

**Rule No. 11/2014**  
**on the Depository and Custody Activity of the Privately Managed Pension Funds' Assets**

Published in the Official Journal, Part I. No. 376 of 21/05/2014

Having regard to the provisions of Arts. 119 – 133 of Law No. 411/2004 on the privately managed pension funds, republished, as subsequently amended and supplemented,

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

Based on the provisions of Art. 2 Para (1) letters c) and d), Art. 3 Para (1) letter b), Art. 5 letter c), Art. 6 Para (1) and Para (2) and of Art. 7 Para (2) of Government Emergency Ordinance No. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, as subsequently amended and supplemented, approved by Law No. 113/2013, as subsequently amended and supplemented,

Further to the deliberations of the Financial Supervisory Authority Board of 23 April 2014,

The Financial Supervisory Authority issues this rule:

**CHAPTER I**  
**General Provisions**

Art. 1. – This rule establishes the conditions in which the depository of the privately managed pension funds' assets is authorized and may operate.

Art. 2. – The terms and phrases used herein have the meaning provided under Art. 2 of Law No. 411/2004 on the privately managed pension funds, republished, as subsequently amended and supplemented, hereinafter referred to as the Law, in the legislation on capital market and in the legislation applicable to credit institutions.

**CHAPTER II**  
**Authorization of the Depository**

**SECTION 1**  
**Authorization Conditions**

Art. 3 – In order to conduct depository and custody activities of the privately managed pension funds' assets, a credit institution must obtain the authorization of the Financial Supervisory Authority, hereinafter referred to as the Authority.

Art. 4. – To issue the authorization conferring the capacity as depository, the Authority shall analyse the authorization application and the documentation submitted by the applicant and shall verify whether the institution meets all of the conditions provided by the Law, and the following conditions:

- a) it has the necessary equipment and technical facilities to properly conduct the depository and custody activity and its personnel involved in the depository and custody operations of

the pension funds' assets have adequate professional qualifications for the activities carried out;

b) it conducts activities of financial instruments custody;

c) it holds funds of more than 500 million lei;

d) it has in place procedures ensuring the safekeeping of all pension funds' assets and of the assets related to the technical provision, and the permanent control, in terms of compliance with law, over the operations ordered by the administrator acting on behalf of a pension fund.

## **SECTION 2**

### **Documentation Necessary to Obtain the Licence**

Art. 5. - (1) The licence provided under Art. 3 shall be issued based on an application, prepared in accordance with Annex No. 1, which shall be accompanied by the following documents:

a) a copy of the operation authorisation issued by the National Bank of Romania/the similar authority in the European Union Member State or European Economic Area Member State, as the case may be, attesting that the credit institution was authorized to carry out depository and custody activities for the pension funds' assets, in accordance with the provisions of the legislation in force;

b) the original of the certificate of recorded amendments regarding the amendment of the object of activity, in accordance with the provisions of letter a), if applicable;

c) a copy of the organizational chart and the competency limits at the level of the organizational structure of the applicant carrying out operations related to the depository and custody activity;

d) a copy of the procedures related to the depository and custody, security, control activities and those applicable in case of force majeure events, allowing for the separation and safekeeping of all of the pension funds' assets and of the assets related to the technical provision;

e) a copy of the procedures regarding the separation of the institution's own assets from those of the pension funds and from the assets related to the technical provisions for which they conduct depository and custody activities and among one another, approved by the board of directors/persons empowered in this respect;

f) the fiscal certificate for legal persons issued by the National Agency for Fiscal Administration and the fiscal certificate issued by the local public administration authority, submitted in original, within their validity term, attesting that the credit institution has no overdue debts to the State budget, the social insurance budget, the local budgets and the special funds;

g) the original of the company details certificate issued by the Trade Registry Office, within its validity term;

- h) a copy of the document whereby the statutory body appoints the persons authorized to represent the credit institution in the relationship with the Authority;
- i) a copy of the identity document of each person representing the credit institution in the relationship with the Authority, certified as true to the original by the holder of the identity card;
- j) the original of the curriculum vitae, dated and signed, of the persons representing the credit institution in the relationship with the Authority, revealing that they have the necessary professional training and experience, signed on each page;
- k) the list of all signature specimens for the persons representing the credit institution in the relationship with the Authority, prepared in accordance with Annex No. 2, in original, in authentic form;
- l) the original of the criminal record certificate and the fiscal record certificate for the persons representing the credit institution in the relationship with the Authority, submitted within their validity term;
- m) the original of the description of the computer systems used revealing their capacity to carry out the activities for which the licence is requested, the information security level and the capacity to display the reports requested by the authority;
- n) the original of the statement revealing that the applicant is not subject to the supervisory or special administration measure, given on their own liability by at least two persons having the power to engage the credit institution or by at least 2 employees empowered by the institution's management;
- o) a copy of the most recent statement of the calculation and reporting form of the institution's own funds at individual level;
- p) a copy of the proof of payment of the licence fee.

(2) The application for authorization as depository shall be signed by at least two persons having the power to bind the credit institution or by at least two employees appointed by the institution's management.

(3) All documents submitted to the Authority to obtain the appointment shall be numbered and signed as true to the original by the legal representative or by at least one appointed person by the applicant and shall be accompanied by an index.

### SECTION 3

#### Issuance of the Authorization or Rejection of the Application for Licence

Art. 6. - (1) The Authority shall analyse the application and the attached documents, within 30 calendar days from the registration of the applicant's complete file.

(2) Any request from the Authority with regard to the supply of additional information or to amend the documents initially submitted shall interrupt the term provided under Para (1), and a new term shall start running as of the submission date of the said information or amendments. The supply of

additional information or the amendment of the documents shall be made within maximum 30 calendar days from the Authority's request, under the penalty of rejecting the application.

(3) If the documents submitted are incomplete, illegible or were submitted in an inadequate form, and in the case of missing documents, the Authority shall request the applicant to replace or supplement them.

(4) If the conditions provided under Art. 4 are met, the Authority shall issue a licence granting the applicant credit institution the capacity as depository.

(5) If the conditions provided under Art. 4 are not met, the Authority shall issue a decision rejecting the application for licence filed by the credit institution.

Art. 7.- (1) The rejection decision may be contested within maximum 30 days from its communication date, in accordance with the administrative dispute law.

(2) The credit institution may file new application with the Authority only if all the deficiencies representing the rejection grounds of the initial application were remedied.

### **CHAPTER III** **The Depository and Custody Activity**

Art. 8. - (1) The depository activity shall be carried out based on a depository contract concluded between the administrator, as representative of the privately managed pension fund in the relationship with third parties and the depository of that pension fund's assets.

(2) The depository contract shall be prepared in accordance with the framework template provided in Annex No. 3.

Art. 9. - (1) The custody activity shall be carried out based on a custody contract concluded between the administrator, as representative of the privately managed pension fund in the relationship with third parties, and the depository of that pension fund's assets..

(2) The custody contract shall include at least clauses referring to:

a) the parties' rights and obligations including at least the custodian's obligation to return to the privately managed pension fund all of its assets which, regardless of the reason, are no longer in the portfolio of the pension fund, and the custodian's right to implement procedures and methods ensuring a proper control over all of the operations carried out in the name and on behalf of the pension fund;

b) the settlement of the transactions;

c) the keeping of assets in custody;

d) the confirmation/reporting of holdings to the administrators and the Authority, as applicable;

e) the monitoring and processing of group events, as applicable;

f) the collection of coupons/dividends, as applicable;

g) tax recovery services, as applicable;

h) representation services at the general assemblies of shareholders, as applicable.

(3) To conduct custody activities related to a privately managed pension fund's assets, the depository must have in place procedures including at least the following:

a) the confirmation/reporting of holdings to external and/or local central depositories, sub-custodians, authorities, issuers;

b) the reconciliation with the external and/or local central depositories and/or sub-custodians;

c) the information of the structure carrying out depository activities of the group events;

d) the daily reconciliation with the depository unit for the assets held in custody, the prices used, the evaluation of the fee calculation and instruments;

e) means to ensure the existence of the ownership rights over those assets of the privately managed pension funds that the depository considers that, from a technical standpoint, it cannot keep in custody;

f) means to ensure that the entire investment and/or disinvestment process, and the financial circuit involved are under its control.

Art. 10.- (1) In the exercise of the depository and custody activities, the credit institution shall only act based on the instructions received from the pension fund administrator and within the limit of the applicable legal provisions.

(2) In the exercise of the depository activity, the credit institution shall ensure that one person is appointed to maximum 4 pension funds or maximum 4 billion lei of cumulated assets.

(3) In the exercise of the custody activity, the credit institution shall ensure that one person is in charge of maximum 4 pension funds or maximum 4 billion lei of cumulated assets.

(4) The credit institution shall notify the Authority with regard to the persons in charge of or appointed to carry out depository and custody activities, and with regard to their replacements, within 2 business days from their appointment.

(5) The credit institutions carrying out depository and custody activities for the pension funds must ensure the operational separation of the depository activity from the custody activity, which may not be performed by the same persons.

Art. 11. – The depository shall request from the administrator any information and/or documents it deems necessary to properly fulfil its obligations arising from the legal provisions in force and/or from the depository contract and/or from the custody contract.

Art. 12. – The administrator has the obligation and cannot refuse for confidentiality reasons, to submit the information and/or documents necessary for the depository to fulfil its obligations.

Art. 13. – The depository shall receive the amounts representing the contributions of the participants in a pension fund, in the collection account of the fund opened only with the depository.

Art. 14. - (1) The depository shall register, verify and monitor all assets of each pension fund for which it carries out the depository and custody activity.

(2) The depository shall register, verify and monitor all assets related to the technical provision constituted by the administrator for each privately managed pension fund for which it carries out the depository and custody activity.

Art. 15. - (1) The pension funds' assets are registered in separate accounts for each fund, other than that of the administrator and of the depository.

(2) The depository shall open financial instrument accounts and bank accounts to settle transactions, in the name of each pension fund, which shall be debited/credited only based on its depository and custody functions, in strict compliance with the administrator's instructions.

(3) The privately managed pension funds' assets shall be deposited separately for each fund and shall be registered so as to be identified as property of the pension fund for which the depository and custody activity is carried out.

(4) All crediting or debiting operations of the financial asset accounts of the pension fund shall be performed only through the depository.

(5) All crediting or debiting operations of the assets account related to the technical provision established for each pension fund shall only be performed through the depository.

Art. 16. – The depository shall certify the existence of the pension fund assets and shall calculate the net asset value and the number of fund units of the pension fund based on its own information and documents, and based on the documents issued by other institutions through which investments were made on behalf of the fund.

Art. 17. - (1) The depository shall make payments from the pension fund's account only upon receiving the related instructions from the administrator, in the following situations:

a) to make investments, in accordance with the legal provisions;

b) to extinguish obligations, pay audit fees, management commissions for the privately managed pension fund;

c) for any other purpose specified in the instructions, prepared in compliance with the establishment documents of the pension fund.

(2) The depository shall proceed to the disposal of the financial instruments within the portfolio of a pension fund only upon receiving the related instructions from the administrator, concurrently crediting the fund's account with the counter value of such financial instruments.

Art. 18. - (1) The depository shall carry out operations with the assets related to the technical provision for each pension fund only to make investments in accordance with the applicable legislation, concurrently crediting/debiting the related account, based on the administrator's

instructions, and based on the documents issued by other institutions through which the investments were made.

(2) The depository shall certify the existence and the value of the assets covering the technical provision constituted for each pension fund.

Art. 19. - (1) The depository has the obligation to keep the confidentiality of the information and/or documents received from the administrator during the evaluation of the legality of the operations carried out by it on behalf of the managed pension fund.

(2) The depository may not invoke the confidentiality clause provided under Para (1), in case of controls carried out by the Authority and/or by the National Bank of Romania and their requests.

Art. 20. – For each pension fund carrying out depository and custody activities, the depository shall calculate and send the Authority, every business day, the net asset value, the value of the fund unit and the number of fund units.

Art. 21. – The depository shall inform in writing the Authority on any acts or facts that may be a breach of the applicable legal provisions or of the fund's establishment documents, of which it becomes aware in connection with the pension funds for which it carries out the depository and custody activity.

Art. 22. – The depository shall inform in writing the Authority on any refusal of the administrator to supply information and/or documents, together with a description of the operation for which the refusal was given, within maximum one business day from the receipt of the administrator's refusal.

Art. 23. – In the situation provided under Art. 22, the Authority may suspend the conversion into fund units of the received contributions, and the transfer of the participants to/from other privately managed pension funds, until the clarification of the situation.

Art. 24. – If, after the supply of all relevant documents and/or information requested by the depository, there are differences between it and the administrator with regard to the performance of an operation, the depository shall promptly inform the Authority and shall submit all information and copies of the relevant documents with regard to such operation.

Art. 25. – The depository has the obligation to inform in writing the Authority with regard to any abuse of the administrator in connection with the deposited assets of the pension fund or with the assets related to the technical provision constituted for each pension fund.

Art. 26. - (1) The depository may delegate its obligations, assumed by the custody contract, to another entity supervised by an authority competent to provide financial supervisory services, only in the cases of custody of assets purchased on external markets, under the penalty of withdrawal of the depository authorization for the privately managed pension funds' assets.

(2) The depository's obligations shall not be affected by the fact that it entrusted to another entity all or part of the assets it keeps.

(3) The depository shall not be exempted from its responsibility regarding ensuring the safekeeping of the assets held in custody of another entity.

Art. 27. - (1) The depository is prohibited from guaranteeing in any way or from disposing in any manner of the financial instruments or of the amounts of money entrusted to it by the administrator, in its name or on behalf of the pension fund.

(2) The depository is prohibited from transferring the financial instruments or the amounts of money entrusted to it in its name or on behalf of the pension fund, unless it was instructed to do so by the administrator.

(3) The interdictions provided under Paras (1) and (2) shall not apply if the Authority orders special measures or if incidental legal provisions are enforced.

Art. 28. – The depository is prohibited from granting loans, in any form, to the administrator and the privately managed pension fund.

Art. 29. – The assets of a privately managed pension fund may not be subject to forced execution procedures initiated by the depository's creditors, may not be seized or garnished by them and may not be included in the statement of affairs in case of bankruptcy of the credit institution.

#### **CHAPTER IV Notifications to the Authority**

Art. 30. - (1) All of the amendments to the documents provided under Art. 5 Para (1) that were submitted in order to obtain the authorization shall be notified to the Authority.

(2) The notifications shall be submitted to the Authority within maximum 10 business days from the performance of the amendments, i.e. from the issuance date of the certificate of recorded amendments, as applicable.

(3) The notifications shall be accompanied by the documents based on which the amendments were made.

Art. 31. – The amendments shall meet all of the conditions provided in the applicable legislation, required for obtaining the authorization of the capacity as depository.

Art. 32. - (1) The Authority may request additional information related to the initially submitted documents.

(2) If the documents submitted are incomplete, illegible or were submitted in an inadequate form, and in the case of missing documents, the Authority shall request the applicant to replace or supplement them.

Art. 33. – The depository shall notify the Authority, within one business day from the moment it became aware of them, the following:

- a) perpetration of acts or deeds suspected of being in breach of the legal provisions in force, in connection with the pension funds for which it carries out depository or custody services;
- b) the excess of the investment limits provided by the legislation in force and by the prospectus of the pension fund scheme;



c) the administrator's failure to fulfil its obligation to correct the deviation from the degree of risk;

d) the administrator's failure to fulfil its obligation to correct the passive deviation from the rating requirements.

Art. 34. -(1) The Authority may request the depository to supply information on all the issues of the depository and custody activity carried out for the pension funds, and to provide all related documents.

(2) The submission to the Authority of the information provided under Para (1) does not represent a breach of the business secrecy obligation, and it shall not incur the liability of the depository.

## **CHAPTER V**

### **Termination of the Depository Contract or of the Custody Contract**

Art. 35. – The depository contract and the custody contract shall cease simultaneously in the following situations:

a) by unilateral termination, in the conditions established in the contract;

b) by the parties' consent;

c) upon the expiry of the term for which it was concluded;

d) as a result of the withdrawal of the depository's authorization;

e) as a result of the withdrawal of the privately managed pension fund's authorisation.

Art. 36.- (1) The termination of the contracts in one of the situations provided under Art. 35 letters a) to c) shall produce effects within 90 calendar days from the notification of the Authority.

(2) The termination of the contracts in the situations provided under Art. 35 letters d) and e) shall produce effects as of the date when the depository is notified by the Authority of the withdrawal of the licence/authorisation.

## **CHAPTER VI**

### **Withdrawal of the Depository's Licence**

Art. 37. – The Authority has the right to withdraw the depository's authorization in the situations provided by the Law, and in the following situations:

a) the conditions provided by this rule, required for obtaining the licence, are no longer met;

b) if the depository does not fulfil the obligations provided by the Law, by the Authority's regulations or by the depository and custody contract;

c) upon the initiation of the special supervision or administration by the National Bank of Romania/the similar competent authority in the European Union Member State or in the European Economic Area Member State, as applicable, or upon the initiation of the bankruptcy proceedings;

d) upon the withdrawal of the operation authorisation by the National Bank of Romania/the similar competent authority in the European Union Member State or in the European Economic Area Member State, as applicable.

Art. 38. - (1) In the cases provided under Art. 35 letters a) to c), the administrator has the obligation to conclude a new depository and custody contract within 15 business days from the notification regarding the change of the depository, with another credit institution approved by the Authority to conduct depository and custody activities for the privately managed pension funds' assets.

(2) The former depository shall transfer to the new depository the pension fund's assets and copies of the document regarding its activity in connection thereto, within 30 calendar days from the conclusion of the depository contract and the custody contract between the administrator and the new depository.

(3) Within 5 calendar days from the withdrawal of the depository's licence, the Authority shall notify such decision to the depository and to all of the administrators that concluded depository and custody contracts with it.

(4) The decision to withdraw the authorization may be contested within maximum 30 days from the communication date, in accordance with the administrative dispute law.

(5) If, during the period provided under Para (2) the assets are not transferred to a new depository, the depository whose authorization was withdrawn has the obligation to notify the Authority, which may proceed to restricting the accounts of such pension fund until the transfer date.

Art. 39. - (1) In the cases provided under Art. 35 letter d) and Art. 37, the new depository contract and custody contract shall be submitted with the Authority for endorsement, within maximum 3 business days from their conclusion date.

(2) The depository whose authorization was withdrawn shall commence the complete transfer of the assets held for the privately managed pension funds to the new depository that concluded depository contracts and custody contracts with the administrator, within maximum 2 business days from the endorsement by the Authority of the new depository and custody contracts.

Art. 40. - (1) Within 3 business days from the conclusion of the transfer process of the privately managed pension funds' assets, the depositories involved shall prepare a report for each pension fund, containing the detailed description of the transfer of the pension fund's assets, of the assets related to the technical provision, of the net asset value and of the value of the fund unit, the number of fund units, the date when the last transfer operation was performed.

(2) The report shall be submitted to the privately managed pension fund administrator and to the Authority.

## **CHAPTER VII**

### **Legal Liability**

Art. 41. - (1) The following deeds shall be deemed minor offences:

a) the depositories' failure to fulfil the obligations provided under Art. 8, 9, 10, 18, 19 Para (1), Art. 21, 22, 24, 25 and Art. 38 Para (5);

- b) the depositories' failure to observe the interdictions provided under Art. 27 and 28;
- c) the administrators' failure to fulfil the obligations provided under Art. 12 and Art. 38 Para (1);
- d) the failure to fulfil the other obligations provided herein.

(2) The perpetration of any of the deeds provided under Para (1) shall be sanctioned in accordance with the provisions of Art. 140 Para (1), Art. 141 Para (2), (3), (4), (6), (7), (9) and (10) of the Law.

## **CHAPTER VIII**

### **Final and Transitory Provisions**

Art. 42. -(1) All documents and information provided in this rule shall be submitted in the Romanian language and the documents issued in another language shall be submitted in authentic form, accompanied by the certified translation thereof.

(2) All documents submitted in copy to the Authority shall be signed by the depository's representative and certified as true to the original.

Art. 43. - (1) This rule shall enter into force within 90 days from its publication in the Official Journal of Romania, Part I.

(2) Within 30 days from the entry into force of this rule, the depository has the obligation to prepare or to revise, as the case may be, the depository contract, the custody contract and the procedures in compliance with the provisions of this rule and to notify them to the Authority.

Art. 44. – Annexes Nos. 1 to 3 form an integral part of this rule.

Art. 45. – Upon the entry into force of this rule, Rule No. 12/2007 on the depository activity of privately managed pension funds' assets, approved by Resolution No. 33/2007 of the Private Pension System Supervisory Commission, published in the Official Journal of Romania, Part I, No. 290 of 3 May 2007 shall be abrogated.

### **ANNEXES to Rule 11**

ANNEX No. 1

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APPLICANT IDENTIFICATION DATA

APPLICATION FOR AUTHORIZATION AS DEPOSITORY FOR

PRIVATELY MANAGED PENSION FUNDS

The undersigned .....,

(name and surname)

in my capacity as .....,

hereby request to be authorized to conduct depository activities of privately managed pension funds

for:

.....,

(name of credit institution)

having:

Registered headquarters.....,

(locality) (street and number) (county) (postal code)

Legal status .....,

(central, subsidiary, branch)

Telephone Number .....Fax Number.....

E-mail address.....,

Signature .....

Date .....

This application is accompanied by the index of the attached documents and by .....

documents, having in total ... pages.

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Persons with powers to bind the credit institution, persons having managerial positions within the organizational structure having a mandate to carry out operations related to the depository activity of privately managed pension funds and the persons replacing them

#### APPLICATION FOR LICENCE AS AUTHORIZATION FOR PRIVATELY MANAGED PENSION FUNDS

Name and surname Position Personal Number Code

Name and surname of the legal representative.....

Signature of the legal representative.....

Date .....

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#### DATA ON THE DEPOSITORIES' SHAREHOLDERS

APPLICATION FOR AUTHORIZATION AS DEPOSITORY FOR  
PRIVATELY MANAGED PENSION FUNDS

Natural/legal person DEPOSITORY SHAREHOLDERS

No. Shareholders 1)

Name/ Name and surname

Residency State

Competent Supervisory Authority 2)

Holding

Fiscal Registration Code/Personal Number Code No. of 3) shares % of share capital

Name and surname of legal representative .....

Signature of legal representative .....

Date .....

1) If the undertaking has more than 20 shareholders, only the shareholders holding at least 5% of the share capital shall be registered, the last line being filled in with other natural and legal person shareholders holding less than 5% of the share capital and, the total of their holdings. The form shall be filled in starting with the shareholding structure of the undertaking requesting the authorisation. For each legal person significant shareholder a new page shall be filled in, specifying its shareholding structure up to the level of natural person shareholder, inclusively. This shall not be filled in the case of companies where the State or a public administration authority is a shareholder or associate, specifying this situation. For the companies whose shares are traded on a regulated market only the significant shareholders, as at the application date, shall be filled in. For foreign natural and legal persons, the series and number of the passport or, as applicable, the registration number with the institution similar to the Register of Commerce in the state of origin shall be filled in.

2) To be filled in only by legal persons with the name of the supervisory authority in the state of origin, together with its contact data (full address, Telephone No., fax, e-mail).

3) For foreign natural and legal persons, the series and number of the passport or, as applicable, the registration number with the institution similar to the Register of Commerce in the state of origin shall be filled in.

ANY FALSE STATEMENTS OR INTENTIONAL OMISSIONS TO DECLARE CERTAIN FACTS MAY BE A BREACH OF THE CRIMINAL LAW

ANNEX No. 2

SIGNATURE SPECIMENS1)

.....

(name of the credit institution requesting the licence for depository activities of privately managed pension funds' assets)

Registered with the Registry of Commerce under No. ....having fiscal registration code with the Registry of Commerce .....

No.

Name and surname

legible

Capacity Signature

1)

.....

2)

.....

\_\_\_\_\_

1) This annex shall be filled out in the presence of the Financial Supervisory Authority representative. If one of the persons representing the depository in the relationship with the Financial Supervisory Authority cannot sign, a notarized statement regarding the signature specimen shall be submitted.

ANNEX No. 3

FRAMEWORK TEMPLATE OF THE DEPOSITORY CONTRACT

ARTICLE 1

Contracting parties

..... - S.A., with its headquarters in....., Str. .... No. ...., sector ....., registered with the Trade Registry Office under No. ...., Sole Registration Code ....., registered with the Financial Supervisory Authority Registry, hereinafter referred to as the Authority – Private Pension System Sector under No. ...., authorized by the Authority by Resolution No. ...., duly represented by ....., as administrator of Privately Managed Pension Fund ....., registered with the Authority's Registry under No. ...., hereinafter referred to as the administrator.

and

..... - S.A., with its headquarters in....., Str. .... No. ...., sector ....., registered with the Trade Registry Office under No. ...., Sole Registration Code ....., registered with Authority's

Registry under No. ...., approved by the Authority by Licence No. ...., duly represented by ....., as depository of Privately Managed Pension Fund ....., hereinafter referred to as the depository.

## ARTICLE 2

### Definitions

(1) The assets of the privately managed pension fund, hereinafter referred to as the Fund, represent the financial instruments, including the derivatives, and the cash resulting from the investment of the participants' personal assets.

(2) The deposited assets represent only the assets transferred or taken in custody by the depository, deposited in accounts opened in the name of the Fund and managed by the depository.

(3) The custody of the assets represents all of the operations performed by an authorized entity to provide custody services.

(4) The Fund's expenses represent costs related to its operation, as provided by Law No. 411/2004 on the privately managed pension funds, republished, as subsequently amended and supplemented and in the Authority's rules.

## ARTICLE 3

### Object of the contract

The object of the contract is the safekeeping of the Fund's assets and the performance of depository activities, including the calculation, for each business day, of the net asset value, of the value of the fund unit and of the number of fund units, in observance of the legal provisions on the privately managed pensions.

## ARTICLE 4

### Term of the Contract

This Contract is valid for a period of ....., starting from its effective date.

Unless neither party notified the other party the termination hereof at least 90 days prior to the expiry date of its term, it shall be deemed automatically extended under the same conditions, the absence of the notification being deemed a tacit agreement of the parties.

## ARTICLE 5

### The parties' obligations

(1) The actual working modality and the delivery-receipt of the Fund's assets and records shall be established by procedures.

(2) The depository's obligations:

1. to receive, to keep in safe conditions all of the Fund's assets and to register them separately from its own assets and from the assets of other entities;

2. to open:

a) a collection account for the collection of the equivalent of the gross individual contributions of the participants;

b) operational accounts used for the performance of investments and for the extinguishment of the Fund's obligations, in lei and in the settlement currencies of the financial instrument transactions on external markets;

c) a transfer account for the wiring operations related to the equivalent of the transferred personal assets of the participants;

d) an account for the payment of the equivalent of the Fund participants' personal assets in case of death, invalidity and commencement of the pension right (DIP account);

e) settlement bank accounts for the financial transactions in lei and in the settlement currencies of the financial instrument transactions on external markets.

3. The accounts provided under Para (2) item 2 shall be debited/credited by the depository only based on its depository functions and in strict compliance with the administrator's instructions.

4. to ensure that any payment obligation related to the transactions with the Fund's assets are fulfilled within the established term;

5. to ensure that the transformation of the contributions in fund units is performed by the administrator in compliance with the legal provisions;

6. to calculate the net asset value and the value of the fund unit and to submit them to the administrator and to the Authority in the conditions and on the terms provided by the legislation in force;

7. to execute the administrator's instructions, unless they are in contradiction with the legislation in force;

8. to inform in writing the administrator of any act or fact relevant for the Fund's activity;

9. any other obligations provided by the Authority's rules.

(3) The administrator's obligations:

1. to request the depository to open:

a) a collection account for the collection of the equivalent of the gross individual contributions of the participants;

b) operational accounts used for the performance of investments and for the extinguishment of the Fund's obligations, in lei and in the settlement currencies of the financial instrument transactions on external markets;



c) a transfer account for the wiring operations related to the equivalent of the transferred personal assets of the participants;

d) an account for the payment of the equivalent of the Fund participants' personal assets in case of death, invalidity and commencement of the pension right (DIP account);

e) settlement bank accounts for the financial transactions in lei and in the settlement currencies of the financial instrument transactions on external markets;

2. to communicate in due time all of the information necessary for the proper fulfilment of the depository's obligations, and any other information requested by it for the proper fulfilment of its obligations and for monitoring the Fund's activity;

3. to pay to the depository the price of this contract;

4. to inform the depository in writing, in due time, of any change with regard to the Fund's management;

5. any other obligations provided by the Authority's rules.

#### ARTICLE 6

##### Price of the contract

(1) For the services provided, the depository shall charge the following commissions:

.....

(2) In case of failure to fulfil its obligations regarding the payment of the contract price, the administrator shall pay, from its account, penalties of.....% per day of delay, from the value of the amount owed to the depository.

#### ARTICLE 7

##### The parties' liability

(1) In the execution of this contract, the administrator is liable for the instructions it gives the depository, and for any acts and facts related to the management activity, as defined in the legislation in force. The depository shall not be held liable for the administrator's failure to submit, by omission or otherwise, the information and documents necessary to calculate the Fund's net assets and the record of the fund units. The administrator undertakes to submit in due time (the limit date and time shall be established by procedures) notifications to correct any errors as soon as it becomes aware that the information supplied is not exact, correct and complete. If such notifications cannot be submitted in due time, the depository shall operate the related modifications upon the following calculation of the Fund's net asset.

(2) The depository is liable before the administrator and before the Fund participants for any loss or damage incurred, as long as the losses or damages were caused by its improper fulfilment or failure to fulfil the obligations assumed hereby.

(3) The depository has the obligation to keep the confidentiality of the information and/or documents received from the administrator during the evaluation of the legality of the operations carried out by it on behalf of the Fund. The confidentiality may not be invoked in case of controls performed by the Authority, the National Bank of Romania or the supervisory authorities in the state of origin of the branch.

(4) The depository may not guarantee or dispose in any way of the financial instruments or amounts of money entrusted to it by the administrator on behalf of the Fund.

(5) The depository may not transfer the financial instruments or the amounts of money entrusted by the administrator on behalf of the Fund, unless it was instructed to do so by the administrator.

(6) The administrator may not change the depository without the Authority's consent.

(7) The depository shall request the administrator to provide any information and/or documents it deems necessary in connection with the depository activity. The administrator may not refuse the supply of such information and/or documents by invoking confidentiality.

## ARTICLE 8

### Force majeure

(1) Force majeure is an unpredictable, objective and unavoidable event, occurred during the performance of this contract which prevents the parties from executing, in full or in part, their assumed obligations.

(2) The force majeure exonerates the party from liability, provided that it is communicated within ..... days and proven within ..... days, both from the occurrence date.

## ARTICLE 9

### Amendment of the contract

(1) This contract may only be amended by an additional act signed by the legal representatives of the parties, notified to the Authority.

(2) The amendments to the contract shall enter into force in accordance with the legal provisions in force.

## ARTICLE 10

### Termination of the Contract

This contract shall be terminated in the conditions provided under Art. ....of Rule No. .... on the depository and custody activity of the privately managed pension funds' assets, issued by the Authority.

## ARTICLE 11

### Disputes

(1) Any dispute in connection with the execution or interpretation of this contract shall be settled amicably.

(2) If an amicable settlement cannot be reached within 30 days from the occurrence of the dispute, it shall be submitted for settlement to the competent courts of law.

## ARTICLE 12

### Final provisions

(1) This contract, together with its annexes and any potential additional acts, represents the will of the parties and supersedes any verbal understanding between them, either prior or subsequent to its conclusion.

(2) If one of the clauses of this contract is declared invalid, illegal or unenforceable, the other clauses of the contract shall not be affected in any way, and the parties shall agree upon replacing, with reasonable endeavours, the said clause with a legal and valid clause having the same purpose.

(3) This contract was concluded today, ....., in three (3) counterparts, one for each contracting party, and one for the Authority, and shall enter into force on .....

Depository Administrator

.....