

RULE NO. 6/2016
on the evaluation and resolution decision-making process

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. 137 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) the conditions which the financial auditor must meet where it evaluates an insurer, as set out in Art. 55, Art. 57 – Art. 62, and in Art. 131 of Law No. 246/2015 on the insurers' recovery and resolution, hereinafter referred to as Law No. 246/2015;

b) the aspects which must be considered by the financial auditor set out in Art. 55 of Law No. 246/2015, where an independent evaluation of an insurer is carried out.

(2) Within the meaning of this rule, the terms and expressions below shall have the meanings set out in Law No. 246/2015, and in Law No. 237/2015 on the authorisation and supervision of the insurance and reinsurance business, hereinafter referred to as *Law No. 237/2015* if they are not provided for in Law No. 246/2015.

Art. 2 – Where a financial auditor evaluates an insurer, as provided for in Art. 55, Art. 57 – Art. 62, or Art. 131 of Law No. 246/2015, such evaluation shall be carried out based on a decision issued by the Financial Supervisory Authority, hereinafter referred to as *FSA*, for the insurer concerned.

CHAPTER II

Specific conditions which must be met by the financial auditor

Art. 3 – Where a financial auditor carries out the evaluation set out in Art. 2, then the financial auditor must cumulatively meet the following conditions:

- a) it must be a legal person;
- b) it must have obtained the maximum score “A” at the last evaluation carried out by the Chamber of Financial Auditors of Romania;
- c) the activity carried out in the financial audit field and the responsibilities exercised must certify that it has a good professional reputation at the national or international level;
- d) it must have international experience in connection with the audit engagement to be carried out, i.e. it must have participated in the last 5 years in audit works such as the asset quality assessment or the valuation of the assets and liabilities of the companies in the financial–banking field or in evaluation actions for the resolution of a company in the financial–banking field;
- e) it must not be the statutory auditor of the insurer at the time of the selection and during the evaluation;
- f) it must not be the special administrator, temporary administrator or resolution administrator of the insurer;
- g) it must not have carried out statutory audit engagements at the insurer concerned in the last 5 years preceding the evaluation;
- h) it must not have been sanctioned by disciplinary penalty by a final decision in the last 3 years by the competent authorities supervising their activity;
- i) it must not have been punished by the Romanian or foreign authorities in the financial field with the prohibition to perform activities in the financial-banking system or with the temporary prohibition to perform any type of activities;
- j) it must have concluded a professional indemnity insurance contract, in compliance with the rules concerning the professional risk insurance issued by the Chamber of Financial Auditors of Romania; FSA shall assume no liability for the compliance of the professional indemnity insurance contract with the rules concerning the professional risk insurance issued by the Chamber of Financial Auditors of Romania;
- k) it must not be in any situations of incompatibility or conflict of interest provided by the legislation in force;

l) it must have at least 5 persons employed, who are active members of the Chamber of Financial Auditors of Romania;

m) its audit team must include at least an actuary.

CHAPTER III

Obligations of the financial auditor

Art. 4 – (1) The valuation provided for in Art. 2 shall include all assets, liabilities, including any technical reserves, and equities of the insurer subject to evaluation.

(2) The financial auditor shall value the assets and liabilities referred to in Para (1) both in compliance with the accounting regulations in force and with the standards set out in Law No. 237/2015.

(3) The financial auditor shall draw up an adjusted balance sheet based on the corrections resulting from the valuation referred to in Para (2), which shall have two sections, as follows:

a) the valuation of assets and liabilities in compliance with the accounting regulations in force;

b) the valuation of assets and liabilities in compliance with the standards set out in Law No. 237/2015.

Art. 5 – At the beginning of the evaluation, the financial auditor shall draw up a work plan which shall include the following main elements: the scope, objectives, limitations, hypotheses, description of the methods and tools used in the activity and the description of the organisation of the work. The work plan shall be sent to FSA within 14 days of the initiation of the evaluation process of the insurer.

Art. 6 – (1) During the evaluation, the financial auditor must send FSA twice a month a progress report and participate, when called upon, in monthly meetings with FSA and teleconferences organised by it.

(2) At any time whatsoever during the evaluation, the financial auditor may draw up an additional report where it considers that FSA must be informed of facts and aspects which are or may be urgent, of special interest, or important for the successful completion of the audit engagement.

Art. 7 – (1) The financial auditor must draw up and send FSA, in the Romanian language, the final report comprising the results of the evaluation process.

(2) The final report referred to in Para (1) comprising the evaluation process must detail and include at least the following elements:

- a) the introduction and context;
- b) the scope, objective and purpose of evaluation;
- c) the main limitations of the evaluation;
- d) the methodologies and hypotheses. The financial auditor shall identify and explain any significant deviation from the hypotheses used by the insurer to draw up the financial statements or to calculate the solvency requirements;
- e) the evaluation overview;
- f) the information set out in Art. 60 of Law No. 246/2015;
- g) the information set out in Art. 61 of Law No. 246/2015, where applicable;
- h) the information set out in Art. 62 of Law No. 246/2015;
- i) the findings resulting from the evaluation set out in Art. 4(2);
- j) the adjusted balance sheet, based on the corrections resulting from the evaluation, drawn up in compliance with the accounting regulations in force;
- k) the adjusted balance sheet, based on the corrections resulting from the evaluation, drawn up in compliance with the standards set out in Law No. 237/2015;
- l) the status of the reinsurance cession contracts where the insurer would be liquidated under the normal insolvency proceedings, and also where the insurer would be subject to a resolution measure;
- m) the analysis made for each of the purposes of the evacuation set out in Art. 58 of Law No. 246/2015;
- n) a detailed analysis of the estimated amounts necessary for financing the implementation of the resolution tools, as compared with the costs involved by the insurer's bankruptcy;
- o) any other information provided for by the legislation in force or requested by FSA.

Art. 8 – FSA may request from the financial auditor any details, clarification or explanations in connection with the activity carried out, and also the documents drawn up by such financial auditor where the clarification is deemed insufficient.

CHAPTER IV

Obligations of the insurer

Art. 9 – Prior to the initiation of the evaluation process, the insurer must ensure that the financial auditor meets the conditions set out in Art. 3.

Art. 10 – The insurer must support the financial auditor in achieving the objectives and purposes of the evaluation by providing it with all information and documents requested, within the time line and in the form requested by the auditor.

CHAPTER V

Final provisions

Art. 8 – 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,
Mişu Negriţoiu**

Bucharest, 2016

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