particularly regarding the sale of assets and the provision of information to the employees of the insurance undertaking in Romania.

Article 67 – The competent administrative or legal authorities of the home Member State or the liquidator, as appropriate, shall notify the decision to initiate financial recovery or bankruptcy proceedings, as appropriate, to the Trade Register Office where the respective insurance undertaking is registered, in order to register appropriate mentions.

Article 68 - (1) The competent court, in accordance with the Romanian law, shall immediately inform the competent authorities of the home Member States, through the Insurance Supervisory Commission, of the decision to initiate bankruptcy proceedings, including the potential effects of such proceedings, provided that the decision was made with respect to a branch or subsidiary in Romania of an insurance undertaking with the

registered office in a state than a Member State, which also has other branches and/or subsidiaries on the territory of other Member States.

(2) Disclosure shall be made prior before the date of the decision to initiate bankruptcy proceedings or immediately after that date, and shall also refer to whether the authorization of the respective branch or subsidiary was withdrawn.

## SECTION 4

### Branches of insurance undertakings in non-Member States

Article 69 - (1) Subject to the definitions set out in article 3 and for the purposes of this law concerning financial recovery and bankruptcy proceedings with respect to branches in other Member States opened by insurance undertakings having their head office outside the European Community:

a) home Member State shall mean the Member State where the branch is authorized;

b) supervisory authorities and competent authorities shall mean the authorities of the Member State where the branch is authorized.

(2) When an insurance undertaking having its head office outside the European Community has branches established in at least two Member States, each branch shall be treated independently for the purposes of this law. The competent authorities and supervisory authorities, as well as the designated liquidators of these Member States shall cooperate and coordinate their actions in order to exercise the duties and competences established by law.

## CHAPTER V

### Sanctions

Article 70 – Non-compliance with the provisions of this law and/or of the norms issued for the application thereof shall be sanctioned by the Insurance Supervisory Commission.

Article 71 - (1) The following shall be deemed criminal offences:

a) failure to fulfill the obligation to make available to the Insurance Supervisory Commission the documents and information requested, in accordance with article 6 paragraph (1);

b) failure to establish and/or communicate to the Insurance Supervisory Commission, within 48 hours from the relevant request, the financial position as well as the minimum solvency margin of the insurance undertaking, in accordance with article 6 paragraph (2);

c) failure to implement or the inappropriate implementation of the measures decided by the Insurance Supervisory Commission in the decision concerning financial recovery proceedings, in accordance with article 8 paragraph (2) and paragraph (3) letter a);

d) failure to prepare and/or failure to timely submit to the Insurance Supervisory Commission the financial recovery plan or the financing program, as appropriate, in accordance with article 12 and article 15 letter a);

e) non-compliance and/or inadequate compliance with the measures and provisions of the financial recovery plan or the financing program, as appropriate, as approved by the Insurance Supervisory Commission, in accordance with article 14 paragraph (1) and article 15 letter a);

f) non-compliance with the obligation to notify insurance creditors of the financial recovery measures decided by the Insurance Supervisory Commission, in accordance with article 14;

g) non-compliance with the obligation to notify the appointed trustee of the decision concerning financial recovery and the measures decided by the Insurance Supervisory Commission, in accordance with article 17 paragraph (1);

h) non-compliance with the obligation to provide the manager of the Guarantee Fund with complete records of claim files, as well as with the related technical, operating and accounting records, in accordance with article 23 paragraph (1);

i) non-compliance with the obligation regarding the filing of the petition to initiate bankruptcy proceedings, in accordance with the provisions of article 29.

(2) The criminal offences referred to in paragraph (1) shall be sanctioned as follows:

a) fines in amounts ranging between Lei 150,000,000 and 300,000,000 – payable by insurance undertakings;

b) fines in amounts ranging from Lei 50,000,000 Lei and Lei 150,000,000 – payable by the significant persons of insurance undertakings.

(3) Fines shall be imposed on the insurance undertakings and/or significant persons who participate in the criminal offences. Fines shall be imposed separately on each person who participates in the criminal offence.

(4) Depending on the nature and severity of such offences, the Insurance Supervisory Commission may also apply the fines set out in paragraph (2), and any of the sanctions referred to in article 39 paragraph (3) letters d) and e) of Law no. 32/200, as amended and supplemented.

## CHAPTER VI

### Transitory and final provisions

Article 72 – Bankruptcy proceedings initiated against insurance undertakings and pending court resolution as of the date when this law becomes effective shall be pursued in accordance with this law.

Article 73 – The provisions of articles 56-69 of this law shall apply accordingly with respect to international private law relations concerning the financial recovery of insurance undertakings, insurance/reinsurance undertakings, reinsurance undertakings, mutual insurance undertakings, including their branches abroad, as well as branches and subsidiaries of insurance undertakings of non-Member States, having their offices in Romania, including with respect to disclosure and the rights of insurance creditors.

Article 74 - (1) The bankruptcy proceedings regulated by this law and initiated against an insurance undertaking which purchases assets, shall not affect the rights of the seller when, at the time when the respective proceedings are initiated, the asset subject to sale is located on the territory of a Member State, other than the State where the respective proceedings are initiated.

(2) Bankruptcy proceedings initiated against an insurance undertaking after delivery of an asset subject to sale shall not constitute grounds for terminating or cancelling the respective sale and not prevent the acquisition by the buyer of the property, provided that, at the time when such proceedings are initiated, the respective asset is located on the territory of a Member State, other than the State where the respective proceedings are initiated.

(3) The provisions of paragraphs (1) and (2) shall not prevent legal actions concerning nullity, annulment and/or non-enforcement regulated by the legislation of Romania.

Article 75 - (1) The financial recovery and bankruptcy proceedings regulated by this law shall not prevent or cause prejudice to exercising the rights of insurance creditors concerning the settlement of their claims with the claims of the insurance undertaking subject to such proceedings, in accordance with the law.

(2) The provisions of article 74 paragraph (3) shall apply accordingly.

Article 76 - (1) Without prejudice the provisions of article 9-11, the legal effects of the initiation of financial recovery or bankruptcy proceedings, as applicable, on the rights and obligations of the participants on a regulated market shall be subject solely to the provisions of the law applicable to the respective market.

(2) The provisions of paragraph (1) shall not prevent legal actions concerning nullity, annulment and/or non-enforcement, regulated by the Romanian law, which may be taken with respect to the payments or transactions made in accordance with the law applicable to the respective market.

Article 77 – The provisions of this law shall be supplemented with the provisions of Law no. 32/2000, as amended and supplemented, Law no. 136/1995, as amended and supplemented, Law no. 64/1995, recast, as amended and supplemented, Law no. 105/1992 on the regulation of international private law relations, Law no. 637/2002 on the regulation of international private law relations under insolvency, as well as of the Code of Civil Proceedings.

Article 78 – This law shall transpose the provisions of Directive 2001/17/EC on the reorganization and winding-up of insurance undertakings, save for the annex to the directive.

Article 79 – This law shall become effective within 30 days from the date of publication in the Official Gazette of Romania, Part I.

Article 80 – As of the date when this law becomes effective, the following shall be repealed:

a) chapter VI "Financial recovery, reorganization and winding-up of insurance undertakings" of Law no. 32/2000, as amended and supplemented, published in the Official Gazette of Romania, Part I, no. 148 of April 10, 2000;

b) Order no. 12/2001 of the President of the Insurance Supervisory Commission to implement the Norms concerning the insolvency of insurance undertakings and the appointment of trustees, published in the Official Gazette of Romania, Part I, no. 43 of January 22, 2002;

c) Order no. 14/2001 of the President of the Insurance Supervisory Commission to implement the Norms concerning portfolio transfers, published in the Official Gazette of Romania, Part I, no. 43 of January 22, 2002;

d) Order no. 3/2002 of the President of the Insurance Supervisory Commission to implement the Norms concerning the establishment, use and management of the

Policyholders Protection Fund, published in the Official Gazette of Romania, Part I, no. 327 of May 16, 2002.

Article 81 – Within 60 days from the date when this law becomes effective, the Insurance Supervisory Commission shall issue specific norms for the implementation of the provisions laid down herein.

This law was adopted by the Parliament of Romania, in compliance with article 75 and 76 paragraph (2) of the Constitution of Romania, recast.

PRESIDENT OF THE CHAMBER OF DEPUTIES  
VALER DORNEANU

PRESIDENT OF THE SENATE  
NICOLAE VĂCĂROIU

Bucharest, November 17, 2004

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