

**Financial Supervisory Authority – ASF**

**RULE No. 28/2015**

**on the operation of supervised insurers in accordance with the national regime**

*In force as of 1 January 2016*

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*Further to the deliberations held in the meeting of the Financial Supervisory Authority's Board of 23 December 2015,*

*In accordance with the provisions of Art. 2 (1) Letter b), Art. 3 (1) Letter b) and Art. 6(2) of Government Emergency Ordinance No. 93/2012 on the establishment, organisation and operation of the Financial Supervisory Authority, approved as amended and supplemented by Law No. 113/2013, as subsequently amended and supplemented,*

*on the basis of the provisions of Art. 173 (1) Letters e) -j), l) -n), r) and t) of Law No. 237/2015 on the authorisation and supervision of the insurance and reinsurance activity,*

Financial Supervisory Authority issues this rule.

**CHAPTER I**

**General Provisions**

**ARTICLE 1**

**General Provisions and Scope**

**(1)** This rule sets out the conditions in which the insurers supervised in accordance with the national regime carry out their activity, as follows:

- a)** the conditions in which the insurance activity is carried out;
- b)** the conditions and documents required for the approval of the insurers' merger or division;

**c)** the conditions and documents required for the approval of portfolio transfers;

**d)** the conditions and documents required for submitting reports;

**e)** other matters related to the insurance and/or reinsurance activity.

**(2)** This rule provides the methods for calculating the available solvency margin, the minimum solvency margin and the security fund, the technical reserves that insurers establish, the assets admitted to cover them and the diversity of the assets admitted to cover the gross reserves.

## **ARTICLE 2**

### **Definitions and acronyms**

**(1)** The terms and expressions used in this rule have the meanings provided in Law No. 237/2015 on the authorisation and supervision of the insurance and reinsurance activity and the following meanings:

**1.** insurer – the insurer, composite reinsurer and mixed insurer, according to Art. 1(2) points 3, 4 and 6 of Law No. 237/2015, supervised according to Part II of Law No. 237/2015;

**2.** transferor insurer - insurer that transfers the portfolio;

**3.** transferee insurer - insurer that accepts the portfolio;

**4.** LEI Code – the code regarding the identification of the legal person, an alphanumeric code of 20 characters allocated to insurers by a local operational unit accredited by the Supervisory and Regulation Committee, used in reports;

**5.** division – operation consisting in the division of the entire patrimony of an insurer, which thus ceases to exist, between two or more existing or newly established insurers;

**6.** merger by absorption – operation consisting in the absorption of one or more insurers by another insurer;

**7.** merger by amalgamation – process consisting in the amalgamation of two or more insurers to form a new insurer;

**8.** legal provisions – defined provisions referred to in Art. 1 (2) point 37 of Law No. 237/2015;

**9.** gross mathematical reserve – mathematical reserve calculated prior to the ceding in reinsurance;

**10.** net mathematical reserve – mathematical reserve calculated after the ceding in reinsurance;

**11.** gross technical reserve – technical reserve calculated prior to the ceding in reinsurance;

**12.** net technical reserve – technical reserve calculated after the ceding in reinsurance;

**13.** amount at risk – the difference between the insurance indemnity and the mathematical reserve, calculated for insurance contracts that cover the risk of death;

**14.** gross amount at risk – the amount at risk calculated prior to the ceding in reinsurance;

**15.** net amount at risk – the amount at risk calculated after the ceding in reinsurance;

**16.** value of gross earned premiums – the value of gross written premiums minus the variation in the gross premium reserve.

**(2)** For the purpose of this rule, the acronyms below have the following meanings:

**1.** RAA – Romanian Actuarial Association;

**2.** NBR – National Bank of Romania;

**3.** IVSC – International Valuation Standards Council.

**(3)** The insurers referred to in Art. 1(1) shall submit to ASF the LEI Code prior to 30 June 2016; ASF shall publish on its website the procedure for accessing the list of accredited local operational units and the modality of obtaining the LEI Code.

## **CHAPTER II**

### The insurers' operation

## **ARTICLE 3**

### General provisions

**(1)** The insurers shall comply with the legal provisions regarding the quality requirements related to the governance system, except for those related to ORSA.

**(2)** The insurers shall prepare and revise the internal written policies and procedures, approved by the members of the management, regarding:

- a)** the activity internal control system;
- b)** the risk management function;
- c)** the actuarial function;
- d)** the internal audit function;
- e)** other functions identified by insurers.

**(3)** The direct and indirect significant shareholders of the insurers and the members of their management permanently meet the quality requirements and criteria provided by law.

**(4)** The members of the management only hold this function within the insurers, and cannot hold this capacity in other Romanian or foreign legal entities during the mandate with the insurers, in compliance with the provisions of Company Law No. 31/1990, republished, as subsequently amended and supplemented.

**(5)** For the purpose of promoting the stability of the Romanian insurance market, of protecting the contractors' interests and the insurance market integrity, if the requirements imposed by the legal provisions are no longer met by the persons referred to in Para (3), ASF may take any of the measures established by the legal provisions.

## **ARTICLE 4**

### Communication with ASF

**(1)** ASF may reassess the compliance with and fulfilment of the requirements referred to in Art. 3(3) and (4), if new relevant documents or information appear; in this respect, ASF may request information, explanations and documents from the persons concerned and may use, in the course of the assessment, information obtained from third party sources.

**(2)** After obtaining the operation authorisation, during the conduct of their activity, the insurers shall request ASF's approval on the modification of the documents or conditions based on which such authorisation was granted; this is subject to the fulfilment by the insurers of the obligations referred to in the legal provisions and in the decisions issued by ASF, in force on the application submission date.

**(3)** The requirements regarding the source of the share capital, imposed by the legal provisions, shall also apply to natural or legal person significant shareholders of an insurer who intend to increase their participation in the share capital or who participate in the insurer's share capital increase, but who are not potential acquirers.

**(4)** If authorisation for other risks within a class previously authorised or for a new insurance class is requested, the insurers shall comply with the provisions of Art. 21(3) and (4) of Law No. 237/2015 and shall submit to ASF the business plan updated with the new risks or with the new insurance class and the authorisation fee provided by the legislation in force.

**(5)** At ASF's request, the insurers shall submit the list of direct and indirect shareholders and the percentage held by them in the share capital, as registered in the Shareholders' Registry or according to the provisions of the specific legislation.

**(6)** The list referred to in Para (5) shall be submitted in electronic format and include the following:

**a)** the identity of the shareholders and the participation share held by them in the insurer's share capital;

**b)** the nominal list, in the case of natural persons direct shareholders;

**c)** the list of legal person direct and indirect significant shareholders, up to the last natural person significant shareholder, except for the undertakings listed in the Stock Exchange.

**(7)** The insurers' correspondence with ASF, their reports, information, documents and requests shall be signed only by the members of the management.

## **ARTICLE 5**

Termination or suspension of the position occupied by the members of the management in exceptional situations

**(1)** The appointment of a person as member of the management shall be performed subject to notifying ASF and in the following conditions:

**a)** the person is unable to exercise the duties corresponding to his/her position, for reasons not ascribable to him/her, in situations such as death;

**b)** the person terminates his/her mandate with the insurer, in case of resignation or dismissal.

**(2)** Within 15 business days from the occurrence of the situations referred to in Para (1), the insurer shall notify ASF with regard to the name and position of such persons.

**(3)** The term for submitting the full documentation for the approval of a new member of the management, in the cases referred to in Para (1), is of maximum 45 business days from the date of the notification sent to ASF.

**(4)** The members of the management may exercise the duties of the proposed positions only after ASF issues the approval.

**(5)** Failure to comply with the provisions of Paras (2) and (3) may result in the sanctioning of the insurers and of the persons entitled to make the proposal, and failure to comply with the provisions of Para (4) may result in the sanctioning of the proposed persons; considering the consequences of exercising the duties of a position prior to receiving the legal approval, ASF may even decide to withdraw the approval granted.

**(6)** The provisions of Para (1) shall apply accordingly in the case of suspension of the mandate of the members of the management, in accordance with the legislation in force.

**(7)** If the suspension period is less than the term referred to in Para (3) for the appointment of other persons, the insurers shall notify to ASF, within maximum 5 business days from the suspension date, the identification data of the persons who take over the duties of the members of the management whose mandate is suspended; during the exercise of the duties by the replacement members, the liability for their failure to comply with the applicable legal provisions or for the failure to submit the notification related to them to ASF shall fall upon the insurers' management.

**(8)** Within 3 business days from the suspension of the mandate, the insurers shall notify ASF in this respect, without requesting the re-approval of the person at issue, provided that no changes occurred to the initial situation.

## **ARTICLE 6**

### **Modification of mandates**

The members of the management shall request ASF's approval and shall submit updated statements, corresponding to their new positions, in accordance with the rules on the authorisation and monitoring of insurance and/or reinsurance undertakings, accompanied, where appropriate, by updated documents, if:

**a)** they receive a mandate for a different position within the same insurer or with another insurer;

**b)** their mandate is extended;

**c)** they are nominated for a new mandate or for the continuation of their mandate with:

**(i)** the insurer resulting further to the merger of two or more insurers;

**(ii)** the insurer resulting from the division of an insurer.

## **ARTICLE 7**

### Conduct of the activity

**(1)** The insurers shall carry out their activity in compliance with the applicable legal provisions and in accordance with the insurance practices and the following principles:

**a)** the prudent and professional organisation and conduct of the activity;

**b)** the employment of a sufficient number of persons who meet the professional competence criteria in accordance with the internal procedures or with the written policies regarding the governance system.

**(2)** As regards voluntary insurance, the insurers shall prepare:

**a)** insurance conditions, in compliance with the legal provisions regarding the insurance contract;

**b)** insurance clauses, which may amend the insurance conditions, depending on their own or the contractor's option;

**c)** their own criteria for establishing the insurance premiums;

**d)** their own policies and instructions to determine and liquidate claims, in strict compliance with the provisions of the insurance conditions and contractual clauses;

**e)** written policies on the establishment and maintenance of the technical reserves depending on its own operational record keeping system, in compliance with the ASF regulations.

**(3)** In addition to the provisions referred to in Para (1), the insurers shall meet the following requirements:

**a)** keeping their accounting and operational records, so as to allow:

**(i)** preparing the reports requested by ASF;

**(ii)** analysing the technical results by classes of insurance, in order to determine if the activity is profitable;

**b)** supervising the activity of their own personnel, of the unit subordinated to them and of the registered insurance intermediaries with which they collaborate, including by establishing anti-fraud procedures, so that the activity is not jeopardised;

**c)** submitting the income and expenses budget, each year, within 10 calendar days from its approval, the corrections thereto being submitted to ASF within the same term;

**d)** organising and keeping the accounting records separately for the two insurance activities in the case of composite insurers;

**e)** preparing the reports regarding the reinsurance activity and the reinsurance programmes, in accordance with the provisions of this rule;

**f)** establishing procedures, establishing and implementing the training measures for their own personnel in order to comply with the legislation in force and with the rules issued by ASF regarding the combating terrorism and preventing money laundering through insurance activities;

**g)** preparing and submitting the separate and, as the case may be, consolidated financial statements, in accordance with the accounting regulations issued by ASF;

**h)** submitting other reports, statements, analyses or financial reports, at ASF's request;

**i)** maintaining a special registry of the assets admitted to cover the technical reserves established for non-life insurance and for life insurance, in accordance with the provisions of Rule No. 38/2015 on the technical reserves established for the insurance activity, the calculation thereof for the purpose of preparing the annual financial statements and the special registry of the assets covering them;

**j)** implementing procedures for the claim approval, establishment and settlement in accordance with the ASF regulations;

**k)** implementing procedures for the receipt and settlement of complains, including amicably, for the opening and maintaining the complaints and notifications registry, including submitting the reports to ASF in accordance with the specific rules;

**l)** ensuring that the annual and, as the case may be, consolidated financial statements are audited according to the specific rules;

**m)** publishing an annual report including at least the information provided in this rule;

**n)** presenting the reports, documents, statements and information required by the specialised directorates and inspection teams of ASF.

**(4)** The composite insurers referred to in Art. 174 (2) of Law No. 237/2015 shall carry out the life and non-life insurance activities only if they separate the management of the two activities, in accordance with the provisions of Art. 49 (1) of the same law and meet the following requirements:

**a)** it does not use the profit registered by one of the two activities to improve the other activity;



**b)** the income, particularly the collected premiums, the payments from the reinsurers and from the investment of assets, and the expenses, particularly those with the payment of claims, the additional amounts for the technical reserves, the reinsurance premiums, the operating expenses related to that activity, are broken down according to their nature.

**(5)** The insurers who carry out life insurance activity meet the following requirements:

**a)** they analyse the life insurance activities, every 12 months or at shorter intervals, if ASF deems it necessary, as follows:

**(i)** they calculate the obligations related to the life insurance fund and the necessary technical reserves, in accordance with the fundamental and generally accepted principles of actuarial calculations;

**(ii)** they determine the consistency between the life insurance fund and the related assets;

**b)** they prepare a report regarding the analysis referred to in Letter a), whose layout, contents and certification modality are established by ASF regulations;

**c)** they submit to ASF a copy of the report referred to in Letter b) within 30 business days from the completion of the analysis;

**d)** they submit, where applicable, information, documents and additional details, after submitting the report referred to in Letter c), in the form required by ASF.

**(6)** Further to a written and soundly justified request submitted by the insurers, ASF may approve the extension of the term referred to in Para (5) Letter c).

**(7)** The business plan prepared in accordance with the rules on the authorisation and monitoring of the insurance and/or reinsurance undertakings shall be updated on an annual basis and shall be submitted to ASF prior to 31 October of the year preceding the reference year.

## **CHAPTER III**

### Merger, division and portfolio transfer

#### **SECTION 1**

##### General provisions

#### **ARTICLE 8**

##### General provisions

**(1)** The approval by ASF of a portfolio transfer shall be performed in accordance with this rule, including if the insurers merge, are divided or enter financial recovery, reorganisation or winding-up, as appropriate.

**(2)** The merger may be performed as follows:

**a)** merger by absorption;

**b)** merger by amalgamation.

**(3)** The merger or division processes imply portfolio transfers to the insurers resulting from such processes.

**(4)** The insurers resulting from mergers or divisions shall request ASF to authorise them in accordance with the legal provisions.

**(5)** The merger and division of insurers shall be performed in compliance with the provisions of Chapters II and III of Title VI of Companies' Law No. 31/1990, republished, as subsequently amended and supplemented, as well as with the provisions of Title II Chapter II Art. 23 Letter b) of the Fiscal Procedure Code, as subsequently amended and supplemented.

#### **ARTICLE 9**

##### Rules applicable to mergers or divisions

**(1)** If a Romanian legal person insurer merges with an insurer seated on the territory of another Member State and the registered headquarters of the acquiring insurer or of the insurer resulting further to the amalgamation is in Romania, it shall request ASF to issue an operation authorisation in accordance with Part I of Law No. 237/2015 and with the applicable legal provisions in force.

**(2)** If a Romanian legal person insurer merges with an insurer seated on the territory of another Member State, and the registered headquarters of the acquiring insurer or of the insurer resulting further to the amalgamation is on

the territory of such Member State, ASF shall send its consent, together with the confirmation that the Romanian legal person insurer meets the solvency conditions referred to in this rule, to the competent authority in the Member State where the newly established insurer will be seated.

**(3)** The document approving the merger or division performed in accordance with the provisions of this article shall be published in accordance with the national legislation of the commitment Member State.

**(4)** If reinsurers result from the division, they shall comply with the provisions of Part I of Law No. 237/2015 and shall, consequently, prepare the documentation necessary to obtain authorisation.

## **ARTICLE 10**

### Rules applicable to portfolio transfers

**(1)** Insurance contracts may also be transferred by branches of insurance undertakings from third countries, whose registered headquarters is located in Romania, only if they are authorised and supervised by ASF, in accordance with the provisions of Chapter X of Law No. 237/2015.

**(2)** Insurance contracts may be transferred to the entities referred to in Art. 19 only if they are supervised in accordance with the provisions similar to those referred to in Part I of Law No. 237/2015, applicable in such Member States.

**(3)** For the purpose of this article, ASF shall approve the portfolio transfer at the request of the Romanian legal person transferor insurer, in the conditions referred to in Art. 38 or Art. 117 of Law No. 237/2015, as appropriate, and accompanied by the documentation related to the transferor insurer referred to in Art. 17.

**(4)** The absence of an answer from the supervisors of the entities referred to in Art. 19, as regards their approval/disapproval or certifying that such entities hold own funds eligible to cover SCR, 3 months from the submission of a request in this respect by ASF, shall be deemed a tacit approval.

## **SECTION 2**

Draft terms of merger or division

### **ARTICLE 11**

Conditions regarding the merger

FSA shall approve the draft terms of merger of the insurers, provided that all of the following conditions are met:

**a)** the resulting insurer has an available solvency margin related to the activity it carries out at least equal to the minimum solvency margin calculated in accordance with the provisions of this rule;

**b)** the resulting insurer has the liquidity ration referred to in this rule;

**c)** the insurers meet the requirement regarding the minimum share capital of insurers, including if they are newly established;

**d)** the insurers do not have debts to ASF resulting from taxes and contributions owed according to Regulation No. 16/2014 or to the Policyholders Guarantee Fund established according to Law No. 213/2015;

**e)** the following taxes provided by Regulation No. 16/2014 are paid:

**(i)** the merger tax;

**(ii)** the portfolio transfer tax, if applicable;

**(iii)** the authorisation fee of the newly resulting insurer, if applicable;

**f)** the insurers submit to ASF the documentation referred to in Art. 12.

### **ARTICLE 12**

Merger documentation

In order to approve the draft terms of merger, the insurers shall submit to ASF the following documentation:

**a)** the requests for approval, signed by the members of the insurers' management, according to Annexe No. 1;

**b)** the draft terms of merger signed by the members of the insurers' management, according to Law No. 31/1990, together with the approval issued by the Competition Council;

**c)** copies of the resolutions of the insurers' general shareholders' meetings regarding the draft terms of merger;

**d)** the draft instruments of incorporation and/or the additional act to the instruments of incorporation of the resulting insurer, as the case may be;

**e)** the balance sheet related to the draft terms of merger, signed by the members of the insurers' management, having as reference date the date when the draft terms of merger was prepared;

**f)** the business plan for the resulting insurer for the following 5 years, in accordance with the rules on the authorisation and monitoring of insurance and/or reinsurance undertakings;

**g)** the report prepared by an independent external auditor, assessing the contents of the documents referred to in Letters b) and e);

**h)** the reports of the insurers involved in the merger project regarding:

**(i)** the calculation of the solvency margin prior to the merger and the estimate thereof after the merger, considering as reference date the date when the draft terms of merger is prepared;

**(ii)** the assets covering the technical reserves prior to the completion of the project, the estimate thereof after the completion, considering as reference date the date when the draft terms of merger is prepared;

**(iii)** the contribution to the Policyholders Guarantee Fund and the operation tax owed according to the provisions of Regulation No. 16/2014, considering as reference date the date when the draft terms of merger is prepared;

**(iv)** the situation of the gross technical reserves of the insurers prior to the completion of the merger and an estimate of the situation of the gross technical reserves of the resulting insurer, by categories and classes of insurance, considering as reference date the date when the draft terms of merger is prepared;

**(v)** the structure of the portfolios by categories and classes of insurance of the insurers prior to the merger, considering as reference date the date when the draft terms of merger is prepared;

**(vi)** the situation of the insurers' legal disputes by categories and classes of insurance prior to the completion of the merger, considering as reference date the date when the draft terms of merger is prepared;

**(vii)** the situations regarding the ceding in reinsurance of insurers, by classes and categories of insurance, prior to the completion of the merger, considering as reference date the date when the draft terms of merger is prepared;

**i)** the list of insurance intermediaries through which the insurers carry out insurance activities and the receivables/debts with the insurance

intermediaries, prior to the completion of the merger, including the description of the legal status of the contracts concluded with them;

**j)** proof of payment of the taxes referred to in Art. 11 Letter f);

**k)** the resulting insurer's shareholding structure and the members of its management, specifying the distribution of the shares and voting rights for the resulting insurer, the information regarding each significant shareholder and each person in the management; in order to be approved, they shall meet the requirements and submit the documents provided by law;

**l)** the application for withdrawal of the operation authorisation of the insurers that cease to exist as legal entities, further to the completion of the project;

**m)** the agreement and/or statement of the competent authority in the home Member State of the undertaking participating in the merger/division, in accordance with the provisions of Law No. 237/2015, where appropriate;

**n)** other information relevant for the assessment of the draft terms of merger;

**o)** if reinsurers result from the merger, they shall be authorised according to Chapter III of Law No. 237/2015.

## **ARTICLE 13**

### Division conditions and documentation

**(1)** ASF shall approve the division of insurers if they meet at least all of the conditions referred to in Art. 11, except for Letter e) point (i), and the condition of paying the division tax provided by Regulation No. 16/2014.

**(2)** In order for ASF to approve the division, the insurers shall submit to ASF the documentation referred to in Art. 12.

**(3)** The documents referred to in Art. 12 Letters d), g), h) point (iv) and Letter k) shall be submitted even if the division projects results in several insurers.

## **ARTICLE 14**

### ASF's assessment and decision

**(1)** Within 90 calendar days from receiving the request for approval of the intention to merge or be divided from insurers and of the documentation referred to in Arts. 12 and 13, as applicable, ASF shall analyse the documentation and shall issue the decision regarding its approval; if the request for approval is rejected, ASF shall issue, within the same term, a reasoned decision.

**(2)** In case of any changes to the initial project, ASF shall perform a new assessment thereof; if such changes are contrary to the legal provisions or to this rule, ASF shall revoke the decision to approve the merger or, as the case may be, the division and shall reject the request for authorisation for the newly resulted insurers.

**(3)** In case of a positive decision, ASF shall confirm the fact that the authorisation process was concluded and shall proceed, as the case may be:

**a)** to issue the operation authorisations for the newly established insurers;

**b)** to modify accordingly the authorisations of the insurers, in case of:

**(i)** merger by absorption;

**(ii)** division performed by dividing the entire patrimony or by transferring part of the patrimony to two or more authorised insurers.

**(4)** When issuing the authorisation of the merger or division, ASF shall also withdraw the authorisation of the insurers that cease their activity.

**(5)** The resulting insurers shall register the appropriate specifications in the trade registry, with regard to their registration based on the decision approving the merger or, respectively, the division, and shall comply with the applicable legislation.

**(6)** The insurers involved in the merger or division shall submit to ASF copies of the documents attesting to the completion of the merger or division operation, in accordance with the submitted draft, copies of the documents issued by the trade registry regarding the registration of the newly established insurers, the deregistration of the insurers that cease to exist and the other specifications, accompanied by the instruments of incorporation or, as the case may be, by the additional act to the instruments of incorporation, in authentic form.

**(7)** The decision to approve the merger or division shall be published by ASF in the Official Journal of Romania, Part I.

### **SECTION 3**

#### **Portfolio transfer among insurers**

### **ARTICLE 15**

#### **General provisions**

**(1)** The insurers shall request ASF to approve the transfer of insurance portfolio, performed based on an agreement, the general conditions of

insurance contracts remaining unchanged, whereby part of or the entire portfolio of insurance contracts is transferred to one or more insurers.

**(2)** The partial portfolio transfer may include an insurance class or at least one insured risk included in a class.

**(3)** The portfolio transfer includes the transfer of the rights and obligations deriving from the insurance contracts subscribed by the transferor insurer, and of the technical reserves related to the transferred portfolio, at the same time with the transfer of the assets admitted to cover such reserves.

**(4)** The agreement referred to in Para (1) shall also be signed by the members of the management of the insurers involved in the transfer; if the portfolio transfer also includes life-insurance contracts, the agreement shall also be verified and countersigned by the person holding the actuarial position.

**(5)** The agreement referred to in Para (1) includes clauses related to the termination of the transferor insurer's liability and the commencement of the transferee insurer.

**(6)** The request for approval of the portfolio transfer shall be submitted to ASF within maximum 90 calendar days from the reference date provided in the consent

## **ARTICLE 16**

### Approval conditions

**(1)** For the approval of the portfolio transfer, the transferee insurer shall meet the following conditions:

**a)** it is authorised to practice the risks, class or classes of insurance for which the portfolio transfer agreement was concluded;

**b)** it holds an available solvency margin at least equal to the minimum solvency margin calculated in accordance with the provisions of this rule, both before the portfolio takeover and after its takeover;

**c)** it has, after the portfolio takeover, gross technical reserves and sufficient assets admitted to cover the gross technical reserves, in accordance with the structure provided by the legislation in force;

**d)** it pays the portfolio transfer tax provided by Regulation No. 16/2014.

**(2)** The transferee insurers may take over the portfolio of an undertaking authorised in another Member State or of a branch authorised in a Member State of an undertaking from a third country, only if they request ASF to be supervised in accordance with the provisions of Part I of Law No. 237/2015.



## **ARTICLE 17**

### Documentation

**(1)** In order for ASF to approve the draft terms of portfolio transfer, the insurers shall submit to ASF the following documentation:

**a)** copies of the decisions of the general meetings of the transferor insurer's and transferee insurer's shareholders' regarding the portfolio transfer;

**b)** the draft agreement regarding the portfolio transfer concluded between the transferor insurer and the transferee insurer, including at least the following data and information:

**(i)** the identification data of the parties;

**(ii)** the persons in the management;

**(iii)** the transferable elements;

**(iv)** the period when the portfolio transfer is to be carried out, specifying the reference date and the project completion date;

**(v)** the rights and obligations of the parties resulting from the conclusion of this agreement;

**c)** the information provided in Annexe No. 2;

**d)** the structure of the portfolios by categories and classes of insurance of the transferee insurer and transferor insurer, reflecting the situation existing on the reference date;

**e)** the reports of the transferor insurer and of the transferee insurer, reflecting the situation existing at the end of the month prior to the submission of the documentation, regarding:

**(i)** the calculation of the available solvency margin, of the minimum solvency margin and of the security fund;

**(ii)** the assets admitted to cover the gross technical reserves;

**(iii)** gross technical reserves prior to the portfolio transfer;

**(iv)** the situation of the legal disputes, by categories and classes of insurance;

**f)** the reports of the transferee insurer, reflecting the situation after the portfolio transfer, regarding:

**(i)** the estimated calculation of the available solvency margin, minimum solvency margin and of the security fund;

**(ii)** the estimate of the assets admitted to cover the gross technical reserves;

**(iii)** the estimate of the gross technical reserves, by categories and classes of insurance;

**g)** the reports of the transferor insurer regarding:

**(i)** the assets admitted to cover the gross technical reserves related to the transferable insurance contracts, existing at the end of the month preceding the submission of the documentation;

**(ii)** the contribution to the Guarantee Fund in accordance with the legal provisions in force and the operation tax owed in accordance with the provisions of Regulation No. 16/2014;

**(iii)** the situation of the insurance contracts in force on the execution date of the portfolio transfer agreement;

**h)** the reports referred to in Letter e) points (i)-(iii), Letter f) and Letter g) point (i) are certified by the persons holding the actuarial position within the transferor insurer and the transferee insurer;

**i)** the strategy for the management of the insurance contracts taken over and related risk management strategy of the transferee insurer;

**j)** the list of insurance intermediaries through which the transferor insurer carries out insurance activity and the receivables/debts with the insurance intermediaries;

**k)** the proof of publication of the notification regarding the intention to transfer the portfolio, in accordance with the provisions of Art. 21 (5).

**(2)** The assets admitted to cover the transferable gross technical reserves of the transferor insurer shall be maintained until the actual takeover of the transferred portfolio.

**(3)** The reference date referred to in this article is established in accordance with the provisions of Law No. 31/1990.

## **ARTICLE 18**

### **ASF assessment and decision**

**(1)** Within 90 calendar days from receiving the draft portfolio transfer agreement, ASF shall analyse the documentation and shall issue the decision regarding:

**a)** the approval of the draft portfolio transfer agreement, specifying:

**(i)** the obligation to record separately the subscriptions related to the transferable portfolio performed after the date mentioned in the draft portfolio

transfer agreement and prior to the execution date of the reception report of the transferred portfolio;

**(ii)** other conditions for the performance of the transfer;

**b)** the reasoned rejection of the draft portfolio transfer agreement.

**(2)** In case of any changes to the initial project, ASF shall perform a new assessment thereof; if such changes are contrary to the legal provisions or to this rule, ASF shall revoke the decision to approve the portfolio transfer.

**(3)** The insurers shall submit to ASF the documents attesting to the performance of the portfolio transfer operation, in accordance with the draft portfolio transfer agreement, including the reception report of the transferred portfolio.

## **ARTICLE 19**

### Other transfers

The insurance contracts may also be transferred in accordance with the conditions referred to in Art. 11 by a Romanian legal person insurer to:

**a)** insurance undertakings whose registered headquarters is located on the territory of Member States;

**b)** branches of an insurance undertaking whose registered headquarters is located on the territory of Member States, and which carry out their activities based on the right of establishment;

**c)** insurance undertakings whose registered headquarters is located on the territory of Member States or branches thereof that provide insurance activities on the territory of Member States based on the freedom to provide services;

**d)** branches of insurance undertakings whose registered headquarters is located in third countries and established on the territory of Member States other than Romania.

## **ARTICLE 20**

### Waiver of activity

In order to protect the interests of the contractors, the insurers who cease their activity or the insurers carrying out composite activities which intend to cease their activity or one of the activities shall include in their notification of their intention to ASF proposals regarding the portfolio transfer, accompanied by the documentation related to the portfolio transfer.

## **ARTICLE 21**

### **Final provisions**

**(1)** The portfolio transfer is deemed concluded on the execution date of the reception report of the transferred portfolio, but not later than the date established in the portfolio transfer agreement.

**(2)** The reception report of the transferred portfolio referred to in Para (1) shall be submitted to ASF within 5 calendar days from its execution date by the parties involved in the transfer and shall include at least the following:

**a)** the situation of the transferred portfolio, in the form referred to in Annexe No. 2;

**b)** the situation of the gross technical reserves related to the transferred portfolio;

**c)** the situation of the assets admitted to cover the gross technical reserves related to the transferred portfolio;

**d)** other rights and obligations deriving from the portfolio transfer.

**(3)** The transferor insurer and the transferee insurer shall fill in the special registry of assets with the corresponding amendments resulting from the portfolio transfer.

**(4)** The portfolio transfer is only valid if it has the prior approval of ASF.

**(5)** The notice regarding the intention to transfer the portfolio shall be published on the transferor insurer's own website and in 3 Romanian wide circulation newspapers.

**(6)** After the approval of the portfolio transfer, if the commitment Member State or the Member State where the risk related to the transferred insurance contracts is Romania, the transferee insurer shall submit to the contractors and beneficiaries of the insurance contracts information regarding the transfer, name and address.

**(7)** The contractors notified according to the provisions of Para (6) are entitled to terminate the contracts and to request the restitution of the amounts paid in advance and related to the unexpired validity period.

**(8)** The decision to approve the portfolio transfer shall be published by ASF in the Official Journal of Romania, Part I, and becomes binding upon third parties after such date.

## **CHAPTER IV**

### Prudency indicators in the insurance activity

#### **SECTION 1**

##### General provisions

#### **ARTICLE 22**

##### General provisions

**(1)** The insurers shall maintain, on a permanent basis, the following:

**a)** sufficient technical reserves to allow them to honour all of the obligations assumed by the non-life and life insurance contracts concluded;

**b)** assets admitted to cover the gross technical reserves, in accordance with the provisions of this rule;

**c)** the security fund, in accordance with the provisions of Art. 37;

**d)** available solvency margin corresponding to the activity carried out;

**e)** the liquidity ratio at least at the minimum level provided by this rule.

**(2)** The composite insurers shall ensure the separate administration of the life and non-life insurance activities in accordance with the provisions of Law No. 237/2015, to ensure the fact that the minimum financial obligations, particularly the solvency margins for each of the two activities are observed independently without transferring assets from one activity to the other.

#### **SECTION 2**

##### Gross technical reserves and the assets admitted to cover them

#### **ARTICLE 23**

##### General provisions

**(1)** The gross technical reserves referred to in Art. 22 (1) Letter a) shall be established and calculated in accordance with ASF's regulations regarding the technical reserves established for the insurance activity, the calculation thereof for the purpose of preparing the annual financial statements and the special registry of the assets covering them.

**(2)** The total value of the assets admitted, valued in accordance with the legal provisions in force must be, at all times, at least equal to the value of the gross technical reserves both for the non-life and for the life insurance activity.

**(3)** The assets admitted to cover the gross technical reserves must be located in Romania.

**(4)** The assets admitted to cover the gross technical reserves cannot be encumbered by liens and cannot be subject to any type of guarantee in favour of third parties.

**(5)** The following are not accepted to cover the gross technical reserves:

**a)** the investments in credit institutions or investment companies;

**b)** the part of the technical reserves related to the contracts ceded in reinsurance with insurers/reinsurers which:

**(i)** no longer carry out current operations in connection with their object of activity;

**(ii)** ceased any type of activity;

**(iii)** did not comply with their obligations to third parties.

**(6)** When investing the assets admitted to cover the gross technical reserves, the insurers shall take into consideration the type of activity carried out so as to ensure the profitability, safety and marketability of the investments, in compliance with the diversification and congruence rules provided by this rule.

**(7)** If by complying with the provisions of Art. 22 (2) there are assets still available in one of the two activities, recorded separately, they may be used for the other activity only subject to ASF's prior approval.

**(8)** The assets related to the life insurance fund guarantees the security of the beneficiaries who concluded life insurance contracts and are used only in respect of the obligations related to the life insurance fund.

**(9)** The insurers may exchange, at a reasonable market price, some assets belonging to the life insurance fund with other assets belonging to it and may use the assets related to the life insurance fund for other purposes than those referred to in Para (1), if they provide documents to ASF attesting to the fact that the value of the used assets exceeds the total value of the obligations related to the life insurance fund.

## ARTICLE 24

### Categories of admitted assets

**(1)** The insurers shall cover the gross technical reserves only with the following categories of assets:

**a)** investments:

**(i)** government securities and treasury notes;

**(ii)** securities issued by local public administration authorities;

**(iii)** bonds and other money and capital market instruments, similar therewith, traded on a supervised market;

**(iv)** shares and other variable yield securities, similar therewith, traded on a supervised market;

**(v)** units in undertakings for collective investment in securities and other investment funds;

**(vi)** deposits and current accounts with credit institutions;

**(vii)** land and buildings owned by the insurers, except for agricultural land and land located outside the built-up area of localities;

**b)** receivables:

**(i)** receivables with contractors and intermediaries resulting from direct insurance operations and acceptances in reinsurance;

**(ii)** The part of the technical reserves related to contracts ceded in reinsurance, except for the contracts ceded to captive insurers and reinsurers and which do not have a rating granted by at least one of the rating agencies registered or certified according to Regulation (EC) No. 1.060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

**(iii)** interest receivable related to the assets admitted to cover the gross technical reserves;

**c)** other assets:

**(i)** acquisition costs carried forward;

**(ii)** available cash.

**(2)** By way of exception from the provisions of Para (1) Letter c) point (i), to cover the gross technical reserves established for the non-life insurance activity, the insurers shall only consider the expenses directly attributable to the conclusion of insurance contracts, included in the acquisition costs carried forward.

**(3)** For the assets referred to in Para (1) Letter c) to be considered as assets admitted to cover the technical reserves, the insurers shall keep separate technical and accounting records, allowing for them to be permanently verified by ASF; if the records do not allow such verification or if the amounts resulting from the verifications are different from those reported by insurers, those assets shall be excluded from the category of assets admitted to cover the gross technical reserves, and ASF shall notify the insurers with regard to such exclusion.

**(4)** The buildings admitted to cover gross technical reserves are insured against all risks to which they are exposed, at least at the level of the value considered for covering the gross technical reserves, based on a separate insurance concluded with another insurer, or are self-insured, provided that the risk is ceded in reinsurance in a proportion of at least 70%; if the risks related to the self-insurance of a building are ceded in reinsurance with insurers/reinsurers that do not have a rating granted by at least one of the rating agencies registered or certified according to Regulation (EC) No. 1.060/2009, the maximum value accepted as admitted asset for such building is 40% of its market value.

**(5)** The insurers shall submit to ASF the document attesting to their ownership right over the assets referred to in Para (1) Letter a) point (vii) the first time they are reported as admitted assets and together with the financial statements related to the concluded financial year; upon each report made during the year, the insurers shall declare on their own liability whether or not any changes occurred with regard to the status of the ownership.

**(6)** The insurers provide evidence of establishing the market value of the land and buildings reported as assets covering the technical reserves, provided in Art. 25 (1) Letter f), by submitting to ASF a valuation report prepared in accordance with the CISE international valuation standards, issued no later than 3 months prior to submitting the report; it shall accompany the periodical report in which the insurers first report such land/buildings as assets covering the technical reserves.

**(7)** The insurers shall submit to ASF valuation reports at least once per year or whenever there are significant changes in the market value of the land and buildings reported as admitted assets.

## **ARTICLE 25**

### **Valuation rules**

**(1)** When evaluating the assets admitted to cover the gross technical reserves, the insurers shall comply with the following rules:



**a)** the admitted assets are evaluated on a prudential basis and are subject to value adjustments, so as to be evaluated at the lowest value attributable to them at the reference date;

**b)** the considered value of the assets referred to in Art. 24 (1) Letter a) points (i) to (v) is the minimum value between the value registered in the accounting records and the market value;

**c)** the assets referred to in Art. 24 (1) Letter c) point i) are accepted up to the level of the gross premium reserves and only provided that they are not older than 30 calendar days from the due date provided in the contract; the 30-day term shall be calculated as of the first due date provided in the contract;

**d)** the acquisition costs carried forward are accepted to cover the gross technical reserves only if the calculation method used for them is in accordance with the calculation method used for the premium reserves, for the non-life insurance activity, or, respectively, for the mathematical reserves for the life insurance activity;

**e)** land and buildings are accepted to cover the gross technical reserves at the market value, determined in accordance with the International valuation standards in force prepared by CISE, and only provided that the insurers provide proof of ownership thereof and they are free of encumbrances; the market value is the price for which a land or a building would be traded between two parties in full awareness of the situation, assuming that the land or building may be traded on an active market in normal conditions and that the term available for the negotiation of the transaction is normal, considering the nature of such asset;

**f)** to determine the part of the outstanding claims reserve not reported related to the contracts ceded in reinsurance, admitted to cover the gross technical reserves, the relationship provided in Annexe No. 5 shall be used for each class of insurance.

**(2)** The extensions of the initial due date referred to in Para (1) Letter d) shall not be considered in determining the age of the abovementioned receivables; to efficiently recover the receivable representing insurance/reinsurance premiums, the insurers shall implement measures so that the insurance premiums collected by the insurance intermediaries are deposited in the insurers' accounts or with the insurers' cashiers within maximum 15 calendar days from their collection date, except for the premiums collected by subordinated insurance agents, for which the maximum period is 30 calendar days.

## ARTICLE 26

### Rules for the diversification of the admitted assets

**(1)** The insurers may invest maximum:

**a)** 50% of the gross technical reserves in shares, bonds and other capital market instruments traded on a regulated and supervised market, as well as units with undertakings for collective investments in transferable securities and other investment funds in compliance with the provisions of Letter b);

**b)** 5% of the gross technical reserves in shares and other negotiable securities treated as shares, bonds, debt securities and other money or capital market instruments, as well as units with undertakings for collective investments in transferable securities and other investment funds issued by the same entity;

**c)** 20% of the gross technical reserves in land and buildings, in compliance with the provisions of Letter d) and of Art. 24 (4);

**d)** 10% of the gross technical reserves in one land or building or in a number of plots of land or buildings sufficiently closely located so as to be considered a single investment;

**e)** 90% of the gross technical reserves in deposits and available funds with credit institutions, but not more than 20% of the gross technical reserves in a single credit institution;

**f)** 3% of the gross technical reserves in cash;

**g)** 5% of the part of the technical reserves related to the contracts ceded in reinsurance to insurers/reinsurers that do not have a rating granted by at least one of the rating agencies registered or certified according to Regulation (EC) No. 1.060/2009.

**(2)** In the case of the categories of assets admitted to cover the gross technical reserves, other than those referred to in Para (1), for which no maximum limits were provided, when investing them, the insurers shall comply with the following rules:

**a)** the assets covering the gross technical reserves must be diversified so that there is no excessive use of a certain category of assets, of an investment market or of an investment;

**b)** the investments in certain types of assets posing a high risk either due to the nature of the asset or due to the status of the issuer must be limited to a prudential level;

**c)** the limits of certain categories of assets must have regard to the treatment of reinsurances in the calculation of the technical reserves;

**d)** if the assets held represent an investment in a subsidiary that manages in full or in part the insurers' investments in their name, when applying the provisions of Art. 23 (6), Art. 24-26 hereof and those regarding the categories of gross technical reserves for the insurers pursuing life insurance business provided by the ASF regulations, they shall take into account the subsidiary's assets, the treatment of the assets of other subsidiaries of the insurers being similar.

## **ARTICLE 27**

Provisions specific to life insurance and the annuities related to investments funds

The provisions of Art. 23 (6) shall not apply to the assets admitted to cover the gross technical reserves related to the insurance contracts providing benefits related to:

**a)** the value of the units in an undertaking for collective investment in transferable securities or the value of the assets included in an internal fund held by the insurers pursuing life insurance business, usually divided into units; or

**b)** an index of the shares or another reference value, other than those referred to in Letter a).

## **ARTICLE 28**

Matching rules

**(1)** The insurers shall comply with the principle of matching assets, which refers to the coverage of the obligations subscribed in a certain currency with assets expressed or realisable in the same currency.

**(2)** The insurers' obligations are deemed to be paid in the currency in which the commitments in the contract were expressed.

**(3)** If the insurers' obligations provided in the contract are not expressed in a certain currency, the insurers' commitments are deemed to be payable in RON.

**(4)** By way of exception from Para (3), the insurers may opt for the currency in which the premiums are collected if there is an adequate framework for adopting such a solution; this is possible if, starting from the entry into force of the contract, it is likely that a claim is paid in the currency in which the premium is collected, and not in RON.

**(5)** if the insurers reported a claim that may be paid in a currency other than that resulting from the implementation of the procedures mentioned in this article, the insurers' commitments shall be paid in that currency and, particularly, in the currency established by the court of law or by a settlement concluded between the insurer and the contractor.

**(6)** If a claim is requested which is expressed in a currency known in advance by the insurers but which is different from the currency resulting from the implementation of the procedures mentioned in this article, the insurers' commitments may be paid in that currency.

**(7)** The insurers may chose not to cover the technical reserves with matching assets if the implementation of the procedures provided by this article results in their obligation to keep the assets in a currency not exceeding 7% of the assets expressed in other currency, in order to comply with the principle of matching assets.

**(8)** If the commitments may be paid in a currency of a third country, if the investments in such currency are regulated, if the currency is subject to transfer restrictions or if, for similar reasons, the currency is not appropriate to cover technical reserves, the insurers do not have the obligation to comply with the principle of matching assets.

**(9)** The insurers may hold assets that are not matching to cover an amount not exceeding 20% of their obligations in a certain currency.

## **ARTICLE 29**

Prudential measures regarding the establishment of gross technical reserves  
and the coverage thereof with admitted assets

ASF may take all measures deemed necessary to protect the interests of the contractors.

## **SECTION 3**

Solvency and security fund

## **ARTICLE 30**

General provisions

**(1)** The insurers hold an available solvency margin at least equal to the minimum solvency margin calculated in accordance with the provisions of these rules both for the non-life and for the life insurance activity.

**(2)** The insurers shall determine the minimum solvency margin depending on the classes of insurance practiced, in accordance with the provisions of this section.

**(3)** Composite insurers shall determine the available solvency margin in compliance with the provisions of Law No. 237/2015 on the separate management of the activities and of Art. 22 (2).

## **ARTICLE 31**

### **Available solvency margin**

**(1)** The available solvency margin corresponds to all of the asset items free of any encumbrances, except for intangible assets.

**(2)** To determine the available solvency margin, the following elements shall be included in its calculation:

**a)** the subscribed and paid-in share capital or, as the case may be, if the undertaking is a mutual undertaking, the free paid-in reserve fund plus all of the accounts of its members that meet the following criteria:

**(i)** the statute provides that payments may be made from these accounts to the members only if the payments do not result in the reduction of the available solvency margin below the minimum level or, in case of dissolution of the undertaking, if all of the other debts were paid;

**(ii)** the statute provides that for any payments referred to in point (i), made for any purpose other than the individual withdrawal from the mutual undertaking, ASF must be informed at least one month prior to making the payment, so that it may prohibit, if appropriate, the payment operation within such period;

**b)** all of the insurers' reserves, other than the technical reserves, namely capital premium reserves, revaluation reserves, legal reserves, statutory reserves, conversion reserves, other reserves;

**c)** the net profit resulting after the deduction of the dividends to be paid or, as appropriate, the loss registered by the insurer;

**d)** the profit or loss carried forward.

**(3)** The available solvency margin shall be reduced by the following elements:

**a)** the own shares held directly by the insurer;

**b)** the participations held by the insurers in the following entities:

**(i)** companies and financial companies, defined according to Art. 1 (2) point 56 and 59 of Law No. 237/2015;

**(ii)** non-banking financial institutions, defined according to the provisions of Law No. 93/2009 on non-banking financial institutions, as subsequently amended and supplemented;

**(iii)** foreign legal persons carrying out activities similar to those of the companies referred to in points (i) and (ii);

**c)** each of the following elements that the insurers hold by reference to the entities referred to in Letter b) in which they hold shares:

**(i)** the types of instruments referred to in Para (3);

**(ii)** the types of receivables and subordinated instruments, referred to in Art. 62 Letter a) and d), Art. 63 and 64 of Regulation No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012;

**d)** intangible assets.

**(4)** The following elements may also be included in the calculation of the available solvency margin, where appropriate:

**a)** cumulated preferred shares and/or subordinated debts in proportion of up to 50% of the lowest value obtained by comparing the available solvency margin and the minimum solvency margin. From these, maximum 25% must be established from fixed-term subordinated debts and/or fixed-term cumulated preferred shares. There must be agreements based on which, in case of bankruptcy or winding-up of the insurers, the payment obligations generated by the borrowed subordinated capital and/or the cumulated preferred shares shall be honoured after the obligations before all other creditors or any other payment obligations existing at such time were paid. Subordinated debts must meet the following conditions:

**(i)** the amounts related to the subordinated debts are fully paid-in;

**(ii)** for the fixed-term loans, the initial due date shall be at least 5 years. At least one year before the due date, the insurers shall submit for ASF's approval a plan revealing how the available solvency margin shall be maintained or raised over the level of the minimum margin on the due date, unless the value of the loan included in the available solvency margin was gradually reduced during the 5 years preceding the due date. The early repayment of such amounts may be approved if the insurers requested this to ASF provided that the available solvency margin does not fall below the minimum level;

**(iii)** the loans whose due date is not fixed must be repaid only subject to a prior notice of at least 5 years, unless such loans are no longer considered a component of the available solvency margin or when, as appropriate, the prior consent of ASF for the early repayment was obtained. In this latter case, the insurers must inform ASF at least 6 months prior to the date established for the repayment, indicating the value of the available solvency margin and the value of the minimum solvency margin both before and after such repayment. ASF may approve the repayment only if the value of the available solvency margin of the insurers does not fall below the value of the minimum solvency margin;

**(iv)** the loan contract may not include any clause providing that, in certain circumstances, other than the winding-up of the insurer, the loan may be repaid prior to the agreed due date;

**(v)** the loan contract may only be amended subject to ASF's prior consent;

**b)** fixed-term securities and other securities, including cumulated preferred shares, other than those referred to in Letter a), up to a level that cannot exceed 50% of the lowest value obtained by comparing the available solvency margin and the minimum solvency margin, if the following conditions are met:

**(i)** the securities may only be repaid subject to ASF's prior consent;

**(ii)** the issue contract allows the insurers to postpone the payment of the interest related to the loan;

**(iii)** the creditor's receivables to the insurer have a lower rank as compared to the receivables of all unsubordinated creditors;

**(iv)** the documents based on which the securities were issued must provide the undertakings' capacity to cover the debt and the related interest, so as to allow the insurers to continue their activity;

**(v)** only the amounts fully paid-in shall be considered.

**(5)** At the insurers' request, ASF may approve, based on supporting documents, the inclusion in the calculation of the available solvency margin of the following elements as well, as appropriate:

**a)** half of the share capital not paid-in or, as appropriate, of the free reserve fund not paid-in, when the paid-in share capital or the paid-in free reserve fund is less than 25% of the share capital or of the free reserve fund, up to a level that does not exceed 50% of the lowest value obtained by comparing the available solvency margin and the minimum solvency margin;

**b)** in the case of mutual insurance undertakings or mutual undertakings with variable contributions, any receivable that the undertaking may have against its members by requesting additional contributions, in one financial year, but

not more than 50% of the difference between the maximum contributions and the total payable contributions, and up to 50% of the lowest value obtained by comparing the available solvency margin and the minimum solvency margin;

**c)** any hidden net reserves from the revaluation of the assets, unless such reserves are not exceptional.

**(6)** In addition to the provisions of Para (5), the insurers may request ASF, based on supporting documents, its approval to include in the solvency margin related to the life insurance the amount representing the difference between the mathematical reserve unreduced or partially reduced by the Zillmer procedure and the mathematical reserve reduced by this procedure with the percentage related to the acquisition costs included in the premium, if the procedure is not used or when, if used, the percentage used for the reduction of the mathematical reserve is lower than that related to the acquisition costs included in the premium; the difference shall be reduced by the amount of all acquisition costs carried forward registered as assets.

## **ARTICLE 32**

### **Minimum solvency margin for the non-life insurance activity**

**(1)** The minimum solvency margin for the non-life insurance activity is determined using two methods:

**a)** the premium method, by reference to the value of the gross premiums written over the last 12 calendar months prior to the reference date or to the value of the contributions from the last 12 calendar months prior to the report date;

**b)** the claim method, by reference to the annual average of the gross claims paid over the last 36 calendar month prior to such reference date; if an insurer takes over in insurance one or more of the risks of storm, hail or freezing, the reference period for the calculation of the annual average of the gross claims paid shall correspond to the last 84 calendar months prior to the reference date.

**(2)** The minimum solvency margin is equal to the highest of the values obtained by applying the methods referred to in Para (1).

**(3)** If the minimum solvency margin calculated according to the provisions of Para (2) is lower than the minimum solvency margin reported at the end of the previous financial year, then the minimum solvency margin at the report date must be at least equal to that reported at the end of the previous financial year, multiplied by the ratio between the value of the net outstanding claim reserves reported and not reported registered at the end of the reporting



period and the value of the net outstanding claim reserves reported and not reported at the beginning of the current financial year, ratio which cannot be higher than 1.

### **ARTICLE 33**

Determining the minimum solvency margin for the non-life insurance activity using the premium method

**(1)** In order to determine the minimum solvency margin using the method referred to in Art. 32 (1) Letter a) the value considered shall be the highest value obtained in the last 12 calendar months prior to the reporting date, between:

- a)** the total amount of the gross written premiums or of the contributions;
- b)** the amount of the gross premiums earned or of the contributions.

**(2)** The amount of the gross written premiums or of the contributions from direct insurance shall be increased by the total gross written premiums related to the acceptances in reinsurance over the last 12 calendar months prior to the report date, and the result shall be decreased by the total amount of the cancelled gross written premiums or of the cancelled contributions corresponding to the same period, as well as by the total amount of the taxes and duties related to the premiums and contributions of the reference period.

**(3)** The amount obtained according to Para (2) shall be multiplied by the maximum between 50% and the value obtained as ratio between the net value of claims over the last 3 financial years and the gross value of the claims of the last 3 financial years.

**(4)** The amount of the claims referred to in Para (3) represents the amount of the claims paid over the last 3 financial years plus the variation in the outstanding claim reserve reported and not reported calculated for the last 3 financial years.

**(5)** As regards the calculation of the net claims, at the insurers' request, ASF may approve, based on supporting documents, the deduction as cession in reinsurance of the amounts recoverable from insurance special purpose vehicles.

## ARTICLE 34

Determining the minimum solvency margin for the non-life insurance using the claim method

**(1)** To determine the minimum solvency margin using the method referred to in Art. 32 (1) Letter b), the amount of the gross claims paid in the periods referred to in Art. 32 (1) Letter b), related to the direct insurance activity shall be added to the amount of the gross claims paid during the same period related to acceptances in reinsurance, as well as with the amount of the gross outstanding claim reserves reported and not reported established at the end of the reporting period both for direct insurance and for acceptances in reinsurance.

**(2)** This amount is decreased by the amount of the claims recovered from third parties by subrogating in the rights of the contractors for the same reporting period and the value of the gross outstanding claim reserve reported and not reported established at the beginning of the 35<sup>th</sup> calendar month prior to the reporting month both for direct insurance and for acceptances in reinsurance.

**(3)** If the reference period referred to in Art. 32 (1) Letter b) is 84 calendar months, the amount shall be decreased by the amount of the gross outstanding claim reserve reported and not reported established at the beginning of the eighty-third calendar month prior to the reporting month.

**(4)** In accordance with the reference period referred to in Art. 32 (1) Letter b), a percentage of 26% shall be applied to a third of the amount obtained in the case of the 36-month reference period or to a seventh of the amount obtained in case of the 84-month reference period, as applicable, for the amounts whose amount is lower than the equivalent of EUR 42.9 million and, respectively, a percentage of 23% for the amounts representing excesses over the equivalent of EUR 42.9 million, and the results thus obtained shall be added.

**(5)** Art. 33 (3) - (5) shall apply accordingly.

**(6)** The percentages referred to in Para (4) shall be each reduced to a third in the case of health insurance practiced on a technical basis similar to that for the death insurance, if:

**a)** the premiums paid are calculated based on the illness tables according to the mathematical method used in insurance;

**b)** an ageing reserve is calculated;

**c)** an additional premium is charged in order to establish a prudential margin;

**d)** the insurer may cancel the contract no later than the end of the third year of insurance;

**e)** the contract provides the possibility to increase or decrease payments, even in case of contracts in force.

## **ARTICLE 35**

### Minimum solvency margin for the life insurance activity

**(1)** The minimum solvency margin shall be determined depending on the type of life insurance practices and is equal to the sum of the amounts presented in Paras (2) to (5).

**(2)** For the types of life insurance referred to in Art. 2 (6) point (i) and (ii) of Law No. 237/2015, other than the insurance related to investment funds, the minimum solvency margin shall be equal to the sum of:

**a)** 4% of the gross mathematical reserves regarding direct insurance and acceptances in reinsurance multiplied by the ratio, calculated at the end of the last financial year, between the mathematical reserves after deducting the cessions in reinsurance and the gross mathematical reserves; and

**b)** 0.3% of the gross amount at risk multiplied by the ratio, calculated at the end of the last financial year, between the amount at risk withheld as obligation of the insurers after the cessions in reinsurance and the gross amount at risk.

**(3)** The ratio referred to in Para (2) Letter a) shall be at least 85%.

**(4)** The ratio referred to in Para (2) Letter b) shall be at least 50%, and the calculation shall only refer to the policies for which the amount at risk is positive.

**(5)** At the insurers' request, ASF may approve, based on supporting documents, the deduction as cessions in reinsurance, of the amounts recoverable from insurance special purpose vehicles, both for the calculation referred to in Para (2) Letter a), and for that referred to in Para (2) Letter b).

**(6)** When calculating the death insurance, by way of exception from the provisions of Para (2) Letter b), the 0.3% percentage shall be replaced by:

**a)** 0.1%, if it is concluded for a term of maximum 3 years;

**b)** 0.15% if it is concluded for a term comprised between 3 and 5 years.

**(7)** For the additional life insurances subscribed in addition to the life insurance, referred to in Art. 2 (6) Letter a) point (iii) of Law No. 237/2015, the minimum solvency margin shall be calculated in accordance with the provisions of Art. 32.

**(8)** For the types of insurance in class C3, provided in Section C of Annexe No. 1 to Law No. 237/2015, the minimum solvency margin is equal to the sum of the amounts provided in Letters a), b), c) and d):

**a)** 4% of the technical reserves, calculated in accordance with Paras (2) Letter a), (3) and (5), if the insurers assume the investment risk;

**b)** 1% of the technical reserves, calculated in accordance with Paras (2) Letter a), (3) and (5), if the insurers do not assume the investment risk, but the allowance for covering the administration expenses is established for a period of more than 5 years;

**c)** 25% of the net administration expenses related to such activity carried out in the last financial year, if the insurers do not assume the investment risk, but the allowance for covering the administration expenses is not established for a period of more than 5 years;

**d)** 0.3% of the amount at risk, calculated in accordance with Paras (2) Letter b), (4), (5) and (6) if the insurers cover the risk of death.

**(9)** The insurers authorised to practice life insurance, which are authorised to practice classes A1 and A2 referred to in Annexe No. 1 to Law No. 237/2015, shall calculate the minimum solvency margin for these classes in accordance with the provisions of Art. 32(1).

## **ARTICLE 36**

Measures imposed by ASF in case of decrease of the minimum solvency margin based on reinsurance

**(1)** ASF may reduce the decrease, based on reinsurance, of the minimum solvency margin determined in accordance with the provisions of Art. 32 or 35, as applicable, if:

**a)** the contents or the quality of the reinsurance contracts has significantly changed starting from the last financial year;

**b)** the reinsurance contracts do not provide any risk transfer;

**c)** the reinsurance contracts provide an insignificant risk transfer.

**(2)** A risk transfer is considered insignificant if the expected value of the net losses of the reinsurers related to such reinsurance contract, updated to the current value, is less than 1% of the amount of reinsurance premiums updated to the current value.

**(3)** The insurers have the following obligations:

**a)** to perform calculation regarding the risk transfer performed through a reinsurance contract and, if such risk is insignificant, to submit such reinsurance contract and the calculations performed to ASF;

**b)** to submit to ASF the reinsurance contracts that do not provide any risk transfer.

**(4)** The insurers shall submit to ASF the documents referred to in Para (3) at the same time with the reporting forms regarding the available solvency margin, the minimum solvency margin and the security fund, referred to in Art. 38 and/or at ASF's request.

## **ARTICLE 37**

### **Security fund**

**(1)** A third of the minimum solvency margin, referred to in Art. 32, and in Art. 35, represents the security fund.

**(2)** This fund consists of the elements referred to in Art. 31(2) - (4) and, with ASF's prior consent, in Art. 31 (5) Letter c).

**(3)** The minimum value of the security fund is the RON equivalent of EUR 2.5 million for non-life insurance, and EUR 3.7 million for life insurance.

## **ARTICLE 38**

### **Measures imposed by ASF in case of failure to meet the solvency requirements**

**(1)** In accordance with the provisions of Law No. 503/2004 on the financial recovery, bankruptcy, dissolution and voluntary winding-up in the insurance activity, republished, as subsequently amended and supplemented, at ASF's, request, the insurers shall determine and submit to ASF, within 48 hours from the request, the financial situation and the minimum solvency margin; the information requested shall be submitted together with a statement of the legal representative of the insurers, given on his/her own liability, subject to the sanctions provided by the Criminal Code for the crimes of fraud and false statements, attesting to the fact that the data communicated are correct and true.

**(2)** If the available solvency margin falls below the value of the security fund, the insurers' management shall immediately call the extraordinary general meeting to increase the share capital of the undertaking.

**(3)** Within 5 calendar days from the publication in the Official Journal of Romania of the call to the extraordinary general meeting of shareholders, the insurers shall notify to ASF:

**a)** the proof of the call to the extraordinary general meeting of shareholders and the proposed decision to increase the share capital;

**b)** the detailed analysis of the factors that led to the decrease of the available solvency margin below the value of the security fund;

**c)** the detailed measures plan that the insurers are considering to avoid the decrease of the available solvency margin below the value of the security fund, for a period of at least one year.

**(4)** The operation of increasing of the share capital, including the payment of the subscribed share capital may not exceed 60 calendar days from the date the extraordinary general meeting of shareholders is called.

**(5)** If one of the two solvency margins is insufficient, FSA shall apply, for the activity where the deficiencies are registered, specific recovery measures in accordance with the provisions of the law and of this rule.

**(6)** The transfer between the two activities, in case of a situation such as that referred to in Para (5), shall be made only in exceptional cases and only subject to the conditions established and previously approved by ASF.

## **SECTION 4**

### Liquidity ratio

## **ARTICLE 39**

### General provisions

**(1)** The liquidity ratio referred to in Art. 22 (1) Letter e) is the ratio between the liquid assets and the short term liabilities of the insurers before the contractors.

**(2)** Composite insurers shall determine the liquidity ratio separately for the non-life insurance activity and for the life insurance activity, in compliance with the provisions of Art. 174 (2) of Law No. 237/2015.

**(3)** The insurers shall permanently maintain a liquidity ratio of at least 1, both for the non-life insurance activity, and for the life insurance activity.

**(4)** The insurers shall inform ASF, at any time, of the decrease of the liquidity ratio below the limit referred to in Para (3), presenting at the same time the reasons that led to this situation; within 7 calendar days from the date

of this communication, the insurers' management shall submit to ASF a short term measures plan in order to fulfil the obligation referred to in Para (3).

## **ARTICLE 40**

### Liquid assets

**(1)** The liquid assets referred to in Art. 39 (1) are:

**a)** government securities and bonds issued by the local public administration authorities;

**b)** bank deposits;

**c)** the funds available in the current accounts and in hand;

**d)** the securities traded on regulated and supervised markets, in the following conditions:

**(i)** within the limit of 5% of the total securities issued by the same entity;

**(ii)** in the calculation of the liquid assets, the bonds shall be weighted by a factor of 0.75;

**(iii)** in the calculation of liquid assets, the shares shall be weighted by a factor of 0.50;

**e)** the units with undertakings for collective investment in transferable securities (UCITS) and other investment funds, weighted by a factor of 0.90, within the limit of maximum 20% of the net asset for each fund.

**(2)** The assets referred to in Para (1) Letters d) and e) shall be taken into account within the limit of 50% of the total liquid assets.

**(3)** In the calculation of the liquidity ratio, the assets referred to in Para (1) shall be evaluated at market value.

**(4)** The assets encumbered by charges shall not be considered in the calculation of the liquidity ratio.

## **ARTICLE 41**

### Short term liabilities

**(1)** The insurers short term liabilities towards the policyholders referred to in Art. 39 (1) are represented by the net outstanding claim reserve plus 50% of the part of the gross outstanding claim reserve ceded to the reinsurers.

**(2)** In addition to the provisions of Para (1), for the life insurance activity the short term liabilities also include the following:

- a)** 0.5% of the insured amounts, in case of death insurance;
- b)** the higher between 0.5% of the insured amounts and 10% of the repurchase amounts, in case of insurance covering the risk of death and for which a repurchase value is guaranteed;
- c)** 10% of the repurchase values, in case of insurance that does not cover the risk of death and for which a repurchase value is guaranteed.

## **CHAPTER V**

### Reports

## **ARTICLE 42**

### The annual public report

**(1)** The insurers shall issue an annual report containing information regarding the activity carried out during a financial year; such report, hereinafter referred to as public report, shall be published in a national newspaper and on the insurers' website, available for download, within 90 calendar days from the submission of the annual financial statements with ASF.

**(2)** For the purpose of this article, the information included in the public report are deemed significant if omitting them or presenting them erroneously may influence the decision making process or the judgment of the report users, including of ASF.

**(3)** The public report includes a clear and concise summary, according to Annexe No. 40, that is easily understandable by the contractors and beneficiaries; the summary of the report includes all significant changes to the activity or performance of the insurers' results and to the governance system, made during the reporting period.

**(4)** The public report shall be approved by the members of the management and shall include at least the following information:

- a)** the name and legal status of the insurer;
- b)** the registration number with the Registry of insurers and reinsurers and the LEI code;
- c)** the address of the registered headquarters of the insurer;
- d)** the shareholding structure and the governance system, including the abridged directors' report;



**e)** the categories and classes of insurance practiced and the significant geographical areas where they carry out their activity;

**f)** the activity carried out and the performance registered;

**g)** general information regarding the insurance products and the deductions provided by the fiscal legislation applicable to insurance contracts;

**h)** the distribution network and channels of the practiced insurance products;

**i)** the settlement representatives, the support network and the annual statements adjusted in accordance with the accounting balance sheet, if the insurers practice insurance class A18, in accordance with the particularities referred to in Art. 4 (2) and (3) of Law No. 237/2015;

**j)** the names and contact details of the external financial auditor and the abridged report thereof;

**k)** general information regarding the assets, liabilities, income and expenses, the insurance portfolio, the number of contracts related to the reinsurance activity, indemnities owed and paid, the level of the insurer's exposure to the risk of natural catastrophe, the reinsurance programme and a comparison of this information with that communicated during the previous reporting period;

**l)** the investments made and their profitability and, for the life insurance category, they shall be presented for each class of insurance practiced, specifying detailed information regarding the country where the issuer, the stock exchange market where the securities are traded are located and/or the market value and other information;

**m)** the abridged form of the annual financial statements and the value of the available and minimum solvency margins;

**n)** the law applicable to the insurance contract;

**o)** the significant activities or event that occurred during the reporting period and had a significant impact on the insurer;

**p)** the quality and quantity information regarding the subscription performance, the subscription yield, aggregately and separately for each class of insurance and each significant geographical area where the activity is carried out during the previous reporting period, as revealed by the insurers' financial statements;

**q)** development strategies and perspectives of the insurer's activity.

**(5)** The information referred to in Para (4) Letter d) regarding the governance system includes the information referred to in Art. 294 Paras 1 to 3 and 5 to 10 of Commission Delegated Regulation (EU) 2015/35 of 10

October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), hereinafter referred to as the Delegated Regulation.

**(6)** The information referred to in Para (4) Letter k) also includes a comparison of the information with that communicated during the previous reporting period and:

**a)** income and expenses resulting from investments, broken down by classes of assets and, when necessary for properly understanding the income and expenses, into components of that income and expenses;

**b)** any gains and losses registered recognised directly under equity;

**c)** any investments in securitisation.

**(7)** The report includes quantity and quality information in the form of explanatory notes supplemented, if required, by quantity forms.

**(8)** ASF shall allow insurers not to publish certain information, other than those referred to in Para (3) Letter m), when:

**a)** the publication of such information breaches the competition principle;

**b)** there are certain obligations towards the contractors or certain relationships with the counterparties compelling them to keep the information confidential.

**(9)** FSA shall allow the insurers to refer to information already published according to other legal provisions, so long as they are equivalent, in nature and granularity, to the information referred to in Para (3).

**(10)** If FSA allows the insurers not to publish certain information in accordance with Para (8), then:

**a)** the insurers shall mention this in the report and shall explain the reasons;

**b)** this permission remains valid only during the applicability of the reason not to publish the information;

**c)** the insurers shall inform ASF as soon as the reason for which the permission not to publish the information was granted ceases to exist.

**(11)** The insurers shall publish additional information regarding the nature and effects of the significant changes affecting the relevance of the information published in accordance with this article.

**(12)** The insurers shall establish appropriate systems and structures ensuring the compliance with the requirements provided in this article and shall adopt strategies for the permanent adequacy of such information.

**(13)** The report referred to in this article shall be published only after being approved by the members of the insurers' management.

## **ARTICLE 43**

### Periodical quantity reports

**(1)** The insurers shall submit to ASF the periodical quantity reports allowing ASF to perform a fundamental analysis of the financial standing and to supervise the evolution in time of the main indicators regarding the activity carried out.

**(2)** The periodical quantity reports shall be filled in based on the accounting and technical and operational records.

**(3)** ASF may request information registered in the technical and operational records, necessary to clarify the issues revealed by the analysis of the periodical quantity reports, including the documents based on which they were registered in the accounting records or necessary to update the conditions for granting the authorisation.

**(4)** The periodical quantity reports correspond to the data registered in the technical and operational and accounting records of the undertakings and are as follows:

**a)** annual reports:

**(i)** the annual financial statements in the form provided by the accounting regulations in force;

**(ii)** the calculation of the available solvency margin, of the minimum solvency margin and of the security fund related to the life and non-life insurance activities, in the forms provided by Annexe No. 3, and Annexe No. 4;

**(iii)** the income resulting from the financial investments of the type of assets admitted to cover the gross technical reserves established for the life and non-life insurance activities, in the form provided by Annexe No. 6;

**(iv)** the number of employees and contracted persons, in the form provided by Annexe No. 7;

**(v)** the technical result determined for each class of non-life insurance, in the form provided by Annexe No. 8;

**(vi)** the status of the claims paid and outstanding claim reserves reported for each class of non-life insurance depending on the year when the insured event occurred, in the form provided by Annexe No. 9;

**(vii)** the evolution and structure of the share capital, in the form provided by Annexe No. 10;

**(viii)** the intra-group transactions, in the form provided by Annexe No. 11;

**b)** half-annual reports:

**(i)** the accounting reports in the form provided by the accounting regulations in force;

**(ii)** the calculation of the available solvency margin, of the minimum solvency margin and of the security fund, related to the life and non-life insurance activities, in the forms provided in Annexe No. 3 and, respectively, Annexe No. 4;

**(iii)** the evolution and structure of the share capital, in the form provided by Annexe No. 10;

**(iv)** the intra-group transactions, in the form provided by Annexe No. 11;

**c)** quarterly reports:

**(i)** the intra-group transactions, in the form provided by Annexe No. 11;

**(ii)** the transactions regarding the non-life insurance activity, in the form provided by Annexe No. 12;

**(iii)** the transactions regarding the life insurance activity, in the form provided by Annexe No. 13;

**(iv)** the obligations assumed for the non-life insurance activity, in the form provided by Annexe No. 14;

**(v)** the obligations assumed for the life insurance activity, in the form provided by Annexe No. 15;

**(vi)** the admitted assets and explanations regarding the coverage of the gross technical reserves related to the non-life insurance activity, in the form provided by Annexe No. 16;

**(vii)** the admitted assets and explanations regarding the coverage of the gross technical reserves related to the life insurance activity, in the form provided by Annexe No. 17;

**(viii)** the special registries of the assets admitted to cover the gross technical reserves established for life and non-life insurance, in accordance with the provisions of Rule No. 38/2015;

**(ix)** the situation of the gross written premiums for the non-life and life insurance activity by categories of contractors, namely natural and legal persons, in the form provided by Annexe No. 18;

**(x)** the ratios regarding the activities related to agricultural insurance, in the form provided by Annexe No. 19;

**(xi)** the financial assets held by the undertakings, in the form provided by Annexe No. 20;

**(xii)** the acceptances in reinsurance for the life and non-life insurance activities, in the form provided by Annexe No. 21;

**(xiii)** the cessions in reinsurance for the life and non-life insurance activities, in the form provided by Annexe No. 22;

**(xiv)** the coverage of the risks of natural catastrophes for non-life insurance, in the form provided by Annexe No. 23;

**(xv)** the distribution of the gross written premiums by counties for the life and non-life insurance activities, in the form provided by Annexe No. 24;

**(xvi)** the situation and ratios regarding the activity related to voluntary house insurance, in the form provided by Annexe No. 25;

**(xvii)** the distribution of the gross indemnities paid by counties for non-life and life insurance, in the form provided by Annexe No. 26;

**(xviii)** the investments, in the form provided by Annexe No. 27;

**(xix)** the situation of the on-balance sheet assets and liabilities held by the insurer, in the form provided by Annexe No. 28;

**(xx)** the structure of the insurer's shareholding structure, in the form provided by Annexe No. 29;

**(xxi)** the situation of the intermediated gross written premiums in the form provided by Annexe No. 30;

**d)** monthly reports:

**(i)** the determination of the liquidity ratio for the non-life insurance activity, in the form provided by Annexe No. 31;

**(ii)** the determination of the liquidity ratio for the life insurance activity, in the form provided by Annexe No. 32;

**(iii)** the statement of changes in the equity for the non-life insurance, life insurance and voluntary pension fund management activities, in the form provided by Annexe No. 33;

**(iv)** the repurchased for the life insurance activity, in the form provided by Annexe No. 34;

**(v)** the transfer of the contribution to the Guarantee Fund shall be performed in accordance with Law No. 213/2015 on the Guarantee Fund and of the

Rules issued for the implementation thereof, in the form provided by Annexe No. 35;

**(vi)** the situation regarding the operation fee, in the form provided by Annexe No. 36; the report shall also be submitted for the month in which the amount of the gross premiums collected, and of the operation fee, is zero;

**(vii)** the government securities, in the form provided by Annexe No. 37;

**(viii)** the situation of the disputes pending on the dockets of the courts of law, in the form provided by Annexe No. 38.

**(5)** The insurers shall ensure the consistency between the total amount of the gross premiums collected, reported on a monthly basis, and their amount, reported on a quarterly basis, in accordance with Annexes No. 12 and 13, regarding the transactions performed for the two activities and reported on a quarterly basis.

**(6)** The reporting and the transfer of the amounts owed as operation fee shall be performed on a monthly basis, until the last business day of the month following that for which the reporting is prepared.

**(7)** For the failure to transfer the operation fee, on the due date established herein, the insurers have the obligation to pay delay penalties in accordance with the provisions of Art. 45 (1) of Regulation No. 16/2014 on the income of the Financial Supervisory Authority; the delay penalties are recorded separately on the payment order related to the operation fee.

**(8)** The insurers may perform adjustment and/or compensation operations for the amounts transferred as operation fees based on supporting documents, subject to the prior approval of ASF; in order to obtain approval, the supporting documents shall be submitted to ASF within 5 calendar days from the date when the differences are found.

**(9)** The annual financial statements, the half-annual accounting reports, the periodical quantity reports and any document submitted to FSA shall be signed by the members of the management, by the persons expressly authorised by them or by the persons authorised in accordance with the provisions of Accounting Law No. 82/1991, republished.

**(10)** The persons referred to in Para (9) shall be liable for the accuracy, truthfulness of the data presented and for the compliance of the deadlines for their submission, in accordance with the provisions of Accounting Law No. 82/1991, republished.

**(11)** The periodical quantity reports provided herein shall be submitted to ASF in electronic format in ASF's application EWS, except for the reports

referred to in Para (4) Letter d) points (v) and (vi), which shall be submitted only in writing, in hard copy.

**(12)** The insurers shall submit to ASF, during the year, at any time, the following information:

- a)** the decrease of the liquidity ratio below the limit provided by this rule;
- b)** the decrease of the amount of the available solvency margin below the amount of the security fund;
- c)** the decrease of the amount of the available solvency margin below the amount of the minimum solvency margin;
- d)** the decrease of the amount of the established gross technical reserves below the amount of the obligations assumed by the concluded insurance contracts;
- e)** changes in the structure of the assets admitted to cover the technical reserves and in the diversification of investments of any kind, in accordance with this rule.

**(13)** The insurers shall submit to ASF, during the year, within 5 business days, information regarding the following changes related to the value of the participations held by the insurer with other entities and to its obligations towards third parties:

- a)** when the value of the participations in another entity exceeds the limit of 5% of the share capital of that entity;
- b)** when there are loans/credits in which the undertaking has banking participations, including loans received from undertakings within the group.

## **ARTICLE 44**

### Reports regarding the internal control system

**(1)** The insurers shall prepare annually a report regarding the internal control system, approved and assumed by the members of the management, which shall include at least the following information:

- a)** the procedures regarding the internal control system, including the reporting procedures;
- b)** the internal control activities carried out in accordance with Art. 30 (2) of Law No. 237/2015 during the reporting period;
- c)** the compliance ensuring policy applied by the insurer, issued based on Art. 270 of the Delegated Regulation, the revision, frequency of revisions and any other significant changes made during the reporting period;

**d)** the main deficiencies identified with the internal control system and the remedy measures;

**e)** the presentation of the significant changes occurred in the internal control system during such period, particularly those related to the risk identification and management.

**(2)** The report referred to in Para (1) shall present how the internal control is carried out both at the level of the entities included in the consolidation cluster of the group of which the insurer is part, and at the level of the suppliers of auxiliary or related services.

## **ARTICLE 45**

### **Reports regarding the risk management function**

**(1)** The insurers shall prepare an annual report regarding the risk management function, assumed and approved by the members of the management, which shall include at least the following information:

**a)** the risk management strategies, the objectives, processes and reporting procedures used by the undertaking for each category of risk;

**b)** the risk profile and the risk management policy, specifying the tolerance to the main risks and the limits established for the management thereof;

**c)** the methods used to assess each category of risk, the stress tests and their results, the frequency and contents of the internal reports regarding the analysis and management of risks;

**d)** details regarding the investment policies, including:

**(i)** the procedures for identifying, monitoring and controlling risks;

**(ii)** the strategy related to the investment activity, depending on the complexity of the insurance products, investment assessment techniques, investment yields, including the investments in derivative instruments or in assimilated instruments;

**e)** information on the internal management of the assets and liabilities portfolio:

**(i)** details on the management of assets in relation to the nature and maturity of the obligations;

**(ii)** details regarding the investments made with entities affiliated to the group;



**f)** the procedures for choosing partners, specifying the details of the procedures for the selection and monitoring of fund administrators and financial investment services companies;

**g)** the presentation of the approach and of the policies related to the insurance products, the subscription procedure, the reinsurance activity and solvency;

**h)** details regarding the remuneration of the personnel, to establish the situations in which bonuses or other large salary incentives are granted, which lead to an unjustified increase of the undertaking's risk exposure;

**i)** the global business plan for the following year, containing information regarding:

**(i)** the newly launched products;

**(ii)** the product distribution strategy;

**(iii)** the subscription process;

**(iv)** the reinsurance activity;

**j)** the plans prepared for unforeseen situations;

**k)** the list of the management's decisions;

**l)** details on the outsourced services;

**m)** changes in the organisational chart of the undertaking and in the system of delegation of duties as compared to the situation previously communicated to ASF;

**n)** the activity plan of the risk management function in the analysed period.

**(2)** The report referred to in Para (1) presents the conditions in which the risk management is carried out both at the level of the entities included in the consolidation cluster of the group of which the insurer is part, and at the level of the suppliers of auxiliary or related services.

## **ARTICLE 46**

### **Reports regarding the internal audit function**

The insurers shall prepare an annual report regarding the internal audit function, assumed by the members of the management and approved by the Internal Audit Committee, which includes recommendations regarding the economy, efficiency and effectiveness of the risk management and internal control systems; in addition, the annual internal audit report shall also include the following information:

**a)** presentation of the internal audit plans and of the reasons that led to the establishment of the audit missions;

**b)** presentation of the internal audit missions carried out during the reporting period, as well as a summary of the significant findings and recommendations resulting from the internal audit missions carried out during the reporting period;

**c)** the implementation of the findings and recommendations resulting from the internal audit missions carried out during the reporting period;

**d)** the internal audit procedure applied, its revision, the frequency of the revisions and of the significant changes made during the reporting period;

**e)** the quality and quantity assessment of the criteria established in Art. 271(2) Letters (a) and (b) of the Delegated Regulation, when the persons exercising the internal audit function assume other key-functions.

## **ARTICLE 47**

### **Reports regarding the reinsurance programme**

**(1)** The insurers shall prepare an annual report regarding the reinsurance programme related to the previous financial year.

**(2)** The report referred to in Para (1) shall be assumed and approved by the insurer's management, which shall be fully liable for the effectiveness of the reinsurance programme used in the report's reference period, and shall include information regarding:

**a)** the strategy approved by the members of the management during the previous financial year and explanations regarding the adequacy of the reinsurance programme depending on the risk profile, the description of the procedures intended to ensure the prudence of choosing the reinsurance programme, the avoidance of concentrating the ceded risks on a single market and for a single undertaking;

**b)** the quality and quantity criteria based on which the reinsurance forms were chosen and the reinsurance programme was adopted;

**c)** the selection criteria for the undertakings, the operation market, the applicable jurisdiction, the indication of the undertakings' membership in the group of which the insurer is part, the analysis of their credit risk;

**d)** a detailed description of the reinsurance programme regarding:

**(i)** the ceded risks;

**(ii)** the accumulation of the liabilities assumed by the insurance contracts for each class of insurance;

**(iii)** the level of the own withholding, per overall activity and per each class of insurance;

**(iv)** the amounts ceded in reinsurance;

**(v)** a description of how the policies covered by the reinsurance are registered in the technical and accounting records and how they are managed;

**(vi)** a description of the settlements performed with the reinsurers in accordance with the concluded contracts;

**(vii)** the procedures for monitoring the losses occurred and for recovering the amounts for which the undertakings are liable;

**e)** the names of the departments and of the persons who monitor and are liable for the fulfilment of the provisions of the reinsurance contracts, a description of the procedures used for the periodical assessment of their performances and the measures taken by the members of the insurer's management depending on the results of the assessment;

**f)** a description of the results of the stress tests or of the scenarios carried out by the insurer to assess the risks resulting from the reinsurance contracts;

**g)** the amounts run through other forms of risk coverage that are not related to traditional reinsurance, if applicable;

**h)** a description of the risks of natural catastrophe subscribed, of the capacity of the separate reinsurance contract for each class of insurance, of the calculation of the maximum possible loss and of how the catastrophe reserve was established, maintained and, eventually, released for each class of insurance;

**i)** the results of the comparative analysis of the reinsurance programmes carried out in the report's reference year and in the year preceding it;

**j)** a description of the reinsurance strategy for the current year and of the reasons that led to maintaining a strategy similar to that of the previous year or to a potential modification thereof.

**(3)** Further to analysing the reinsurance report, ASF shall assess:

**a)** the compliance with the prudential requirements;

**b)** the adequacy of the reinsurance programme to the insurer's risk profile;

**c)** the avoidance of risk concentration, the actual transfer of the risks, etc.

**(4)** If ASF finds that the reinsurance strategy and the programme used do not correspond to the prudential requirements provided by the legislation in force, it may order the measures required to change the strategy regarding placing the risks in reinsurance, and the insurer shall implement the related

changes in the financial year following that for which the report referred to in Para (1) is submitted.

## **ARTICLE 48**

### **Reports regarding the actuarial function**

**(1)** The insurers shall prepare an annual report regarding the actuarial function, assumed and approved by the members of the management, which includes an overall image of the activities carried out by the actuarial function in each of its areas of responsibility during the reporting period, including a description of how the actuarial function contributes to the effective implementation of the risk management system used by the insurers.

**(2)** The report referred to in Para (1) shall be prepared separately for each category of insurance, based on the template provided in Annexe No. 39, and, depending on the category of insurance for which it is issued, it shall include at least the following elements:

**a)** the qualified reasoning of the persons holding the actuarial position regarding:

**(i)** the compliance with the calculation modality of the insurance premiums and of the technical reserves related to the period for which the actuarial report was issued;

**(ii)** the adequacy of the level of the insurance premiums, of the technical reserves and of the equity, including a presentation of the detailed analyses based on which it was prepared;

**b)** the technical description of the insurance products, including:

**(i)** the technical details of the insurance products practiced by the insurer required for the calculation of the premiums and of the technical reserves;

**(ii)** the presentation of the options and guarantees of the insurance contracts;

**c)** the statistical data/tables, the morbidity tables used in the calculation of the premiums and technical reserves for each insurance product, specifying the appropriate references from the standpoint of their use in the mathematical calculation related to each premium tariff and to each type of technical reserve;

**d)** the criteria for establishing the premiums for each insurance product, including the commissions and expenses included in the premium, specifying the following:

**(i)** if, when establishing the premium tariffs, actuarial/statistical calculation methods were used, they shall be presented in detail, including the definition of the terms/factors considered;

**(ii)** if, when establishing the premium tariffs, actuarial/statistical calculation methods were not used, then a detailed analysis on the adequacy of the insurance premiums' amount shall be presented;

**e)** the structure by type of assets of each investment programme, investment yields, the structure of the costs and the calculation modality for the unit price for each investment programme, for insurance class C3 provided in Section C of Annexe No. 1 to Law No. 237/2015;

**f)** the presentation of the guaranteed technical interest rates for each insurance product practiced and their adequacy in accordance with the insurer's investment policy, including the presentation of a comparative analysis between the guaranteed technical interest rates and the current/future yields of the assets admitted to cover the technical reserves;

**g)** the documentation of the calculation modality used for the repurchase amounts, premium restitutions and reduced insured amounts for each insurance product;

**h)** the documentation of the calculation modality used for the benefits obtained from investing the assets admitted to cover the technical reserves and how they are distributed to the contractors, for the insurance products;

**i)** the documentation of the calculation modality in case of premium discounts granted to the contractors, for each insurance product;

**j)** the detailed presentation of the calculation modality used for the technical reserves for each type of technical reserve and for each type of insurance product/insurance class, including the definition of the terms/factors considered, the specification of the date when such methods were approved by the members of the management and consistently applied; if the calculation methods for the technical reserves are changed, during the period for which the actuarial report is prepared, then the analysis based on which such measure was taken shall also be presented;

**k)** the documentation of the calculation modality of the acquisition costs carried forward for each type of insurance product;

**l)** the technical description of the reinsurance treaties in force and the presentation of the premiums ceded and of the reinsurance commissions;

**m)** a detailed presentation of the calculation methods used for the technical reserves ceded in reinsurance, and the calculation formulas of the net reinsurance technical reserves for each type of technical reserve and for each

type of insurance product/insurance class, in accordance with the reinsurance treaties in force, including the definition of the terms/factors considered;

**n)** the description of the types of assets that the insurers use to cover the technical reserves, the extent of diversification thereof and the investment yield obtained during the analysed period, information on the assessment of the assets, the method chosen, assets over which charges were established, including the presentation of an analysis regarding the control of the assets admitted to cover the gross technical reserves;

**o)** an analysis of the adequacy of the equity and of the solvency of the insurer.

## **ARTICLE 49**

### **Submission terms**

**(1)** The terms for the submission of the information referred to in Art. 43 (4) Letter a) are the following:

**a)** the annual financial statements referred to in point (i) shall be submitted within 120 days from the end of the financial year;

**b)** the annual quantity reports referred to in points (ii) to (ix) shall be submitted until the last business day of the month of March of the year following the end of the financial year.

**(2)** The half-annual accounting and quantity reports referred to in Art. 43 (4) Letter b) shall be submitted within 45 days from the reference date of the reports.

**(3)** The terms for submitting the information referred to in Art. 43 (4) Letter c) are the following:

**a)** until the last calendar day of the month following the end of the quarter for which the report is made;

**b)** any corrections to the reports related to the 4<sup>th</sup> quarter shall be submitted together with the annual financial statements.

**(4)** The terms for submitting the information referred to in Art. 43 (4) Letter d) are the following:

**a)** until the last calendar day of the month following the month for which the report is made;

**b)** any corrections to the reports related to December shall be submitted together with the annual financial statements.

**(5)** The reports prepared and signed by the persons holding the key-functions referred to in Arts. 44 to 48, shall be submitted for approval to the members of the undertaking's management as follows:

**a)** the reports referred to in Arts. 44 to 46, within 60 calendar days from the end of the financial year;

**b)** the reports referred to in Arts. 47 to 48, within 30 calendar days from the end of the financial year.

**(6)** If ASF requests the reports referred to in Para (5), they shall be submitted to ASF, in electronic format, the business day following the receipt of the electronic request.

## **ARTICLE 50**

### Final provisions

**(1)** The first reports submitted by the insurers, based on this rule, are those related to January 2016, namely those related to the 1<sup>st</sup> quarter of 2015.

**(2)** The insurers shall permanently determine their available solvency margin, their minimum solvency margin and their security fund based on the financial reports and shall submit to ASF, on an annual or half-annual basis, on the term provided herein, the report forms regarding the available solvency margin, the minimum solvency margin and the security fund, in accordance with the specifications referred to in Annexes Nos. 3 and 4.

**(3)** The insurers practicing at least one of the types of insurance referred to in Art. 35(3) and/or Art. 35(5), shall also submit to ASF the report forms provided in Annexe No. 3.

**(4)** Within the reports referred to in Paras (1) to (2) for 31 December of a given year, in order to calculate the RON equivalent of the amounts expressed in EUR, the exchange rate communicated by NBR on the last business day of September of the same year shall be used; such exchange rate shall be maintained until the following report for 31 December.

**(5)** As regards the internal control system of the activity, the risk management function and the internal audit function, the insurers shall consider both the provisions of the national legislation and the international standards in the field.

**(6)** The insurers shall submit to ASF the proof of the audit on the computer system in accordance with the requirements of Rule No. 6/2015 on the management of operational risks caused by the computer systems used by the government entities, authorised/approved and/or supervised by the Financial Supervisory Authority.

**(7)** Any subsequent revisions of the written procedures and policies referred to in Art. 3 (3) shall be submitted for approval to the members of the management within 5 business days from their completion; if ASF requests the written policies or their subsequent revisions, they shall be submitted to ASF the business day following the receipt of the electronic request.

## **CHAPTER VI**

### Final provisions

## **ARTICLE 51**

### Final provisions

**(1)** The insurers shall communicate to the contractors or potential contractors, prior to signing the insurance contract, the information referred to in Arts. 107 to 109 of Law No. 237/2015 and in ASF's regulations

**(2)** If the documentation presented in accordance with these rules is incomplete or insufficient, ASF may request additional information and documents, including updating such documentation.

**(3)** The supplementation of the documentation in accordance with Para (2) shall be requested at least 30 calendar days prior to the expiry of the terms specified for the submission of the documentation.

**(4)** The documentation shall be submitted to ASF in the Romanian language and in case of the documents prepared in a foreign language, the certified translation thereof shall be submitted as well; the documents prepared or certified by a foreign authority shall be super-legalised, in accordance with the provisions of the Romanian legislation.

**(5)** The insurers shall usually perform the insurance and reinsurance operations in RON and if they assume payment obligations in a foreign currency, these operations shall be carried out in the foreign currency, according to law.

**(6)** Annexes Nos. 1 to 40\*) form an integral part of this rule.

\*) Annexes Nos. 1 to 40 shall be published in the Official Journal of Romania, Part I, No. 978 bis.

**(7)** Failure to comply with the provisions of this rule shall be sanctioned by ASF in accordance with the provisions of Art. 163 and 164 of Law No. 237/2014.



## ARTICLE 52

### Entry into force

**(1)** This rule shall be published in the official Journal of Romania, Part I and shall enter into force on 1 January 2016.

**(2)** Upon the entry into force of this rule, the following normative acts are repealed:

**a)** Order No. 3/2001 of the President of the National Securities Commission for the implementation of Rules No. 3/2001 on the insurance classes that may be practiced by insurance undertakings, published in the Official Journal of Romania, Part I, No. 501 of 24 August 2001;

**b)** Order No. 3.104/2004 of the President of the National Securities Commission for the implementation of the Prudential Rules on the insurer's management, published in the Official Journal of Romania, Part I, No. 197 of 5 March 2004;

**c)** Order No. 113.108/2006 of the President of the National Securities Commission for the implementation of the Rules on the portfolio transfer between insurers, published in the Official Journal of Romania, Part I, No. 299 of 3 April 2006, as subsequently amended;

**d)** Order No. 113.111/2006 of the President of the National Securities Commission for the implementation of the Rules on the approval of the merger or division of insurers, and of the authorisation of the insurers thus resulted, published in the Official Journal of Romania, Part I, No. 560 of 28 June 2006;

**e)** Order No. 113.113/2006 of the President of the National Securities Commission for the implementation of the Rules on community coinsurance, published in the Official Journal of Romania, Part I, No. 560 of 28 June 2006;

**f)** Order No. 113.114/2006 of the President of the National Securities Commission for the implementation of the Rules on the pursuit by insurers of the legal protection insurance class , published in the Official Journal of Romania, Part I, No. 560 of 28 June 2006;

**g)** Order No. 113.116/2006 of the President of the National Securities Commission for the implementation of the Rules on the Registry of actuaries, published in the Official Journal of Romania, Part I, No. 562 of 29 June 2006;

**h)** Order No. 113.119/2006 of the President of the National Securities Commission for the implementation of the Rules on the minimum information to be published annually by insurers, published in the Official Journal of Romania, Part I, No. 630 of 21 July 2006;

**i)** Order No. 2/2008 of the President of the National Securities Commission repealing Order No. 14/2007 of the Insurance Supervisory Commission

supplementing the Rules on the calculation and record-keeping method of the minimum technical reserves for the non-life insurance activity, implemented by Order No. 3.109/2003 of the President of the National Securities Commission, published in the Official Journal of Romania, Part I, No. 251 of 31 March 2008;

**j)** Order No. 3/2008 of the President of the National Securities Commission for the implementation of the Rules on the calculation method of the solvency margin available to the insurers practicing non-life insurance, of the minimum solvency margin and of the security fund, published in the Official Journal of Romania, Part I, No. 346 of 6 May 2008, as subsequently amended and supplemented;

**k)** Order No. 4/2008 of the President of the National Securities Commission for the implementation of the Rules on the calculation method for the solvency of the insurers practicing life insurance, of the minimum solvency margin and of the security fund, published in the Official Journal of Romania, Part I, No. 346 of 6 May 2008, as subsequently amended and supplemented;

**l)** Order No. 10/2008 of the President of the National Securities Commission for the implementation of the Rules on loan insurance, published in the Official Journal of Romania, Part I, No. 460 of 19 June 2008;

**m)** Order No. 2/2009 of the President of the National Securities Commission for the implementation of the Rules on the form and contents of the financial and technical reports to be prepared by insurance and/or reinsurance undertakings, published in the Official Journal of Romania, Part I, No. 175 of 20 March 2009, as subsequently amended and supplemented;

**n)** Order No. 18/2009 of the President of the National Securities Commission for the approval of the Rules on the organisation principles of an internal control and risk management system, and the organisation and performance of the internal audit activity for insurers/reinsurers, as subsequently amended and supplemented, published in the Official Journal of Romania, Part I, No. 621 of 16 September 2009;

**o)** Order No. 4/2011 of the President of the National Securities Commission for the implementation of the Rules on the actuarial report, published in the Official Journal of Romania, Part I, No. 146 of 28 February 2011;

**p)** Arts. 3 to 9, Art. 12 and Arts. 16 to 22 of the Rules on the technical reserves for life insurance, the assets admitted to cover them and the distribution of the assets admitted to cover the gross technical reserves, approved by Order No. 8/2011 of the President of the National Securities Commission, published in the Official Journal of Romania, Part I, No. 325 of 11 May 2011, as subsequently amended and supplemented;

q) Order No. 9/2011 of the President of the National Securities Commission for the implementation of the Rules on the assets admitted to cover gross technical reserves for the insurers practicing non-life insurance activity, the distribution of the assets admitted to cover the gross technical reserves, and the liquidity ratio, published in the Official Journal of Romania, Part I, No. 325 of 11 May 2011, as subsequently amended and supplemented;

r) Art. III of Rule No. 5/2014 of the Financial Supervisory Authority supplementing certain normative acts on the calculation of the solvency margin available to the insurer/reinsurer, of the minimum solvency margin and of the security fund, published in the Official Journal of Romania, Part I, No. 279 of 16 April 2014.

President of the Financial Supervisory Authority,  
Mișu Negrițoiu

Bucharest, 23 December 2015.

No. 28.