

RULE No. 5/2016

on the identification of the situations where it is considered that an insurer shall find itself in difficulty or it is likely to find itself in difficulty

In accordance with the provisions of Art. 1(2), Art. 2(1) Letters b) and d), Art. 3(1) Letter b), 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. 160 Letter c) of Law No. 246/2015 on the insurers' recovery and resolution,

further to the deliberations held in the meeting of the Financial Supervisory Authority's Board of 22 January 2016,

the Financial Supervisory Authority hereby issues this rule:

CHAPTER I

Object, scope and definitions

Art. 1 – (1) This rule lays down a number of objective elements which shall substantiate the determination that an insurer shall find itself in difficulty or it is likely to find itself in difficulty, as provided by Art. 43(1) or Art. 129 of Law No. 246/2015 on the insurers' recovery and resolution, hereinafter referred to as Law No. 246/2015.

(2) The directorate exercising the supervisory function within the Financial Supervisory Authority, hereinafter referred to as the supervisory directorate, shall determine whether an insurer shall find itself in difficulty or it is likely to find itself in difficulty. In this case, it shall immediately inform the directorate exercising the resolution function within the Financial Supervisory Authority, hereinafter referred to as the resolution directorate, in accordance with the provisions of Art. 130 of Law No. 246/2015. Subject to the terms set out in Art. 42(2) of Law No. 246/2015, the resolution directorate, after consulting the supervisory directorate, may determine whether an insurer shall find itself in

difficulty or it is likely to find itself in difficulty.

(3) Where the directorate exercising the supervisory function within the Financial Supervisory Authority determines that an insurer shall find itself in difficulty or it is likely to find itself in difficulty, then it shall build on the results of the supervisory process carried out in accordance with Law No. 237/2015 on the authorisation and supervision of the insurance and reinsurance business, hereinafter referred to as Law No. 237/2015.

Art. 2 – Even if an objective element set out in Chapter II of this rule materialises in connection with an insurer, the Financial Supervisory Authority, hereinafter referred to as FSA, as competent authority or resolution authority, as appropriate, must not automatically determine that such insurer shall find itself in difficulty or it is likely to find itself in difficulty, or to automatically apply the resolution tools. Similarly, the list of objective elements set out in this rule is not exhaustive and, depending on the actual circumstances, other situations which will lead to determining that an insurer shall find itself in difficulty or it is likely to find itself in difficulty may occur or may be identified.

Art. 3 – This rule must be read in conjunction with the conditions set out in Art. 42(1) Letter b) of Law No. 246/2015. Consequently, the determination of the fact that an insurer shall find itself in difficulty or it is likely to find itself in difficulty under the terms of these regulations does not mean that all conditions required so that resolution measures are taken have been met.

Art. 4 – The provisions of the rule must be also applied where FSA determines that an insurer shall find itself in difficulty or it is likely to find itself in difficulty when assessing that an insurer is no longer viable to exercise the powers to reduce the value of or convert the debts into capital items in accordance with Art. 126 of Law No. 246/2015.

Art. 5 – For the purpose of this rule, the terms and expressions shall have the meanings set out in Law No. 246/2015 and in Law No. 237/2015, if they are not provided for in Law No. 246/2015.

CHAPTER II

Objective elements in determining that an insurer shall find itself in difficulty or it is likely to find itself in difficulty

SECTION 1

General

Art. 6 – In order to determine whether an insurer shall find itself in difficulty or it is likely to find itself in difficulty, as set out in Art. 43(1) of Law No. 246/2015, FSA, both as competent authority and as resolution authority, as appropriate, shall assess the objective elements in connection with:

- a) the level of the insurer's eligible own funds;
- b) the situation regarding the insurer's adequacy of liquidity.

Art. 7 – FSA, as competent authority or as resolution authority, shall determine whether an insurer shall find itself in difficulty or it is likely to find itself in difficulty based on the assessment of the objective elements indicated in Sections 2 and 3 and taking into account, where appropriate, the following:

- a) whether FSA imposed on the insurer concerned financial recovery and/or early intervention and/or short term financing specific measures, and the application of these measures was not successful;
- b) the notifications received by FSA from the insurer concerned, in accordance with Art. 99 or Art. 100 of Law No. 237/2015.

SECTION 2

Level of eligible own funds

Art. 8 – Pursuant to Art. 43(1) Letters a) and b) of Law No. 246/2015, an insurer may be deemed to find itself in difficulty or likely to find itself in difficulty if:

- a) it breaches or if, in accordance with certain objective elements, it may be concluded that, in the near future, the insurer shall breach the minimum capital requirements (MCR), as set out in Law No. 237/2015, as a result of the fact that the insurer

incurred or it is likely to incur losses which shall lead to the deterioration of its financial situation or to the depletion of a significant part of its own funds, without limitation thereto; or

b) its liabilities are greater than its assets, or if, in accordance with certain objective elements, it may be concluded that, in the near future, its liabilities shall be greater than its assets.

Art. 9 – The prospective assessment of the insurer's assets and liabilities, and the prospective assessment of the fulfilment of the solvency capital and minimum capital requirements shall be based on the following objective elements, without limitation thereto:

a) the level and structure of the insurer's own funds and whether they meet the minimum capital requirements;

b) the results of the assessment of the assets and/or liabilities, which indicate a significant decrease in the value of assets, or a significant increase in liabilities resulting in the breach of the minimum capital requirements, where appropriate;

c) the results of the assessment made to evidence whether the conditions necessary to initiate the resolution procedure are met under Art. 58 Letter a) of Law No. 246/2015, where appropriate; or

d) the results of any assessment made at the level of the insurer of the value of its assets and liabilities, either by an independent evaluator, FSA or any other person, in so far as the assessment methodology applied is in line with Title II, Chapter III of Law No. 246/2015, which shall support the determination of the fact that the value of the insurer's assets is, or that it is likely to be in the near future, less than the value of its liabilities. Elements of the assessment results may be used to determine whether the insurer breaches, or it is likely to breach in the near future, the minimum capital requirements, to a sufficient extent so as to justify the withdrawal of its authorisation, where appropriate.

SECTION 3

Adequacy of assets

Art. 10 – Pursuant to Art. 43(1) Letter c) of Law No. 246/2015, an insurer is deemed to find itself in difficulty or likely to find itself in difficulty if it is impossible for that insurer to pay its insurance obligations or if, in accordance with certain objective elements, it may be concluded that it will happen in the near future.

Art. 11 – The determination of whether the insurer is likely to find itself in the impossibility to pay its insurance obligations must be based on several objective elements which may include, without limitation, the following:

a) the significant negative developments of the level of the insurer's liquidity, so as to lead to a deficit of liquid assets to pay short term obligations;

b) the significant negative developments of the current and future assets of the insurer; when assessing the insurer's assets, account shall be taken, as appropriate, of:

(i) outflows of assets, existing and future, including by the payment of indemnity or compensation, premium return, payment of reinsurance ceded premiums, payment of redemptions, etc.;

(ii) any contingent asset;

c) any information revealing that the insurer faces difficulties in paying its insurance obligations.

CHAPTER III

Process determining that the insurer finds itself in difficulty or it is likely to find itself in difficulty

SECTION 1

Determination by FSA, as competent authority or resolution authority, of the fact that an insurer shall find itself in difficulty or it is likely to find itself in difficulty

Art. 12 – The assessment of the elements set out in Chapter II shall be carried out, as a rule, by the supervisory directorate during the supervisory process carried out in accordance with Law No. 237/2015.

Art. 13 – Where the resolution directorate determines that an insurer shall find itself in difficulty or it is likely to find itself in difficulty, then it shall take into account the elements set out in Chapter II in connection with the capital and liquidity situation.

Art. 14 – When it determines that an insurer shall find itself in difficulty or it is likely to find itself in difficulty, the resolution authority must also take into account, as objective element, the information received from the supervisory directorate in connection with the results of the supervisory process and, where appropriate, the fact that the insurer has failed to comply with the financial recovery and/or early intervention and/or short term financing specific measures.

SECTION 2

Consultation and exchange of information between the supervisory directorate and resolution authority

Art. 15 – Without prejudice to Art. 43(2) or Art. 130 of Law No. 246/2015, to facilitate an efficient flow of information so as to determine whether an insurer shall find itself in difficulty or it is likely to find itself in difficulty, the supervisory directorate and the resolution authority must exchange information as required in these rules.

Art. 16 – Before concluding on whether an insurer shall find itself in difficulty or it is likely to find itself in difficulty, the supervisory directorate and resolution authority must appropriately inform and consult each other on the result of their assessments.

Art. 17 – If the resolution authority identifies objective elements set out in Chapter II, it must request from the supervisory directorate to explain how these circumstances reflected in the supervisory process.

Subsection 2.1.

Information provided by the supervisory directorate

Art. 18 – Pursuant to Art. 27 of Law No. 246/2015 on the insurer's recovery and resolution, the supervisory directorate shall inform the resolution authority of the fulfilment of the conditions necessary for the application of the early intervention measures in

connection with an insurer. Also, the supervisory directorate shall inform the resolution authority of any crisis prevention and/or financial recovery and/or early intervention and/or short term financing measures imposed on the insurer.

Art. 19 – To facilitate the exchange of information, the supervisory directorate shall also send the resolution directorate the results of the supervisory process. Thus, the supervisory directorate must provide the resolution directorate with at least the following information in connection with the insurer concerned:

- a) a summary of the insurer's general assessment;
- b) a complete set of indicators used in the regular monitoring of the key indicators underlying the supervisory process, including their relevance thresholds;
- c) all details of the supervisory measures applied, and a description of the insurer's compliance with the same; and
- d) details on the recovery and/or short term financing options applied by the insurer, where appropriate.

Subsection 2.2.

Information provided by the resolution authority

Art. 20 – After it identifies the elements in Chapter II, the resolution authority shall send the supervisory directorate its findings and explanations.

Art. 21 – The supervisory directorate shall be informed each time when FSA, as resolution authority:

- a) decides to use its powers to order an insurer to contact potential buyers to prepare the insurer's resolution, pursuant to Art. 27 of Law No. 246/2015 on the insurers' recovery and resolution;
- b) requests an assessment carried out by a legal person financial auditor, pursuant to Art. 55 or Art. 131 of Law No. 246/2015, or it decides on a provisional assessment by FSA, pursuant to Art. 56 of Law No. 246/2015;
- c) analyses the result of the assessment carried out by the financial auditor, or it

determines the result of the provisional assessment carried out by it, under the terms of Art. 56 of Law No. 246/2015.

CHAPTER IV

Final provisions

Art. 22 – This rule shall be published in the Official Journal of Romania, Part I, and shall enter into force on the date of its publication.

President of the Financial Supervisory Authority,

Mișu Negrițoiu

Bucharest, 2016

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