

RULE NO.8/2016

on the conditions for the implementation of the safety mechanisms and categories of contracts to which the protective measures apply

In accordance with the provisions of Art. 2(1) Letter b), 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

Scope

Art. 1 – (1) This rule lays down:

a) the conditions for the implementation of the safety mechanisms set out in Chapter V of Law No. 246/2015 on the insurers' recovery and resolution, hereinafter referred to as Law No. 246/2015;

b) the categories of contracts to which the protective measures apply within the resolution procedure, provided for in Law No. 246/2015.

(2) The terms and expressions below shall have the meanings set out in Law No. 246/2015, or Law No. 237/2015 on the authorisation and supervision of the insurance and reinsurance business as long as they do not contradict Law No. 246/2015.

CHAPTER II

Conditions for the implementation of the safety mechanisms

Art. 2 – (1) With a view to applying the principle provided for in Art. 44 Letter g) of Law No. 246/2015 and given the application of the resolution tools and powers, the Financial Supervisory Authority, hereinafter referred to as *ASF*, as resolution authority, shall issue a decision requesting the insurer under resolution to have an evaluation carried out by a legal person financial auditor, to verify whether the principle was complied with.

(2) The evaluation cost shall be borne by the insurer under resolution.

Art. 3 – (1) The evaluation carried out in order to determine the treatment of shareholders and creditors as part of the application of the resolution tools or powers, given the conditions applicable within the insolvency proceedings, shall have the minimum content set out in Art. 134(2) and Para (3) of Law No. 246/2015.

(2) The financial auditor shall carry out the evaluation in compliance with the applicable standards and shall draw up an evaluation report in the Romanian language, which shall be sent to the insurer under resolution and to *ASF*.

(3) *ASF* 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.

(4) The evaluation shall determine the amount that each of the shareholders and creditors whose receivables were not transferred to a bridge institution, insurer or asset management vehicle would have received if the insurer had been liquidated through the insolvency proceedings, in accordance with Law No. 85/2014 on the insolvency prevention and insolvency proceedings.

(5) The evaluation shall be reported at the time the decision concerning the resolution measures is made.

Art. 4 – (1) Where as a result of the evaluation it appears that the losses incurred by the shareholders and creditors whose receivables were not transferred to a bridge institution, insurer or asset management vehicle are higher than those which would have been incurred within the insolvency proceedings set out by Law No. 85/2014, then they shall be entitled to receive payment from the Insurers' Resolution Fund.

(2) ASF, as resolution authority, shall inform each shareholder and creditor referred to in Para (1) of the amount representing the difference that they are entitled to receive, within one month from the receipt of the evaluation report, and the identification data of the Insurers' Resolution Fund which shall pay such amount.

(3) The shareholders and creditors referred to in Para (1) may request that the amount referred to in Para (2) be paid within the general limitation period provided by law.

CHAPTER III

The conditions which must be met by the financial auditor

Art. 5 – The financial auditor that carries out the evaluation in accordance with the provisions of Art. 134 of Law No. 246/2015 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 evaluation of the asset and liability quality of the companies in the financial –banking field or 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 a 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; ASF 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 IV

Safety mechanisms for counterparties in the case of partial transfer and categories of contracts to which protective measures apply

Art. 6 – (1) When applying the provisions of Art. 136 of Law No. 246/2015 referring to the protection extended to the partial transfers of assets, rights or liabilities of the insurer under resolution to another insurer, or when exercising the resolution tool from one bridge institution or asset management vehicle to another insurer, the following categories of contracts shall apply:

a) the financial contracts defined in Art. 2 Point 12 of Law No. 246/2015;

b) the financial guarantee contracts, defined by Government Ordinance No. 9/2004 on certain financial guarantee contracts, approved as amended and supplemented by Law No. 222/2004, as subsequently amended and supplemented;

c) the settlement-clearing contracts of transactions in financial instruments on regulated markets, multilateral trading facilities and organised trading facilities;

d) the commitments relating to the covered bond issue;

e) the mortgages provided for in accordance with the Civil Code.

(2) The protection extended to the contracts referred to in Para (1) refers to the fact that the assets of the insurer under resolution, bound by or over which mortgage rights or liens have been established may not form the object of the sale tool of the activity and portfolio, provided by Law No. 246/2015.

Art. 7 – The protective measures shall apply until the date of initiation of bankruptcy proceedings.

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

No. 8