

# **Rule no. 33/2017 on the organization of the archiving activity in the authorized / approved entities, regulated and supervised by the Financial Supervisory Authority**

*In force starting January 1<sup>st</sup>, 2018*

*Published in the Official Gazette, Part I no. 998 of December 15<sup>th</sup>, 2017. There have been no changes by March 19<sup>th</sup>, 2018.*

*In accordance with the provisions of Art. 2 par. (1) , art. 3 par. (1) letter b), art. 5 , corroborated with the provisions of art. 6 par. (1) and (2) of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as amended and supplemented,*

*under the following provisions:*

- art. 135 par. (2) of Law no. 297/2004 on the capital market, with subsequent amendments and completions;

- art. 57 par. (1) letter k) , art. 66 par. (2) and Art. 70 letter h) of Law no. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented, and art. 15 par. (1) letter l) of Law no. 204/2006 on voluntary pensions, as subsequently amended and supplemented;

- art. 8 par. (1) of Law no. 32/2000 on the activity and supervision of intermediaries in insurance and reinsurance, as subsequently amended and supplemented;

- art. 173 par. (1) letter t) and art. 179 par. (4) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, as subsequently amended,

*following the deliberations of the Financial Supervisory Authority Board during the meeting held on December 6, 2017,*

The Financial Supervisory Authority issues this rule.

## **CHAPTER I**

### **General provisions**

**Art. 1.** - This rule regulates the archiving activity carried out at the level of entities - legal entities authorized/approved, regulated and supervised by the Financial Supervisory Authority, hereinafter referred to as ASF, as defined by the laws on National Archives and the laws on electronic archiving.

**Art. 2.** - The entities authorized /approved, regulated and supervised by ASF, hereinafter referred to as entities, which fall under the provisions of this rule are:

**a)** financial investment services companies;

**b)** investment management companies;

- c) self-managed collective investment vehicles (OPCs);
- d) market / system operators;
- e) central depositories;
- f) clearing houses;
- g) central counterparties;
- h) alternative investment fund managers;
- i) insurance and / or reinsurance companies;
- j) insurance and / or reinsurance intermediaries;
- k) private pension fund managers.

**Art. 3.** - The terms and expressions used in this Rule shall have the meanings provided in the laws on National Archives and the laws on electronic archiving, Law no. 297/2004 on the capital market, as subsequently amended and supplemented, Law no. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented, Law no. 204/2006 on voluntary pensions, as subsequently amended and supplemented, Law no. 32/2000 regarding the activity and supervision of intermediaries in insurance and reinsurance, as subsequently amended and supplemented, Law no. 74/2015 on alternative investment fund managers, as amended and supplemented, Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, as subsequently amended.

**Art. 4.** - Entities provided for in art. 2 have the obligation to register, record, inventory, select, maintain and use the documents they create or hold under the conditions established by the laws on National Archives and the laws on electronic archiving, by this rule, as well as by sectoral legislation specific to each type of entity.

**Ar . 5.** - **(1)** In the case of the outsourcing of the archiving activity under the conditions defined by the laws on National Archives, entities have the obligation to conclude a contract for the provision of archival services with archivist service providers, in compliance with the archiving laws. Entities remain responsible for complying with the legal provisions on archiving.

**(2)** The conclusion of the contract stipulated in par. (1) shall be made after the prior notification of the National Archives or, as the case may be, of the competent county services / the Bucharest Municipality Service, hereinafter referred to as the National Archives, under the conditions provided by the laws on National Archives.

**(3)** The entity has the obligation to notify ASF within 7 days of the date of the conclusion of the archival service contract.

## **CHAPTER II**

### Obligations of entities to organize the archiving activity

#### **SECTION 1**

##### Records of documents on paper

**Art. 6. -** Entities are required to register, keep records of all documents attesting to their activities, entries/exits, including those prepared for internal use, the storage of which is mandatory under archiving laws, and to ensure their authenticity, integrity and use.

**Art. 7. - (1)** The registration of documents shall be carried out in a register of entries/exits of documents, chronologically in the order of entry/exit, by assigning a registration number allowing the unique identification of the document, without the assigned registration numbers being repeated.

**(2)** The registration provided in par. (1) shall start on January 1<sup>st</sup>, and shall end on December 31<sup>st</sup> of each year.

**Art. 8. -** The register of entry/exit of documents provided in art. 7 par. (1) shall contain at least the following elements:

- a) registration number;
- b) date of registration;
- c) number and date of the document given by the issuer;
- d) number of pages of the document;
- e) number of annexes;
- f) issuer of the document;
- g) content of the document in a summary;
- h) the department to which it was assigned;
- i) date of delivery;
- j) way of solving;
- k) recipient;

**it)** the registration number of the document to which it is linked, and the index of the file according to the archive list, established and filled in in the register after the document is resolved.

**Art. 9. -** Documents that refer to a topic found in a document already registered in the document entry / exit register shall be linked to it by the registration of the same registration number with that of the document to which the joining is made.

**Art. 10. -** The transmission of documents for archiving from the secondary offices to the main office / central office shall be carried out on the basis of a document delivery-receipt protocol in accordance with the provisions of the laws on National Archives.

## **SECTION 2**

### Records of documents in electronic form

**Art. 11. -** Entities have the obligation to record and keep records of all entry/exit documents drawn up in electronic form, of internal documents for internal use the storage of which is mandatory under the archiving laws.

**Art. 12. -** Entities holding an electronic archive shall submit for archiving documents in electronic form, in compliance with the laws on archiving of electronic documents which establishes the legal regimen applicable to the creation, preservation, consultation and use of electronic documents archived or to be archived in an electronic archive.

**Art. 13 . -** According to the provisions of the laws on electronic archiving, the archiving of electronic documents is performed in compliance with the provisions of the laws on National Archives, as well as the regulations in force regarding the preservation, access and protection of private information.

**Art. 14. -** Entities submitting for storage electronic documents to an electronic archive, are required to designate an administrator of the electronic archive to register and keep records of all documents in electronic form in an electronic register.

**Art. 15. -** At the request of ASF, entities are required to allow access to any archived electronic document from the format in which it was generated in a format that allows visualization, reproduction, and storage of that document at the level of current technology.

### **SECTION 3**

#### **Archive organization**

**Art. 16. - (1)** Entities are required to designate persons responsible for the archive and / or to establish archive departments according to the complexity, value and quantity of the documents they create or hold.

**(2)** Establishing competences regarding the archiving activity, designating the persons stipulated in par. (1), as well as establishing the archive department structure, where the entities have such a structure, are under the responsibility of the management of the entities, in accordance with the provisions of the laws on National Archives.

**Art. 17. - (1)** Entities have the obligation to organize the archive repository and obtain the approval of the National Archives in accordance with the provisions of the laws on National Archives.

**(2)** Upon request of the ASF, entities have the obligation to submit the approval provided in par. (1).

**Art. 18. - (1)** Entities are required to group documents in archive units annually according to the archive list, depending on content and storage periods.

**(2)** Entities have an obligation to catalogue all the archive units that they have set up.

**Art. 19. -** The archive units provided in art. 18 shall be deposited by the entities in the archive repository in the year following their establishment, on the basis of inventories and delivery-receipt protocols in accordance with the provisions of the laws on National Archives.

**Art. 20. - (1)** Records of all entries and exits of archive units in / from the archive shall be kept in a register.

**(2)** Archive units in the repository that have a permanent storage term shall be kept separate from those with a temporary storage term.

**Art. 21. -** Entities shall submit for archiving to the National Archives the documents organized in archive units with permanent storage periods, according to the archive list and the laws on National Archives.

**Art. 22.** - By the delivery of the documents referred to in art. 19, entities have the obligation to draw up a provisional record of the documents, which shall be constantly updated.

**Art. 23.** - Documents received in accordance with art. 19 shall be organized in the archive repository by year and within the year by departments and storage periods or by departments and, within the department, by years and storage periods.

**Art. 24.** - Entities are required to have adequate internal procedures in place, containing at least the following elements:

**a)** the access way in the archive repository shall only be allowed to the persons in charge of the archive;

**b)** the level of access of its staff to the archived documents and its responsibilities with regard to the documents taken;

**c)** the way of issuance of documents from the archive to their own staff and to other state institutions / authorities.

**Art. 25.** - Entities are required to allow access to ASF to the original documents in the archive repository in order to perform control actions or specialty analyzes.

**Art. 26.** - Entities are required to select and remove documents from the archive records and archive units with an expired storage period in accordance with the archive list.

**Art. 27.** - Entities are required to provide evidence of the following approvals / confirmations from the National Archives:

**a)** confirmation of removal of documents from the archive;

**b)** the approval to remove files from the archive records in order to transfer them to another entity or to another archive repository;

**c)** the approval to transfer documents to another archive repository, due to destruction caused by natural disasters or justified legal situations.

**Art. 28.** - At the request of ASF, the entity has the obligation to submit the archive list and the document attesting its approval by the National Archives.

### **CHAPTER III**

#### Other provisions on the organization of the archiving activity

**Art. 29.** - **(1)** Entities are required to notify ASF within 15 days as of the date on which the following occur:

**a)** the approval of the persons responsible for the archiving activity / archive department obtained from the National Archives;

**b)** the use of an electronic archive manager, subject to compliance with the laws on electronic archiving;

**c)** the submission of documents in archive units with permanent storage periods at the National Archives according to the archive list;

**d)** the removal of files from the records of the archive in the situation stipulated in art. 27 letter b) ;

**e)** the approval of the archival service operator;

**f)** the approval of any changes to the archive list.

(2) Any notification provided in par. (1) sent to ASF shall be accompanied by copies of the documents received from the competent authorities in the archiving field.

**Art. 30.** - In order to ensure that ASF is able to carry out its control tasks, according to the law, entities are required to allow or ensure access to ASF and / or auditors of the entity to all the requested documents, including when outsourcing the archiving activity.

**Art. 31.** - Entities holding electronic documents within an electronic archive have the following obligations:

a) manage the electronic documents in such a way as to ensure the integrity, authenticity and the possibility of using them;

b) adopt an archive management system approved by the competent authority in the field, containing specific procedures;

c) implement technical mechanisms to ensure the access and modification of data, in the allowed circumstances, in a controlled, identifiable and dated manner, keeping the variants prior to the changes made;

d) implement technical solutions that allow the export of data from the system in a standardized format, approved by the relevant competent authority or commonly used, with the obligation to migrate the data in the agreed formats being assigned to the entity, in accordance with the laws on electronic archiving.

**Art. 32.** - Entities provided for in art. 2 letters i) and j) have the obligation to keep for 10 years from the date of creation of the document in their own archive the following documents regarding the activity performed in the field of insurance / reinsurance:

a) the claims files together with the technical records and related accounting records;

b) the annual financial auditor's report;

c) the special register of assets covering gross technical reserves;

d) financial reports submitted to ASF;

e) annual financial statements;

f) any other reports provided by the laws issued in the field of insurance;

g) practical documents on the basis of which copies, certificates and extracts are issued concerning the individual rights of policyholders.

**Art. 33.** - Where entities use telephone records in their business, they are required to comply with the following requirements:

a) use registration applications that allow the easy identification and access of any record;

b) ensure storage / archiving and subsequent access to telephone conversations;

c) to keep records of telephone records in the form of an interrogable summary containing at least the date and the name of the consumer of non-banking financial products, in order to identify the latter.

**Art. 34.** - (1) Any change occurring during the archiving activity shall be notified to ASF by the entity within maximum 7 days from the date of its occurrence.

(2) In the case of unforeseen events that occur in the course of the archiving activity and which may affect the integrity of the archive, the notification shall be made within 24 hours after becoming aware of the event's occurrence.

**Art. 35.** - Entities are required to issue certificates, extracts and copies of documents they create or hold at the request of consumers of non-banking financial products or their legal representatives on the basis of supporting documents attesting to their quality in the case where the claim relate to rights that concern them.

**Art. 36.** - The entity's management is required to ensure that the persons in charge of the archive fulfill the requirements regarding the records, inventory, selection, storage and use of documents entered in the entity's archive list and that the following are ensured:

a) adequate equipment of repositories according to the format and the support of the documents with adequate means of maintaining and protecting them, as well as with means and systems for prevention and extinguishing fires, flood prevention, as well as with specific equipment for the tracking and ensurance of microclimate and access control in the repository;

b) organization of the archive repository according to the criteria established in accordance with the laws on archiving;

c) organization of the activity of drafting the entity's archive list, ensuring connection with the National Archives for its verification and confirmation, as well as monitoring the way it is applied by the structures of the entity;

d) coordinating the archiving activity within the entity, in accordance with the laws on archiving;

e) organization of the archiving of documents received from the structures of the entity based on a delivery-receipt protocol and inventories, drawn up in compliance with the applicable laws;

f) records of all documents entered into / out of the archive repository based on the records of entry / exit of documents;

g) signature-based issuance and record keeping of documents requested by the entity's compartments and verification of their integrity at restitution;

h) preparation of historical documents and their inventories in order to be submitted to the National Archives according to the applicable laws;

i) making available to ASF of all the documents requested when exercising control duties.

**Art. 37.** - Entities are required to keep copies of the original documents submitted to the judicial bodies or other public authorities, together with proof of their submission.

## CHAPTER IV

### Final provisions

**Art. 38.** - This rule shall be supplemented with the provisions of the laws on National Archives and the laws on electronic archiving in the field of archiving, as well as the sectoral laws specific to each type of entity.

**Art. 39.** - Entities are required to take all necessary steps to organize the archiving activity in accordance with the laws on National Archives and the laws on electronic archiving and the provisions of this rule.

**Art. 40.** - Entities are required to communicate to ASF, within 30 days of the date of establishment, reorganization or merger, the measures taken in relation to the archiving activity.

**Art. 41.** - Failure by the entities referred to in Art. 2 to comply with the provisions of this rule shall be sanctioned according to the laws applicable to each type of entity.

**Art. 42.** - This rule shall be published in the Official Gazette of Romania, Part I, and shall enter into force on January 1<sup>st</sup>, 2018.

**Art. 43.** - On the date of entry into force of this rule, the following shall be repealed:

**a)** Decision of the Board of the Financial Supervision Authority no. 3/2013 for the approval of Rule no. 1/2013 on the organization of the archiving activity of the private pension fund managers, published in the Official Gazette of Romania, Part I, no. 448 of July 22<sup>nd</sup>, 2013;

**b)** Rule of the Board of the Financial Supervisory Authority no. 9/2014 on the organization of the archiving activity to insurers / reinsurers and intermediaries in insurance and / or reinsurance, published in the Official Gazette of Romania, Part I, no. 343 of May 9<sup>th</sup>, 2014.

The Chairman of the Financial Supervisory Authority,  
Leonardo Badea

Bucharest, December 7<sup>th</sup>, 2017.

No. 33.