

Insurance Supervisory Commission - CSA

Order No. 113118/2006

for the implementation of the Rules on the classification of penalising measures

In force as of 28 June 2006

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There are no amendments as at 27 August 2015.

On the basis of Art. 4(26) and (27) of Law No. 32/2000 on the insurance activity and supervision of insurance, as subsequently amended and supplemented,

in accordance with the Resolution of the Insurance Supervisory Commission's Board of 20 June 2006 whereby the Rules on the classification of penalising measures were adopted,

the President of the Insurance Supervisory Commission hereby issues this order:

Art. 1. - The Rules on the classification of penalising measures, laid down in the annexe forming an integral part of this order, are hereby approved.

Art. 2 – The Directorate-General for Control, Directorate-General for Supervision of Solvency and Financial Reporting, Directorate for Authorisation, Directorate-General for Compulsory Insurance and Directorate-General for Regulation of the Insurance Supervisory Commission shall take action for the fulfilment of the provisions of this order.

President of the Insurance Supervisory Commission,

Nicolae Eugen Crişan

Bucharest, 23 June 2006.

No. 113.118.

RULES

on the classification of penalising measures

Art. 1. – Perpetrating with intent or by negligence, by action or inaction, any of the deeds provided for in Art. 39(2) of Law No. 32/2000 on the insurance activity and supervision of insurance, as subsequently amended and supplemented, shall be punished as provided by Art. 39(3) of such law, by any or more of the following measures:

- a) written warning;
- b) limits on operations;
- c) fine;
- d) cancellation of the vote cast or temporary suspension of the voting right of significant shareholders;
- e) temporary or permanent prohibition on insurers and/or reinsurers to exercise the insurance and/or reinsurance activity, in full or in part, for one or more insurance categories, and temporary or permanent prohibition on insurance and/or reinsurance brokers to exercise the activity defined under Art. 2, Letter C, Points 56 and 57 of Law No. 32/2000, as subsequently amended and supplemented;
- f) withdrawal of the authorisation of insurers, reinsurers or insurance and/or reinsurance brokers;
- g) revocation of a member or of the entire executive board of the Street Victim Protection Fund;
- h) revocation of the approval granted to the entities organising professional qualification, training and ongoing training courses, and/or lecturers;
- i) instruction to insurers, reinsurers and insurance/reinsurance brokers to deregister natural or legal person insurance agents, subagents, subordinated insurance agents or brokerage assistants from the special registries in which they were entered;
- j) withdrawal of the approval for the entities and/or persons provided for in Art. 5 Letter h3) of Law No. 32/2000, as subsequently amended and supplemented.

Art. 2. - (1) The penalising measures provided for Art. 39(3) of Law No. 32/2000, as subsequently amended and supplemented, shall apply either incrementally or directly, taking into account one or more of the following elements:

1. policyholders' interest;
2. consequence on the stability of the insurance activity in Romania;
3. risk profile of each insurer;
4. insurance categories;
5. degree of social danger of the deed perpetrated;
6. circumstances under which the deed was perpetrated;
7. mode and means of perpetration of the deed;
8. purpose;
9. real and personal circumstances of the perpetration of the deed;

10. objections to the finding report or the offender's response to the notification of the Insurance Supervisory Commission, explaining the reasons for breaching the legal provisions;

11. the other data mentioned in the finding report/certificate;

12. other grounds of advisability, evaluations and qualitative analyses.

(2) The penalty shall be proportionate to the degree of social danger of the perpetrated deed.

(3) The level of gravity of the deed shall be quantified by assessing the impact of the perpetrated misconduct on the policyholders' interests, on the solvency and continuity of the offender's activity, taking into account also the other elements referred to in Para (1).

(4) Taking into consideration the circumstances of the perpetration of the deed and the conduct of the perpetrator shall be analysed based on the insurer's risk profile, procedures for prevention and techniques for mitigation of risks set out by the legal provisions (relating to minimum rules on the internal control activity, prudential rules on the management of the insurer, rules on the prevention and combating of money laundering and the financing of terrorist acts through the insurance market, internal control procedures), in its own internal system of risk management and anti-fraud procedures, which must be appropriate to the nature and dimensions of each insurer.

(5) Where any person repeatedly commits several petty offences, the following penalty shall be incrementally increased, if necessary, up to the maximum limit prescribed by law.

Art. 3. - (1) Warning means the written warning given to the offender of the social danger of the deed perpetrated, together with the recommendation to comply with the legal provisions.

(2) The warning shall apply if the deed is less gravity.

Art. 4. - (1) The non-criminal fine has an administrative nature.

(2) The minimum and maximum limits of the applicable non-criminal fine according to Law No. 32/2000, as subsequently amended and supplemented, shall be:

1. for insurers or reinsurers, from 0.5% to 1% of the share capital;

2. for insurance and/or reinsurance intermediaries, organised as joint stock company, from 3% to 6% of the share capital;

3. for insurance and/or reinsurance brokers, organised as limited liability company, from 10% to 20% of the share capital;

4. for legal person insurance agents, organised as limited liability company, from RON 1,000 to RON 5,000;

5. for natural person insurance agents, subagents and subordinated insurance agents, and lecturers, from RON 500 to RON 1,000;

6. for the managers of the entities organising professional qualification, training and ongoing training courses, from RON 5,000 to RON 10,000;

7. for the members of the board of directors and/or executive board and/or the supervisory board, executive management, persons directing the life insurance and non-life insurance activities, in the case of insurers with mixed activity, persons holding managerial positions specific to the insurance field, which shall be established by rules issued for the application of Law No. 32/2000, as subsequently amended and supplemented, persons directing the business of, or, where appropriate, executive management of legal person insurance and/or reinsurance intermediaries, members of the executive board of the Street Victim Protection Fund, between 1 to 6 net salaries or allowances for board meetings of those persons in the month preceding the month in which the petty offence was found.

(3) If by applying these fines the maximum limit set for fines in the framework law governing the legal status of the petty offence is exceeded, then that law shall apply.

(4) The penalty by fine may be applied cumulatively with any of the penalties provided for in Letters d) and e) of Art. 39(3) of Law No. 32/2000, as subsequently amended and supplemented.

(5) The individualisation of the penalty shall take into account the personal and real circumstances of the perpetration of the deed and the conduct of the perpetrator.

(6) Where it is found that two or more petty offences were perpetrated, the fine prescribed for the most serious petty offence shall apply.

(7) The penalising decision shall be signed by the president of the Insurance Supervisory Commission and shall become effective as of the date of its communication to the person penalised.

Art. 5. - The limitation period for the application of the non-criminal penalties provided for by Law No. 32/2000, as subsequently amended and supplemented, shall expire within 6 months from the date of establishment of the offence, but not more than 24 months from the date of its perpetration.

Art. 6. - The non-criminal fines prescribed by law and applied by the Insurance Supervisory Commission shall constitute revenue in the State budget at the rate of 50%, and the difference shall constitute revenue in the budget of the Insurance Supervisory Commission.

Art. 7. - The penalising decisions shall include the legal justification for their application and shall be communicated to natural or legal persons against whom the penalty was ordered. The penalising decisions shall also mention the right of the persons concerned to challenge the penalising measures ordered, the time limit by which the challenge may be filed, and the authority or court where the challenge must be submitted.

Art. 8. - (1) The natural or legal person concerned may make a complaint to the Bucharest Court of Appeal against the decisions taken by the Insurance Supervisory Commission within 30 days after notification of the decisions, in accordance with Art. 8(2) of Law No. 32/2000, as subsequently amended and supplemented.

(2) The complaint filed with the Bucharest Court of Appeal shall not suspend, while pending settlement, the measures provided by the Insurance Supervisory Commission.

(3) The complaint shall be resolved with priority and as a matter of urgency.

Art. 9. - The Insurance Supervisory Commission may at any time decide whether to amend or revoke any measures ordered, if it finds that they are no longer required.

Art. 10. – The provisions of Government Ordinance No. 2/2001 on the legal regime of petty offences, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented shall apply to the petty offences provided for in Art. 39(2) of Law No. 32/2000, as subsequently amended and supplemented, unless otherwise provided by Law No. 32/2000, as subsequently amended and supplemented.

Art. 11. - Any person's deed of pursuing the insurance business in/from Romania without the authorisation of the Insurance Supervisory Commission, as well as pursuing the activity without being registered in the Registry of insurers, reinsurers and insurance and/or reinsurance intermediaries constitutes a crime and is punishable with imprisonment ranging between three months and three years or with fine ranging between RON 20,000 and RON 100,000.

Art. 12. - In order to ensure transparency of the application of the penalising measures and inform policyholders and prospective policyholders of the same, the penalising decisions whereby interdictions are imposed, authorisations are suspended or withdrawn shall be published in the Official Journal of Romania, Part I, and entered in the Registry of insurers, reinsurers and insurance

and/or reinsurance intermediaries, such information being permanently accessible to the public on the website of the Insurance Supervisory Commission.

Art. 13. - The Insurance Supervisory Commission is the only authority competent to rule on the grounds of advisability, evaluations and qualitative analyses underlying the issuance of its acts.