

Law No. 289/2010
amending and supplementing certain legislative acts

In force as of 2 January 2011

Published in the Official Journal of Romania, Part I No. 892 of 30 December 2010.

There are no amendments as at 23 June 2015.

The Parliament of Romania hereby adopts this law.

Art. I. – Law No. 32/2000 on the insurance activity and supervision of insurance, published in the Official Journal of Romania, Part I, No. 148 of 10 April 2000, as subsequently amended and supplemented, is hereby amended and supplemented as follows:

1. Under Article 4, Paragraphs (2) and (8), and Letters b), d) and f) of Paragraph (16) are hereby amended and shall read as follows:

“(2) The Insurance Supervisory Commission is the autonomous administrative, specialised, independent and self-financed authority with legal personality, seated in Bucharest that shall exercise its tasks in accordance with the provisions of this law.

.....
(8) Appointment of the members of the Board of the Insurance Supervisory Commission is made from the joint list proposed by the Committee on budget, finance, banking and capital market of the Senate and by the Committee on budget, finance and banks of the Chamber of Deputies, elected exclusively on professional qualification criteria.

.....
b) must not be senators, deputies or members of any political party during their terms of office;

.....
d) must not be members of the board of directors or of the commissions of censors of legal persons subject to the supervision by the Insurance Supervisory Commission, or significant shareholders thereof, both themselves and their family members, including third degree relatives and in-laws;

.....
f) must have a clean criminal record certificate and tax offence record certificate;”

2. Under Article 4, Paragraph (16), after Letter f) a new letter, Letter g), is hereby inserted, and shall read as follows:

“g) must not be spouses or relatives or in-laws, including third degree relatives of in-laws, of the President of Romania, the Presidents of the Chambers of the Parliament and members of the Government.”

3. Under Article 4, after Paragraph (18¹) a new paragraph, Paragraph (18²), is hereby inserted and shall read as follows:

“(18²) Legal expenses incurred in the legal actions taken against the persons referred to in Para (18¹) shall be borne by the Insurance Supervisory Commission and shall be recovered, as appropriate, from the unsuccessful party.”

4. Under Article 7, Paragraph (1) is hereby amended and shall read as follows:

“Art. 7. - (1) The President of the Board of the Insurance Supervisory Commission shall submit to the Parliament, not later than 30 June of the following year, the annual report of the Insurance Supervisory Commission covering its activities, annual financial statements and audit report that shall be debated, without being put to the vote, in the joint session of the two Chambers of the Parliament.”

5. Under Article 8, after Paragraph (4) a new paragraph, Paragraph (5), is hereby inserted and shall read as follows:

“(5) In performing its tasks, the Insurance Supervisory Commission, and its personnel, shall not request or receive instructions of any kind from any public institution or authority.”

6. Under Article 42, Paragraphs (1) and (2) are hereby amended and shall read as follows:

“Art. 42. - (1) The provisions of this law shall apply to all aspects concerning the organisation and operation of the Insurance Supervisory Commission, and regulation of the insurance and reinsurance business.

(2) Any legal provisions concerning the organisation and operation of the Insurance Supervisory Commission and insurance/reinsurance business shall be the responsibility of the Insurance Supervisory Commission.”

Art. II. – Government Emergency Ordinance No. 50/2005 on the establishment, organisation and operation of Private Pension System Supervisory Commission, published in the Official Journal of Romania, Part I, No. 509 of 15 June 2005, approved as amended and supplemented by Law No. 313/2005, is hereby amended and shall read as follows:

1. Under Article 1, Paragraph (2) is hereby amended and shall read as follows:

“(2) The Private Pension System Supervisory Commission, hereinafter referred to as the Commission, is the autonomous administrative, specialised, independent and self-financed authority with legal personality, whose authority shall be exercised in the entire territory of Romania, organised and existing in accordance with the provisions of this emergency ordinance.”

2. Under Article 1, after Paragraph (2) a new paragraph, Paragraph (2¹), is hereby inserted and shall read as follows:

“(2¹) In performing its tasks, the Commission and its management personnel shall not request or receive instructions of any kind from any other public institution or authority.”

3. Under Article 1, Paragraph (4) is hereby repealed.

4. Under Article 3, after Paragraph (2) a new paragraph, Paragraph (2¹), is hereby inserted and shall read as follows:

“(2¹) The joint commissions referred to in Para (2) shall select the proposals from a list comprising an extended number of candidates by reference to the number of the members to be appointed, elected exclusively on professional qualification criteria.”

5. Under Article 8, Paragraph (1) is hereby amended and shall read as follows:

“Art. 8. - (1) The duration of the term as member of the Commission’s Board is 5 years, except for the Chairman and Vice Chairman, whose terms shall be 6 years; each member may be re-vested.”

6. Under Article 16, after Paragraph (1) a new paragraph, Paragraph (1¹), is hereby inserted and shall read as follows:

“(1¹) The act whereby the Commission imposes the sanction by fine constitutes an enforcement order.”

7. Under Article 17, after Paragraph (5) a new paragraph, Paragraph (6), is hereby inserted and shall read as follows:

“(6) The available resources of the Commission may be invested in interest-bearing instruments at credit institutions, in money market instruments, government securities or securities of the local public administration, and in other placements or allocations established by the legislation in force.”

8. Article 18 is hereby amended and shall read as follows:

“Art. 18. – The President of the Commission’s Board shall submit to the Parliament, not later than 30 June of the following year, the annual report of the Commission covering its activities, annual financial statements and audit report that shall be debated, without being put to the vote, in the joint session of the two Chambers of the Parliament.”

9. After Article 21 a new article, Article 21¹, is hereby inserted and shall read as follows:

“Art. 21¹. - (1) The provisions of this emergency ordinance shall apply to all aspects concerning the organisation and operation of the Commission, and regulation, authorisation, supervision and control of the activity in the private pension system.

(2) Any legal provisions concerning the organisation and operation of the Commission and private pension system shall be the responsibility of the Commission.

(3) In the event of a conflict between the provisions of this emergency ordinance and the provisions of other legislative acts in force, the provisions of this emergency ordinance shall apply.”

10. Article 32 is hereby amended and shall read as follows:

“Art. 32. - (1) The members of the Commission’s Board and its specialised personnel with supervisory or control duties shall not be held liable under civil or criminal law, as appropriate, if the courts of law establish the fulfilment or omission of fulfilment by those persons, in good faith and without negligence, of any act or fact in connection with the exercise, under the law, of their job duties.

(2) Legal expenses incurred in the legal actions taken against the persons referred to in Para (1) shall be borne by the Commission and shall be recovered, as appropriate, from the unsuccessful party.

(3) Wilful violation by the specialised personnel of the Commission of their job duties shall incur the disciplinary, non-criminal, civil or criminal liability, as appropriate.”

Art. III. – The Annexe to Government Emergency Ordinance No. 25/2002 approving the Statutes of the National Securities Commission, published in the Official journal of Romania, Part I, No. 226 of 4 April 2002, approved as amended and supplemented by Law No. 514/2002, as subsequently amended and supplemented, is hereby amended and shall read as follows:

1. Under Article 1, Paragraphs (1) and (2) are hereby amended and shall read as follows:

“(1) The National Securities Commission, hereinafter referred to as CNVM, is the autonomous administrative, specialised, independent and self-financed authority with legal personality.

(2) CNVM shall regulate and supervise the capital market, regulated commodity markets and derivatives, and the institutions, instruments and operations specific thereto.”

2. Under Article 1, after Paragraph (2) a new paragraph, Paragraph (2¹), is hereby inserted and shall read as follows:

“(2¹) CNVM is the competent regulatory and supervisory commission, within the meaning of Art. 22(1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, with the tasks and powers established by it, exercised in accordance with the provisions of these statutes.”

3. Under Article 1, Paragraph (3) is hereby repealed.

4. Under Article 1, after Paragraph (5) three new paragraphs, Paragraph (6) through (8), are hereby inserted and shall read as follows:

“(6) The provisions of these statutes and of Capital Market Law No. 207/2004, as subsequently amended and supplemented, shall apply to all aspects concerning the organisation and operation of CNVM, and regulation, authorisation, supervision and control of the capital market activity.

(7) Any legal provisions concerning the organisation and operation of CNVM and capital market shall be the responsibility of CNVM.

(8) In the event of a conflict between the provisions of these statutes and of Capital Market Law No. 207/2004, as subsequently amended and supplemented, on the one hand, and the provisions of other

legislative acts in force, on the other hand, the provisions of these Statutes and of Capital Market Law No. 207/2004, as subsequently amended and supplemented, shall apply.”

5. Article 2 is hereby amended and shall read as follows:

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ARTICLE 2

Fundamental Objectives

CNVM shall prepare and apply the capital market policy and its fundamental objectives are:

- a) to establish and maintain the framework necessary for the development of the markets in financial instruments;
- b) to promote confidence in the markets in financial instruments and investments in financial instruments;
- c) to ensure protection of operators and investors against unfair, abusive and fraudulent practices;
- d) to promote correct and transparent operation of markets in financial instruments;
- e) to prevent fraud, market manipulation and ensure integrity of markets in financial instruments;
- f) to establish financial soundness and honest practice standards on the markets in financial instruments;
- g) to adopt the measures necessary to avoid systemic risks on markets in financial instruments;
- h) to prevent damage of equal information and treatment of investors, or their interests;
- i) to cooperate at the international level with similar competent authorities to reach the objectives referred to in Letters a) through h).”

6. Under Article 3, after Paragraph (2) a new paragraph, Paragraph (21), is hereby inserted and shall read as follows:

“(2¹) The joint commissions referred to in Para (2) shall select the proposals from a list comprising an extended number of candidates by reference to the number of the members to be appointed, elected exclusively based on technical experience and qualification in the supervision of the financial sector.”

7. Under Article 3, Paragraph (11) is hereby amended and shall read as follows:

“(11) CNVM’s members shall not be held liable under civil or criminal law, as appropriate, if the courts of law establish the fulfilment or omission of fulfilment by those persons, in good faith and without negligence, of any act or fact in connection with the exercise, under the law, of their job duties.”

8. Under Article 4, Paragraph (1) is hereby amended and shall read as follows:

“(1) Appointment of CNVM’s members shall be made for 5 years, with the possibility to renew the office term, in accordance with Paras (3) and (4).”

9. Under Article 4, Paragraphs (3) and (4) are hereby amended and shall read as follows:

“(3) CNVM’s members shall be Romanian citizens, with their permanent domicile in Romania, of minimum 30 years of age, of good repute and professional training in the economic or legal field, with a minimum experience of 5 years in the financial sector.

(4) CNVM's members:

a) must not be spouses or relatives or in-laws, including third degree relatives of in-laws, of the President of Romania, the Presidents of the Chambers of the Parliament and members of the Government, governor of the National Bank of Romania, President of the Insurance Supervisory Commission, CNVM's members;

b) must not be deputies or senators, members of a political party;

c) are committed to the exercise of their tasks, with the possibility of carrying out teaching, scientific research and consultancy or expertise duties for international bodies, avoiding any conflict of interest;

d) must not be members of the board of directors, executive managers, censors or auditors of legal persons subject to the supervision by CNVM, Insurance Supervisory Commission, or National Bank of Romania, significant shareholders thereof, both themselves and their family members;

e) must have a clean criminal record certificate and tax offence record certificate."

10. Under Article 4, after Paragraph (5) two new paragraphs, Paragraphs (5¹) and (5²), are hereby inserted and shall read as follows:

"(5¹) The revocation of any CNVM member shall be made in the joint session of the two Chambers of the Parliament, on a proposal of the standing commission of the two Chambers of the Parliament provided for in Art. 3(2), if such member no longer meets the requirements necessary for the exercise of his/her tasks or if found guilty of crimes, incompatible with the exercise of the capacity as member of CNVM.

(5²) No CNVM member may be revoked for reasons or through a procedure other than those referred to in Paras (5) and (5¹)."

11. Under Article 5, after Paragraph (6) a new paragraph, Paragraph (7), is hereby inserted and shall read as follows:

"(7) In performing their tasks, both the members and personnel of CNVM shall not request or receive instructions of any kind from any other public institution or authority."

12. Under Article 6, the introductory part of Paragraph (3) is hereby amended and shall read as follows:

"(3) In the negotiation or during the conduct of international agreements to which Romania or CNVM is a party, CNVM shall provide assistance in particular in connection with the exchange of information and cooperation in the investigative activities. This type of assistance shall include, without limitation:"

13. Under Article 6, after Paragraph (3) a new paragraph, Paragraph (3¹), is hereby inserted and shall read as follows:

"(3¹) In the framework of international cooperation relationships, to respond to the requests made by other similar competent authorities carrying out investigations of violations of their own legislation, CNVM shall exercise its legal powers under the law."

14. Under Article 6, Paragraph (4) is hereby amended and shall read as follows:

“(4) CNVM shall issue regulations on the cooperation procedure with similar competent authorities, in accordance with the Community legislation in force.”

15. Under Article 7, after Paragraph (3) three new paragraphs, Paragraphs (3¹) through (3³), are hereby inserted and shall read as follows:

“(3¹) CNVM shall be competent to take measures to enforce compliance with the capital market legislation and impose the legal sanctions in the event of breach thereof.

(3²) CNVM shall authorise, control and verify, based on the reports received and further to on-the-spot inspections, the account books and cash and securities accounts and any other documents of the entities regulated, authorised and/or supervised, if it deems it necessary.

(3³) CNVM shall have the right to request any information and have access to any document, in any form whatsoever, from and in connection with any person or entity subject to its supervision, in the exercise of its authorisation, supervision and control duties, to achieve the fundamental objectives provided for in Art. 2.”

16. Under Article 10, Paragraph (1) is hereby amended and shall read as follows:

“(1) CNVM may delegate to its agents or to institutions or bodies of the markets in financial instruments one or more of its powers assigned by law.”

17. After Article 12 a new article, Article 12¹, is hereby inserted and shall read as follows:

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ARTICLE 12¹

Budget of CNVM

The annual income and expenditure budget shall be approved by CNVM and shall be verified during its implementation, in accordance with the internal audit and control practices and procedures.”

18. Under Article 13, Paragraphs (2) and (3) are hereby amended and shall read as follows:

“(2) CNVM’s income comes from:

- a) a share of maximum 0.08% of the value of transactions in financial instruments subject to regulation and/or supervision by CNVM, borne by the purchaser, except for derivatives;
- b) a monthly share of maximum 0.1% of the value of the net assets of undertakings for collective investment;
- c) a share of maximum 0.5% of the value of public sale offers;
- d) a share of maximum 2% of the value of public purchase-takeover bids;
- e) tariffs and shares for transactions in derivatives;
- f) tariffs and shares charges for activities for which CNVM issues an individual act;
- g) tariffs and shares charged for the supply of services to entities supervised by third parties;
- h) penalties established by its own regulations as financial sanctions;
- i) donations;
- j) publishing, advertising, duplication activities;

k) any other legal sources.

(3) The shares and tariffs referred to in Para (2) shall be established on a regular basis by regulation of CNVM.”

19. Under Article 13, Paragraphs (4) and (5) are hereby repealed.

20. After Article 13 a new article, Article 13¹, is hereby inserted and shall read as follows:

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ARTICLE 13¹

Use of Financial Resources

So as to make profitable CNVM’s financial resources, they may be invested, in the prevailing market conditions and with the avoidance of any conflict of interest, in interest-carrying instruments at credit institutions, government securities or securities of the local public administration, and in other low risk instruments.”

21. Under Article 14, Paragraph (3) is hereby amended and shall read as follows:

“(3) Expenses shall be established by the annual budget of CNVM, in accordance with its objectives and tasks.”

22. Article 15 is hereby amended and shall read as follows:

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ARTICLE 15

Personnel of CNVM

(1) The personnel of CNVM shall be employed in accordance with Law No. 53/2003 – Labour Code, as subsequently amended and supplemented.

(2) The provisions of Letters c), d) and e) of Art. 4(4) shall apply to the employees of CNVM.

(3) The employed personnel may be seconded under the law to other regulatory authorities in the country or abroad, respectively to supervised entities. During their secondment, they shall continue to be employees of CNVM and shall sign a confidentiality agreement with the entity where they were seconded.

(4) The personnel of CNVM shall not be held liable under civil or criminal law, as appropriate, if the courts of law establish the fulfilment or omission of fulfilment by those persons, in good faith and without negligence, of any act or fact in connection with the exercise, under the law, of their job duties.”

23. After Article 15 a new article, Article 15¹, is hereby inserted and shall read as follows:

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ARTICLE 15¹

Legal Expenses

Legal expenses incurred in the legal actions taken against the members of CNVM and its personnel shall be borne by CNVM and shall be recovered, as appropriate, from the unsuccessful party.”

24. Article 16 is hereby amended and shall read as follows:

“

ARTICLE 16

Annual Activity Report

The President of CNVM shall submit to the Parliament, not later than 30 June of the following year, the annual report of CNVM covering its activities, annual financial statements and audit report that shall be debated, without being put to the vote, in the joint session of the two Chambers of the Parliament.”

25. Under Article 17, after Paragraph (3) a new paragraph, Paragraph (4), is hereby inserted and shall read as follows:

“(4) The individual act whereby CNVM imposes the sanction by fine constitutes an enforcement order.”

Art. IV. - Law No. 32/2000 on the insurance activity and supervision of insurance, published in the Official Journal of Romania, Part I, No. 148 of 10 April 2000, as subsequently amended and supplemented, and with the amendments and supplementations made by this law, shall be republished in the Official Journal of Romania, Part I, and texts shall be renumbered.

Art. V. - Government Emergency Ordinance No. 25/2002 approving the Statutes of the National Securities Commission, published in the Official journal of Romania, Part I, No. 226 of 4 April 2002, approved as amended and supplemented by Law No. 514/2002, as subsequently amended and supplemented, and with the amendments and supplementations made by this law, shall be republished in the Official Journal of Romania, Part I, and texts shall be renumbered.

Art. VI. – Government Emergency Ordinance No. 50/2005 on the establishment, organisation and operation of Private Pension System Supervisory Commission, published in the Official Journal of Romania, Part I, No. 509 of 15 June 2005, approved as amended and supplemented by Law No. 313/2005, with the amendments and supplementations made by this law, shall be republished in the Official Journal of Romania, Part I, and texts shall be renumbered.

This law was adopted by the Parliament of Romania, in accordance with Art. 77(2), in compliance with the provisions of Art. 75 and Art. 76 (1) of the Constitution of Romania, republished.

on behalf of the PRESIDENT OF THE CHAMBER OF DEPUTIES

IOAN OLTEAN

PRESIDENT OF THE SENATE

MIRCEA-DAN GEOANĂ

Bucharest, 28 December 2010.

No. 289.

