

RULE NO. 22/2015

on the authorisation of the privately managed pension fund

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Having regard to the provisions of Arts. 3 through 10 and Arts. 17 through 20 of Law No. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented,

on the basis of the provisions of Art. 24 Letter a) of Government Emergency Ordinance No. 50/2005 on the establishment, organisation and operation of the Private Pension System Supervisory Commission, approved as amended and supplemented by Law No. 313/2005, as subsequently amended and supplemented,

pursuant to the provisions of Art. 2(1) Letters c) and d), Art. 3(1) Letter b), Art. 5 Letter c), Art. 6(1) and (2) and Art. 7(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,

further to the deliberations held in the meeting of the Financial Supervisory Authority's Board of 16 December 2015,

the Financial Supervisory Authority hereby issues this rule.

CHAPTER I

General Provisions

Art. 1. – This rule lays down the procedure, authorisation conditions and documents which must be submitted to the Financial Supervisory Authority, hereinafter referred to as ASF, in the process of authorisation of the privately managed pension fund.

Art. 2. – The privately managed pension fund shall be established for the implementation of a private pension scheme whose prospectus was authorised by ASF under the law.

Art. 3. – Privately managed pension funds may pursue their business in the territory of Romania only based on the authorisation decision issued by ASF.

Art. 4. – The terms and expressions used in this rule shall have the meanings assigned to them in Law No. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented, hereinafter referred to as the Law.

CHAPTER II

Establishment of the privately managed pension fund

Section 1

General Provisions

Art. 5. – **(1)** The privately managed pension fund shall be established under the articles of partnership, in accordance with the provisions of Law No. 287/2009 on the Civil Code, republished, as subsequently amended and supplemented, hereinafter referred to as the Civil Code, of the Law and of this rule.

(2) The initiative of establishing a privately managed pension fund lies with its founders, and they must fulfil the conditions to become participants in accordance with the Law and rules issued for its application.

(3) The number of founders necessary for the formation of a privately managed pension fund is at least 5 persons.

Art. 6. – The headquarters of the privately managed pension fund shall be the same with that of the manager.

Art. 7. – **(1)** The founding members shall sign a management contract with the privately managed pension fund manager, hereinafter referred to as the manager, whereby the privately managed pension fund acknowledges the private pension scheme whose prospectus was authorised by ASF.

(2) The founding members of the pension fund shall by the management contract empower the manager to represent the privately managed pension fund in its relationships with third parties, including before courts of law.

Section 2

Minimum content of the articles of partnership

Art. 8. – The articles of partnership shall include at least the following:

- a) the contracting parties;
- b) the name of the privately managed pension fund;
- c) the legal basis of the formation of the privately managed pension fund;
- d) the term of the privately managed pension fund;
- e) the objectives of the privately managed pension fund;
- f) the parties' rights and obligations;
- g) the manager's duties and responsibilities concerning the management of the privately managed pension fund;
- h) the limits of the mandate granted to its founders;
- i) the unit - definition, description, initial value;
- j) the force majeure - definition;
- k) the clauses concerning the termination of the articles under the conditions laid down in the Civil Code and the Law, procedures and modalities for the protection of participants in these cases;
- l) the provisions indicating that the participants become contracting parties through the execution of the individual joining act;
- m) other clauses.

CHAPTER III

Procedure for amending the articles of partnership

Section 1

General provisions

Art. 9. – (1) The articles of partnership may be amended by fulfilling the procedure provided herein.

(2) The procedure for amending the articles of partnership shall consist of two stages:

- a) obtaining the prior approval for amending the articles for partnership, issued based on the request and documents submitted by the manager requesting the amendment;

b) obtaining the final approval for amending the articles of partnership, after meeting all requirements established by this rule.

Art. 10. – The articles of partnership may be amended on a proposal from the manager or majority of participants in that fund, unless otherwise provided by the articles of partnership.

Section 2

Procedure for prior approval of the amendment of the articles of partnership

Art. 11. – **(1)** In order to obtain the prior approval for the amendment of the articles of partnership, the manager shall submit to ASF a request for prior approval of the amendment thereof, together with the following documents:

- a)** the manager’s explanatory memorandum;
- b)** the draft addendum to the articles of partnership;
- c)** the document for information and request for approval of the participants;
- d)** the proof of payment of the fee for approval of the amendment of the articles of partnership.

(2) The explanatory memorandum referred to in Letter a) of Para (1) shall include at least the following:

- a)** the reasoning behind the amendment of the articles of partnership;
- b)** the amendments proposed by the manager and/or participants in the pension fund, shown comparatively;
- c)** the remark that the participant’s own will must be expressed within maximum 20 working days after transmission of the document for information and request for approval of the participants.

(3) The document for information and request for approval of the participants referred to in Letter c) of Para (1) shall include at least the following:

- a)** the proposed amendments of the articles of partnership, shown comparatively with the provisions of the articles in force;
- b)** the specification that the participant’s own will must be expressed within maximum 20 working days after transmission of such document;

c) the specification that the participants who do not agree on the amendments proposed to the articles of partnership may request, in writing, the transfer to another privately managed pension fund, without any transfer penalties, and all expenses incurred with the transfer shall be borne by the manager.

(4) Participants shall be notified through the document for information and request for approval of the participants that, where the participants' consent on the amendments to the articles of partnership is not obtained, the requests for transfer submitted as a result of expressing their disagreement as regards the amendment of the articles of partnership shall be without effect, and the articles of partnership shall not be amended.

Art. 12. – (1) ASF shall decide on the request for prior approval within maximum 30 calendar days after the registration of the last document corresponding to the request, sent by the applicant.

(2) Any request by ASF for additional information or amendment of the documents initially submitted shall interrupt the term referred to in Para (1), and another term shall start running from the date of submission of such information or amendments, which may not exceed 30 calendar days after the date of ASF's request, on penalty of rejection of the request.

(3) Where the documents submitted are incomplete, illegible, or they were not submitted in an appropriate form, or documents are missing, then their supplementation or replacement shall be requested, as appropriate.

Art. 13. – (1) Where any of the conditions provided herein is not fulfilled or it is improperly fulfilled, then the request for prior approval of the amendments to the articles of partnership shall be rejected.

(2) The prior approval or the written and reasoned decision of rejection shall be communicated to the applicant within maximum 5 working days from adoption.

(3) The decision of rejection may be challenged in accordance with the provisions of Dispute Administrative Law No. 554/2004, as subsequently amended and supplemented, hereinafter referred to as Law No. 554/2004, within maximum 30 calendar days after its communication.

Art. 14. – Another request for prior approval of the amendments to the articles of partnership may be filed with ASF provided that the deficiencies which were the reasons for the rejection of the initial request were remedied.

Section 3

Procedure for obtaining the participants' consent on the amendment of the articles of partnership

Art. 15. – (1) The consent of the participants existing in that privately managed pension fund at the date of communication of the prior approval must be obtained in order to amend the articles of partnership.

(2) In order to obtain the consent of the participants for the amendment of the articles of partnership, the manager of the privately managed pension fund shall, within 10 working days after the date of communication of the prior approval, disclose the operation as follows:

- a)** publication on its own Internet page of the documents referred to in Art. 11(1) Letters a)-c);
- b)** publication of a notice, in at least two national newspapers and for at least 3 consecutive days, making known that the documents referred to in Art. 11(1) Letters a)-c) are published on its own Internet page;
- c)** transmission to the participants of the document for information and request for approval set out in Art. 11(1) Letter c).

Art. 16. – The manager must deliver the document for information and request for approval of the participants through mail services to the last mailing address of the participant.

Art. 17. – (1) Participants may express their will in writing, within the time limit referred to in Letter b) of Art. 11(3).

(2) Where participants do not express their will within the time limit referred to in Letter b) of Art. 11(3), it shall be deemed that they have given tacitly their consent.

Art. 18. – (1) Within maximum 40 working days after the date of the prior approval, but not earlier than the 35th working day after obtaining it, the manager shall draw up a report on the fulfilment of the requirements referring to the participants' consent.

(2) The report referred to in Para (1) shall at least indicate the manner of fulfilment of the publication requirements, specifying their exact date, number of participants informed in writing and number of participants expressing their disagreement on the amendment of the articles of partnership.

(3) Where after the preparation of the report referred to in Para (1) it is found that the participants' express or tacit consent was not obtained, the manager shall publish on its own Internet page a

notice informing them that the articles of partnership shall no longer be amended and shall notify ASF in this respect.

Section 4

Procedure for final approval of the amendment of the articles of partnership

Art. 19. – ASF shall decide on the final approval of the amendment of the articles of partnership, based on the request for final approval and documents submitted by the manager.

Art. 20. – The request shall be submitted together with the report provided for in Art. 18(1), addendum to the articles of partnership, in original, and documents evidencing that the requirements provided for in Art. 15 were met.

Art. 21. – **(1)** ASF shall decide on the request for final approval of the amendment of the articles of partnership within maximum 30 calendar days from the registration of the last document corresponding to the request, sent by the applicant.

(2) Any request by ASF for additional information or amendment of the documents initially submitted shall interrupt the term referred to in Para (1), and another term shall start running from the date of submission of such information or amendments, which may not exceed 30 calendar days after the date of ASF's request, on penalty of rejection of the request.

(3) Where the documents submitted are incomplete, illegible, or they were not submitted in an appropriate form, or documents are missing, then their supplementation or replacement shall be requested, as appropriate.

Art. 22. – **(1)** Where any of the conditions provided herein is not fulfilled or improperly fulfilled, then the request for final approval of the amendments to the articles of partnership shall be rejected.

(2) The final approval or the written and reasoned decision of rejection shall be communicated to the applicant within maximum 5 working days from adoption.

(3) The decision of rejection may be challenged in accordance with the provisions of Law No. 554/2004, within maximum 30 calendar days after its communication.

Art. 23. – **(1)** On the working day following the communication of the final approval, the manager shall publish on its own Internet page a notice whereby the amendments to the articles of partnership and the updated addendum to the articles of partnership are communicated to the participants.

(2) Where ASF issues the decision of rejection, the manager shall publish on its own Internet page, on the day following the receipt of the decision, a notification whereby it informs the participants that the articles of partnership are no longer amended.

CHAPTER IV

Authorisation of the privately managed pension fund

Section 1

Authorisation conditions

Art. 24. – For the purpose of authorisation, the privately managed pension fund must upon submission of the request for authorisation cumulatively meet the requirements provided by the Law and those below:

- a)** the fund must be formed under the articles of partnership, drawn up in compliance with the provisions of this rule concerning the minimum content;
- b)** the manager must be authorised by ASF or similar authorities of a European Union Member State or belonging to the European Economic Area;
- c)** the manager must have the private pension scheme prospectus authorised by ASF, under the Law and rules issued for its application;
- d)** the individual act to join the privately managed pension fund must be approved by ASF under the Law and rules issued for its application;
- e)** the depository of the assets of the privately managed pension fund must be authorised by ASF, under the Law and rules issued for its application;
- f)** the financial auditor of the privately managed pension fund must be approved by ASF, under the Law and rules issued for its application;
- g)** the founding members of the privately managed pension fund must meet the requirements to become participants in accordance with the provisions of the Law and rules issued for its application.

Section 2

Documentation necessary for the authorisation of the privately managed pension fund

Art. 25. – The decision for authorisation of the privately managed pension fund shall be issued based on a request for authorisation of the privately managed pension fund, drawn up by the manager in accordance with the annexe hereto.

Art. 26. – The request for authorisation of the privately managed pension fund shall be submitted by the manager's legal representative to ASF, together with the following documents, in copy:

- a)** the document evidencing the authorisation as pension fund manager, issued by ASF or by other similar authorities of a European Union Member State or belonging to the European Economic Area, as appropriate;
- b)** the management contract concluded between the manager and the founding members of the privately managed pension fund and which shall enter into force on the date of its authorisation;
- c)** the depository and custody contracts concluded between the fund manager and the depository, contracts concluded subject to the authorisation of the privately managed pension fund and which shall enter into force on the date of its authorisation;
- d)** the contract concluded between the fund manager and financial auditor, to audit the activity of the privately managed pension fund, a contract concluded subject to authorisation of the privately managed pension fund and which shall enter into force on the date of its authorisation;
- e)** the articles of partnership forming the pension fund;
- f)** the individual joining acts to the articles of partnership whereby the pension fund is formed and to the private pension scheme prospectus;
- g)** the copy of the identity act of each founding member of the privately managed pension fund, certified as true to the original by the signature of its holder affixed on the same page on which image is photocopied;
- h)** the documentation necessary to prove fulfilment by each of the founding members of the conditions provided by the Law and rules issued for its application, in order to become a participant.

Art. 27. – ASF may verify any aspect of the request for authorisation of the privately managed pension fund, being entitled to address to the competent authorities or request other documents and information from other sources.

Section 3

Procedure for approval or rejection of the request for authorisation of the privately managed pension fund

Art. 28. – **(1)** ASF shall verify whether the conditions provided by the Law and this rule are complied with, approve the articles of partnership and decide, within 30 calendar days, on the approval or reasoned rejection of the request for authorisation of the privately managed pension fund.

(2) The decision approving the request for authorisation of the privately managed pension fund shall be communicated to the manager within 5 calendar days after the date of its adoption by ASF.

Art. 29. – **(1)** Any request by ASF for additional information or amendment of the documents initially submitted shall interrupt the term provided for in Art. 28(1), and another term shall start running from the date of submission of such information or amendments, which may not exceed 30 calendar days after the date of ASF's request, on penalty of rejection of the request for authorisation.

(2) Where the documents submitted are incomplete, illegible, or they were not submitted in an appropriate form, or documents are missing, then their supplementation or replacement shall be requested, as appropriate.

Art. 30. – **(1)** ASF shall reject the request for authorisation of the privately managed pension fund, subject to the conditions provided by the Law, also if the documentation submitted:

a) is still incomplete even after the expiry of the period of 30 calendar days after the request for additional information or documents;

b) is not drawn up in accordance with the legal provisions in force;

c) contains clauses which are likely to harm, or do not adequately protect, the participants' interests.

(2) The written and reasoned decision of rejection of the request for authorisation of the privately managed pension fund shall be communicated within 5 calendar days from its adoption.

(3) The decision of rejection may be challenged in accordance with the provisions of Law No. 554/2004, within maximum 30 days after its communication.

Art. 31. – Another request for authorisation may be filed with ASF provided that the deficiencies which were the reasons for the rejection of the initial request were remedied.

CHAPTER V

Final provisions

Art. 32. – **(1)** All documents submitted to ASF shall be numbered, signed for compliance purposes by the applicant's legal representatives and shall be accompanied by a list of documents including the same.

(2) All documents and information laid down in this rule shall be sent in the Romanian language, and the documents issued in another language shall be submitted in original, in authenticated form, as appropriate, together with their legalised translation.

Art. 33. – The annexe is an integral part of this rule.

Art. 34. – **(1)** This rule shall be published in the Official Journal of Romania, Part I and shall enter into force on the date of its publication.

(2) Rule No. 4/2007 on the authorisation of the privately managed pension fund, approved by Resolution No. 22/2007 of the Private Pension System Supervisory Commission, published in the Official Journal of Romania, Part I, No. 182 of 16 March 2007, as subsequently supplemented, and any other provisions to the contrary, shall be repealed with effect from the date of entry into force of this rule.

President of the Financial Supervisory Authority,

Mișu NEGRIȚOIU

Bucharest, 17 December 2015

No. 22

REQUEST FOR AUTHORISATION OF THE PRIVATELY MANAGED PENSION FUND	
1. Name of the fund:	
2. Name of the applicant manager:	
3. Attorney-in-fact: (surname, first name and position)
 (telephone number)
4. Contact person: (surname, first name and position)
 (telephone number)
5. Registration certificate of the manager issued by the National Office of the Trade Register: (series, number and date of issuance)	
6. Sole registration code of the manager with the National Office of the Trade Register:	
7. Documents evidencing the management authorisation issued by ASF or similar authorities of a European Union Member State or belonging to the European Economic Area: (number and date of issuance)	
8. Decision for authorisation of the private pension scheme prospectus issued by ASF: (number and date of issuance)	
Signature of the attorney-in-fact:
Date:
FALSE STATEMENTS OR INTENDED OMISSIONS OF CERTAIN FACTS MAY CONSTITUTE VIOLATIONS OF THE CRIMINAL LAW	