

Financial Supervisory Authority

RULE No.38/ 2016

on the rights, obligations, competences and designation of the special administrator

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

based on the provisions of art. 17 paragraph (2) of Law no. 503/2004 on the financial recovery, bankruptcy, dissolution and voluntary liquidation in the insurance activity, republished, as subsequently amended and supplemented, and on the provisions of art. 2 paragraph (4) of Law no. 213/2015 on the Policyholder Guarantee Fund,

pursuant to the deliberations held in the meeting of the Financial Supervisory Authority's Board, dated 2016,

the Financial Supervisory Authority hereby issues the following rule:

Art. 1. (1) In accordance with the provisions of Art. 16 of Law. 503/2004 on the financial recovery, bankruptcy, dissolution and voluntary liquidation in the insurance activity, republished, as subsequently amended and supplemented, hereinafter referred to as Law No. 503/2004, in the event of applying the method for financial recovery of the insurance/reinsurance undertakings through special administration, as provided in art. 8, paragraph (1) letter b) of the same law, the Financial Supervisory Authority, hereinafter referred to as ASF, shall designate, by decision, a special administrator.

(2) The special administrator is designated by ASF from the persons enlisted in the Registry of special administrators for insurance/reinsurance undertakings, entitled the Registry of Special Administrators - SAR, according to the procedure approved by the Board of the Financial Supervisory Authority.

(3) ASF may designate, by decision, the Policyholder Guarantee Fund as a special administrator; in such event, the provisions of paragraphs (4) - (7) are not applicable to the Policyholder Guarantee Fund.

(4) In order to be enlisted in the Registry of Special Administrators - SAR, a natural or legal person must have the capacity of insolvency practitioner, recorded in the National Union of Insolvency Practitioners of Romania Register, published on the website of the National Union of Insolvency Practitioners of Romania, hereinafter referred to as *NUIPR*, and submit the following documents to the ASF:

- a) supporting document issued by *NUIPR* indicating the capacity of insolvency practitioner for the relevant natural person or legal entity, the fact that it is not suspended or deemed incompatible and that it was not the subject of any disciplinary sanctions in the previous 3 years;
- b) a copy of the professional liability insurance agreement;
- c) a copy of the natural person's identity card or, as applicable, a copy of the of the legal entity's certificate of registration with the trade register office;
- d) the request for registration into the Registry of Special Administrators - SAR, according to the annex which is an integral part of this rule;
- e) a list of the main services provided in the previous 3 years highlighting the experience in the financial-banking sector and in financial recovery or insolvency procedures or in procedures for restructuring the activities or reorganizing certain companies and for crisis management;

(5) The de-registration of a special administrator from the Registry of Special Administrators - SAR can be made by the ASF in the following cases:

- a) if the special administrator has not complied with the obligations arising from the special administration activity, including those relating to the full submission of reports, reportings or documents required by the applicable regulations or requested by the ASF;
- b) if the ASF observes, during the course of special administration, that the special administrator does not meet the conditions provided in par. (6) anymore;
- c) upon death of the natural person special administrator or, as applicable, pursuant to dissolution, liquidation or insolvency of the legal entity special administrator;
- d) if there are other causes for cessation as provided by the applicable regulations.

(6) In order to be designated as the special administrator for an insurance/reinsurance undertaking authorized by the ASF, a natural person or legal entity must meet the following conditions cumulatively:

- a) to be enlisted in the Registry of Special Administrators - SAR;
- b) to not be in a state of incompatibility or conflict of interest with the insurance/reinsurance undertaking subject to special administration or with the persons involved with it, particularly:
 - (i) to not have been the statutory auditor/in the statutory audit team during the previous 5 years;
 - (ii) to not have been one of the management consultants of the insurance/reinsurance undertaking at the time of selection;

(iii) to not be a husband/wife or relative up to the IVth level including, with the persons from the management of the insurance/reinsurance undertaking, or to not have been in a contractual relationship for the previous 2 years with the insurance/reinsurance undertaking subject to administration or with its management;

(7) In order to be designated as the special administrator for an insurance/reinsurance undertaking authorized by the ASF, the insolvency practitioner must submit the following documents to the ASF:

a) a statutory declaration of the natural person or, as applicable, of the legal representative for the legal entity, on knowing and meeting the conditions required to be designated as a special administrator, as provided in par. (6) and undertaking to observe them during the entire period of their mandate;

b) documents to update, if appropriate, the documents provided in par. (4);

c) other documents requested by the ASF according to the procedure provided in par. (2) to certify the fulfillment of the conditions set out in par. (6).

Art. 2. – (1) The registry provided in art. 1 par. (2) shall be maintained and updated by ASF, in computerized system, the data enlisted in it being permanently accessible to the public on ASF's website:

(2) The Registry provided in par. (1) contains the following columns:

a) number and date of enrolment in the Special Administrator's Registry – SAR, both for the natural person special administrator as well as for the legal entity special administrator

b) for the natural person special administrator:

(i) name and surname;

(ii) address, phone/fax/email;

(iii) date of registration in the UNIPIR panel;

(iv) observations.

c) for the legal entity special administrator:

(i) denomination and legal form;

(ii) address of head office, phone/fax/email;

(iii) legal representative;

(iv) registration number in the Trade Registry;

(v) unique registration number, assigned by the Ministry of Public Finances;

(vi) date of registration in the UNIPIR panel;

(vii) observations.

(3) Enrolment of special administrators' in the Registry provided at par. (1) shall be made in chronological order of their approval by ASF.

(4) Editing of the special administrators' Registry – SAR shall be performed in two sections:

a) section A;

b) section B.

(5) Section A contains special administrators that have obtained ASF's approval and are eligible for selection; Section B contains, in chronological order, special administrators whose enrolment was radiated based on the provisions stipulated in art. 1 par. (5).

(6) The registration number of special administrators has the following alphanumeric structure: RAS-000.

Art. 3. (1) From the date of designation, the special administrator takes full control over the management duties for the insurance/reinsurance undertaking subject to financial recovery, as they are stated in accordance with the provisions of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, the Law on trading companies no. 31/1990, republished, as subsequently amended and supplemented, the regulations of the ASF, the insurance/reinsurance undertaking's articles of association and those of other relevant regulations.

(2) The special administrator adopts the measures provided by the law for the fulfillment of its tasks, including the measures required to preserve the assets and collect the receivables to protect the interests of the contracting parties.

(3) In the meaning of the special administrator's legal obligation to adopt the measures required to preserve the assets, it must keep the assets of the insurance/reinsurance undertaking, without having the option to sell those as a current administrative measure; the special administrator shall adopt adequate administrative measures so as to settle the payments of the insurance/reinsurance undertaking, which are arising from outstanding debts.

(4) The special administrator adopts the measures required to take over and maintain, in good conditions, the archive of the insurance/reinsurance undertaking subject to special administration.

(5) The special administrator shall draw up and send to the ASF the periodical reporting and reports provided by the applicable regulations, for the insurance/reinsurance undertaking subject to special administration.

Art. 4. (1) When fulfilling his attributions, the special administrator employs the insurance/reinsurance company, compliant to the financial recovery procedure in relation to third parties and is responsible, according to the law, of the way in which the financial recovery decision is made and of other measures disposed by ASF by decision.

(2) When exercising the duties conferred by the law and the decisions of the ASF, the special administrator shall, at least, perform the following activities:

- a) shall analyze the entire activity of the insurance/reinsurance undertaking subject to special administration;
- b) shall appropriately maintain the registries and documents of the relevant insurance/reinsurance undertaking and other activities which fall upon administrators when taking control over the management duties of a insurance/reinsurance undertaking, for the purpose of finding any deficiencies existing at management level;
- c) shall draw up a detailed report on the financial status of the relevant insurance/reinsurance undertaking;
- d) shall take the required steps to achieve an increase in capital, in order to financially recover the insurance/reinsurance undertaking;
- e) shall manage the activities of the insurance/reinsurance undertaking, by supervising and controlling it, including the conditions for making payments from or into the accounts of the insurance/reinsurance undertaking;
- f) shall inform the ASF upon observing cases of breaching the law or the internal procedures of the insurance/reinsurance undertaking under administration, within 24 hours after the date of observing them;
- g) shall draw up and send to the ASF monthly reports on the status of the financial recovery procedure;
- h) shall fulfill other ASF provisions required to ensure the protection of the legitimate rights and interests of the contracting parties.

(3) The report provided in par. (2) let. c) shall be drawn up and sent to the ASF within a maximum of 30 working days from the date of being designated as the special administrator and shall contain:

- a) the causes identified as leading to the conditions for starting the financial recovery procedure;
- b) the persons whose activity is imputable within the meaning provided in let. a);
- c) the measures considered by the special administrators, as well as the real and operative possibilities of financial recovery for the insurance/reinsurance undertaking or, as applicable, the reasons that are impeding the fulfillment of this procedure's purpose.

(4) The reports provided in par. (2) let. g) are sent within the first five working days of the current month for the activity undertaken in the previous month; they shall be accompanied by documents relating to the assessment of assets and liabilities, the status of collecting receivables, the cost of maintaining assets and the status of settling debts.

(5) The execution of the mandate and/or the performance of the tasks of the special administrators shall be undertaken expressly by the person designated in the ASF decision, without the special administrator being able to assign its attributions, fully or partially, to third parties.

(6) In the fulfillment of its tasks, the special administrator represents the insurance/reinsurance undertaking subject to the financial recovery procedure in its relationships with third parties and is responsible, according to the law, for the manner in which the financial recovery decision is carried out, as well as other measures which are provided by decision of the ASF.

Art. 5. – For the carried-out activity, the special administrator has the right to remuneration, which shall be established, on a case by case basis, by ASF, having as point of reference the remuneration of the members of the insurance/reinsurance company's board, compliant to special administration, the volume of the activity and the size of the insurance/reinsurance company and it is supported by the insurance/reinsurance company that is the subject of the special administration.

Art. 6. (1) The special administrators shall carry out and adopt the measures required to restore the insurance/reinsurance undertaking's financial status, while observing the provisions, the terms and the conditions included in the financial recovery decision issued by the ASF; the special administrator is liable for the manner in which the duties and responsibilities provided by the applicable regulations and/or established by the ASF are fulfilled.

(2) For justified reasons, the ASF may dispose, any time during the financial recovery procedure, by means of a supported decision, to replace the special administrator and as applicable, in one of the cases provided in art. par. (4), to perform de-registration from the Registry of Special Administrators - SAR.

Art. 7. (1) Cessation of the special administrator capacity will occur in the following cases:

- a) by revocation of the decision of financial recovery by special administration;
- b) by replacement or, as applicable, by resignation of the special administrator from the mandate given;
- c) upon death of the natural person special administrator or, as applicable, pursuant to dissolution, liquidation or insolvency of the legal entity special administrator;
- d) by any other causes for cessation provided in the applicable regulations.

(2) The event in which the special administrator intends to resign from the mandate given, it shall forward to the ASF, together with the notice on the intent of resignation, the report provided in art. 4 par. (2) let. g); The ASF shall decide, if appropriate, the designation of a new special administrator.

(3) Cessation of the special administrator capacity shall be ruled by decision of the ASF and goes into force on the date in which the ASF decision to replace or revoke the special administrator goes into force.

Art. 8. (1) In the event that it is observed that the conditions for recovering the insurance/reinsurance undertaking are not met, that the measures taken by the special administrator did not succeed in meeting the desired purpose and/or in removing the causes which have lead to starting the financial recovery procedures, the ASF shall declare the state of insolvency for the insurance/reinsurance undertaking in accordance with art. 3 par. (1) let. j) pt. 3 of Law no. 503/2004 and shall rule, by supported decision, the cessation of the financial recovery procedure, the withdrawal of the operating permit for the insurance/reinsurance undertaking and the registration of the request for starting bankruptcy, under the conditions of the law.

(2) Through the decision to close the financial recovery procedure, the ASF rules to revoke the special administrator and to cease its capacity and duties.

Art. 9. - Upon the date of this rule's entry into force, the Rule of the Financial Supervisory Authority no. 30/2015 on the rights, obligations and competences of the special administrator, published in the Official Gazette of Romania, Part I, no. 974 dated December 29, 2015, is abolished.

Art. 10. - This rule shall be published in the Official Gazette of Romania, Part I, and goes into force on the date of its publishing

President of The Financial Supervisory Authority,

Mișu Negrițoiu

Bucharest, **23.11. 2016**

No.38

Request for enlistment into the Registry of Special Administrators - SAR;

The undersigned/ Company, headquartered in, mailing address (if different), phone number, e-mail address, personal numerical code/Tax code, I hereby request to be enlisted into the Registry of special administrators for insurance/reinsurance undertakings.

I hereby declare the following.

1. I am in compliance with all the applicable legal provisions to be enlisted in the Registry of special administrators;
2. I do not have an interdiction to work in financial institutions;
3. I have the required professional experience, according to the Rule of the Financial Supervisory Authority no. 38/2016 on the rights, obligations, competences and designation of the special administrator,

Furthermore, in the event of being designated as the special administrator for an insurance/reinsurance undertaking, I commit to do the following:

1. to inform the Financial Supervisory Authority on any state of conflict of interest, incompatibility, and work relationship/kinship with the personnel with the undertaking subject to administration;
2. to inform the Financial Supervisory Authority, within no more than 7 calendar days, on any changes in the data that was subject to registration in the Registry of special administrators - SAR.

To this extent, I hereby attach the following documents:

- a) supporting document issued by the National Union of Insolvency Practitioners of Romania indicating the capacity of insolvency practitioner for the relevant natural person or legal entity, the fact that it is not suspended or deemed incompatible and that it was not the subject of any professional or disciplinary sanctions in the previous 3 years;
- b) a copy of the professional liability insurance agreement;
- c) a copy of the natural person's identity card or, as applicable, a copy of the of the legal entity's certificate of registration with the trade register office;
- d) a list of the main services provided in the previous 3 years highlighting the experience in:
 - (i) financial recovery or insolvency procedures
 - (ii) procedures for restructuring the activities of/reorganizing certain companies and for crisis management;
 - (iii) experience in the financial-banking sector.

Signature

Date

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