



***Rule no. 28/2017***

***on the use of the personal net asset of the participant in a voluntary pension fund***

*Published in the Official Gazette, Part I, no. 993 of December 14, 2017*

*Considering the provisions of art. 77 paragraph (3) and (4), art. 93 and 94 of Law no. 204/2006 on voluntary pensions, as subsequently amended and supplemented,*

*based on the provisions of art. 2 paragraph (1) letters c) and d), art. 3 paragraph (1) letter b), art. 5 letter c), art. 6 paragraph (1) and (2) and art. 7 paragraph (2) and art. 28 of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as amended and supplemented,*

*under the provisions of Art. 24 letter. c) of Government Emergency Ordinance no. 50/2005 on the establishment, organization and operation of the Private Pension System Supervisory Commission, approved with amendments and completions by Law no. 313/2005, as subsequently amended and supplemented,*

*following the deliberations of the Financial Supervisory Authority's Board in the meeting held on November 22, 2017*

*the Financial Supervisory Authority issues this rule.*

**CHAPTER I**

**General provisions**

**Art. 1.** - This rule regulates how the net asset of a participant in a voluntary pension fund is used if the latter:

a) has reached the age of 60 and does not fulfil one or both of the conditions provided in art. 93 paragraph (2) letters b) and c) of the Law no. 204/2006 on voluntary pensions, as subsequently amended and supplemented, hereinafter referred to as the *Law*;

b) receives a disability pension under the conditions of Law no. 263/2010 on the unitary pension system, as subsequently amended and supplemented, hereinafter referred to as the Public Pensions Law, respectively a similar pension category established under the laws governing the granting of the pension in the case of certain professional categories, as the case may be;

c) dies before submitting the application for a voluntary pension according to art. 94 letter c) of the Law.

**Art. 2.** - Until the entry into force of the special law on the organization and operation of the payment system of private pensions, in the situations provided by art. 93 paragraph (2) letter a) and art. 94 letters b) and c) of the Law, the participant or the beneficiary, as applicable, shall receive the due amount as a single payment or staggered payments upon request.

**Art. 3.** - (1) The terms and expressions used in this rule shall have the meaning provided in Art. 2 paragraph (1) of the Law.

(2) Also, the terms below shall have the following meanings:

a) legal guardian - the person exercising the parental rights and obligations towards the minor, namely the parents, the surviving parent, the guardian or other person exercising these rights and obligations according to the law;

b) staggered payment - the amount paid by the manager to the participant / beneficiary, representing monthly instalments equal to at least 500 lei, except for the last instalment that will be a residual rate, from which legal deductions and bank commissions for making transfers or postal charges, as the case may be, are deducted, for a maximum period of 5 years;

c) residual rate - the last rate, i.e. the amount paid by the manager to the participant / beneficiary according to the payment schedule.

## CHAPTER II

### Use of the participant's net personal asset

#### SECTION 1

##### *Use of personal net asset if the participant is 60 years old*

**Art. 4.** - The participant who meets the request provided in art. 93 paragraph (2) letter a) but does not fulfil one or both conditions provided in art. 93 paragraph (2) letters b) and c) of the Law have the right to opt for:

**a)** the entry into possession of the equivalent value of the personal net asset, as a single payment, or staggered payments, upon request;

**b)** the continuation of the payment of the contributions, if the participant, after the age of 60, continues to carry out an activity within the meaning of art. 74 paragraph (1) of the Law.

**Art. 5.** - The participant who opted for the continuation of the payment of the contributions, according to art. 4 letter b) has the right to request at any time the equivalent value of the net personal asset on the basis of a request for payment.

**Art. 6.** - **(1)** In order to receive the equivalent of the net personal asset under Art. 4 letter a), the participant, personally or through proxy, shall submit to the manager of the voluntary pension fund the following documents:

**a)** the written application requesting the payment of the due rights;

**b)** the identity document valid on the date of filing the application;

**c)** special and authentic power of attorney in the case of the proxy.

**(2)** The documents referred to in paragraph (1) shall be submitted as follows:

**a)** in original copy for the documents stipulated in paragraph (1); the manager shall keep, for the documents referred to in letter b), c) and d) their copies as well, after verifying and certifying compliance with the original;

**b)** in original copy for the document referred to in paragraph (1) letter a), in certified copy for the documents stipulated in paragraph (1) letter c) and in copy for the document referred to in paragraph (1) letter b) for documents sent through postal or similar services

**(3)** If the participant is represented by a proxy, the proxy shall submit his / her identity document valid on the date of filing the application and also a copy thereof, together with the documents provided in paragraph (1) and in the form specified in paragraph (2); the manager shall keep the copy after verifying and certifying compliance with the original.

**(4)** In the written application requesting the payment of the due rights, the participant or the proxy shall indicate the payment variant of the net personal asset according to art. 4 letter a), as well as the chosen way of payment of the due amounts, according to art. 7 paragraph (1), specifying all the information required to make the payment.

**(5)** If the participant requests the payment of the net personal net asset by transfer to a bank account, the latter has the obligation to fill in the documentation provided in paragraph (1) with the account statement certifying the IBAN and the holder or any other document issued by the credit institutions attesting the account holder and the associated IBAN.

**Art. 7 - (1)** The payment of the amount representing the equivalent value of the participant's net asset is made by bank transfer or by postal mandate.

**(2)** The payment of the equivalent value of the net personal asset provided in paragraph (1) shall be made exclusively to the participant of the voluntary pension fund, his proxy being the participant's representative only for the submission of the application and the accompanying documents.

**(3)** The payment of the amount provided in paragraph (1) shall be made within 10 calendar days starting the date of submission of the documentation provided in art. 6 paragraph (1) if the participant opts for a single payment or according to a schedule established by the manager for staggered payments.

**(4)** If the submitted documents are incomplete, illegible or they are found to be in an inappropriate form, as well as the lack of documents, the participant, the beneficiary or the proxy, as applicable, will be required to complete or replace them, as the case may be, and the request shall lead to the interruption of the deadline stipulated in paragraph (3), a new deadline starting from the date of submission of the complete documentation.

(5) If the participant opts for a single payment, the due amount to be transferred from the transaction account to the single payment DIP account shall be calculated on the basis of the last unit value of the net asset, calculated and reported by the manager and the depositary for the working day preceding that in which the transfer is made and from the amount to be paid out of the single payment DIP account shall be deducted the legal deductions and bank charges for making transfers or postal charges, as the case may be.

(6) The cancellation of the fund units related to the payment of the equivalent value of the participant's net asset shall be made on the same day with the payment of the amount stipulated in paragraph (5) from the operational account to the DIP account for the unique payment of the voluntary pension fund, the payment from the DIP account to the participant being made no later than the next business day.

(7) The manager has the obligation to pay the participant the highest value of the net asset value calculated in accordance with the provisions of paragraph (5) and the value resulting from the application of the securities provided in the prospectus.

(8) If the participant opts for staggered payments, the due amount to be transferred from the transaction account to the DIP for staggered payments account shall be calculated on the basis of the last unit value of the net asset calculated and reported by the manager and the depositary for the working day prior to the one in which the transfer is made, and deductions and bank charges for postal transfers or postal charges, as the case may be, are deducted from the amounts to be paid out of the DIP account for staggered payments.

(9) The cancellation of the fund units related to the transfer of the equivalent value of the participant's net asset shall be made on the same day with the transfer of the amount provided in paragraph (8) from the operational account in the DIP account for staggered payments of the voluntary pension fund, the payment from the DIP account for staggered payments to the participant being made in accordance with the schedule established by the fund manager.

(10) The manager has the obligation to transfer the amount due to the paid-in participant into the DIP account for staggered payments at the higher value between the net asset value calculated in accordance with the provisions of paragraph (8) and the amount resulting from the application of the securities provided in the prospectus.

## SECTION 2

### *Use of participant's net personal asset in case of disability*

**Art. 8. - (1)** - The participant receiving a disability pension of first degree or second degree for a disability which irreversibly affects the work capacity, under the conditions of the Public Pensions Law, respectively by a similar pension category established under the laws governing the granting of the pension in case of certain professional categories, as the case may be, is entitled to receive the equivalent value of the net personal asset as a single payment or as staggered payments upon request.

**(2)** In the case of 3<sup>rd</sup> degree disability, the participant has the right to opt, as appropriate, for:

- a)** suspension of payment of contributions;
- b)** continuation of payment of contributions..

**(3)** The participant in the situation referred to in paragraph (2) letter (a) shall retain his/her rights throughout the period of suspension of the payment of contributions to the voluntary pension fund.

**Art. 9. - (1)** In order to receive the equivalent value of the net personal asset under Art. 8 paragraph (1), the participant, personally or through proxy, shall submit to the manager of the voluntary pension fund the following documents:

- a)** the written application requesting the payment of the due rights;
- b)** the valid administrative decision on granting / recalculation / reviewing the disability pension, as the case may be, or on a similar pension category;
- c)** the medical decision on work capacity, a decision that contains references to the nature not subject to review of the pension, according to the Public Pension Law, or the laws governing pensions of other systems, as the case may be;
- d)** the identity document valid on the date of filing the application;
- e)** the certificate of classification in severe or profound disability issued by the territorial commissions for the assessment of disabled adults or a statutory declaration that the person in question does not hold this certificate, as the case may be;

**f)** a special and authentic power of attorney in the case of the proxy.

**(2)** The documents referred to in paragraph (1) shall be submitted as follows:

**a)** in original copy for the documents stipulated in paragraph (1); the manager shall keep, for the documents referred to in paragraph (1) letters b) - f) their copies as well, after verifying and certifying compliance with the original;

**b)** in original copy for the document referred to in paragraph (1) letter a) in certified copy for the documents stipulated in par.(1) letters b), c), e) and f) and in copy for the document referred to in paragraph (1) letter d) for documents sent through postal or similar services.

**(3)** If the participant is represented by proxy, the latter shall present his / her identity document valid on the date of filing the application and shall submit a copy thereof, together with the documents provided in paragraph (1) and in the form specified in paragraph (2), the manager keeping the copy after verifying and certifying compliance with the original.

**(4)** In the written application requesting the payment of the due rights, the participant or the proxy shall indicate the variant of payment of the net personal asset according to art. 8 paragraph (1), as well as the chosen way of payment of the due amounts, according to art. 10 paragraph (1), specifying all the information required to make the payment.

**(5)** If the participant requests the payment of the net personal net asset by transfer to a bank account, the latter has the obligation to complete the documentation provided in paragraph (1) with an account statement certifying the IBAN and the holder or any document issued by credit institutions attesting to the account holder and the associated IBAN.

**Art. 10. - (1)** The payment of the amount representing the equivalent value of the participant's net asset is made by bank transfer or by postal order.

**(2)** The payment of the equivalent value for the net personal asset provided in paragraph (1) shall be made exclusively to the participant of the voluntary pension fund, the proxy being the participant's representative only for the submission of the application and the accompanying documents.

**(3)** The payment of the amount provided in paragraph (1) shall be made within 10 calendar days from the date of submission of the documentation provided in art. 9 paragraph (1) for the case where the participant opts for a single payment or according to a schedule established by the manager in the case of staggered payments.

(4) If the submitted documents are incomplete, illegible or they are found to be in an inappropriate form, as well as the lack of documents, the participant or the proxy will be required to fill in or replace them, as the case may be, the request leading to the interruption of the deadline stipulated in paragraph (3), a new deadline starting from the date of submission of the complete documentation.

(5) If the participant opts for a single payment, the due amount to be transferred from the transaction account to the single payment DIP account shall be calculated on the basis of the last unit value of the net asset, calculated and reported by the manager and the depositary for the working day preceding that in which the transfer is made and from the amount to be paid out of the single payment DIP account shall be deducted the legal deductions and bank charges for making transfers or postal charges, as the case may be.

(6) The cancellation of the fund units related to the payment of the equivalent value of the participant's net asset shall be made on the same day with the payment of the amount stipulated in paragraph (5) from the operational account to the DIP account for the unique payment of the voluntary pension fund, the payment from the DIP account to the participant being made no later than the next business day.

(7) The manager has the obligation to pay the participant the highest value of the personal net asset value calculated in accordance with the provisions of paragraph (5) and the value resulting from the application of the securities provided in the prospectus.

(8) If the participant opts for staggered payments, the due amount to be transferred from the transaction account to the DIP for staggered payments account shall be calculated on the basis of the last unit value of the net asset calculated and reported by the manager and the depositary for the working day prior to the one in which the transfer is made, and deductions and bank charges for postal transfers or postal charges, as the case may be, are deducted from the amounts to be paid out of the DIP account for staggered payments.

(9) The cancellation of the fund units related to the transfer of the equivalent value of the participant's net asset shall be made on the same day with the transfer of the amount provided in paragraph (8) from the operational account in the DIP account for staggered payments of the voluntary pension fund, the payment from the DIP account for staggered payments to the participant being made in accordance with the schedule established by the fund manager.

(10) The manager has the obligation to transfer the amount due to the paid-in participant into the DIP account for staggered payments at the higher value between the net asset value

calculated in accordance with the provisions of paragraph (8) and the amount resulting from the application of the securities provided in the prospectus.

### SECTION 3

#### *Use of participant's net personal asset in case of death*

**Art. 11. - (1)** Before opening the pension right an account will be opened on behalf of each beneficiary of the deceased participant with the last pension fund to which the latter contributed.

**(2)** The manager shall transfer the required fund units to the account of each beneficiary.

**(3)** The beneficiary is entitled to the single payment of the equivalent value of the due share of the deceased participant's net asset or to staggered payments upon request.

**Art. 12. -** If the manager acknowledges the death of a participant, he shall, as soon as possible, inform the potential beneficiaries by sending at the latest home or correspondence address communicated by the participant, a notice regarding the rights of the beneficiaries of the participant's assets under the applicable laws and the conditions for the exercise of those rights.

**Art. 13. - (1)** In order to receive the equivalent value of the net asset according to art. 11 paragraph (2), each beneficiary, personally, by proxy or by custodian / guardian on the basis of the document issued by the guardianship court in the final form, shall submit to the manager of the voluntary pension fund the following documents:

**a)** a written application requesting the payment of the due rights;

**b)** the death certificate

**c)** the certificate of heir / legatee, the supplementary heir certificate, the voluntary partition or the final court decision, as the case may be, showing the status of heir / legatee and the due share from the deceased participant's net asset;

**d)** the identity document valid on the date of filing the application;

**e)** a special and authentic power of attorney in the case of the proxy.

**(3)** The documents referred to in paragraph (1) shall be as follows:

**a)** in original copy for the documents stipulated in paragraph (1); the manager shall keep, for the documents referred to in paragraph (1) letters b) - e) their copies as well, after verifying and certifying compliance with the original;

**b)** in original copy for the document referred to in paragraph (1) letter a) in certified copy for the documents stipulated in par.(1) letters c) and e) and in copy for the document referred to in paragraph (1) letters b) and d) for documents sent through postal or similar services.

**(3)** If the beneficiary is represented by the proxy, the legal guardian or the custodian appointed for this purpose, he / she shall submit his / her identity document, valid on the date of filing the application, together with the documents stipulated in paragraph (1) and in the form specified in paragraph (2); the manager shall keep the copy after verifying and certifying compliance with the original.

**Art. 14. - (1)** If the beneficiary opts for a single payment, the payment of the amount representing the due share from the participant's net asset is made by bank transfer or postal mandate for each beneficiary.

**(2)** The payment of the amount provided in paragraph (1) shall be made exclusively to the beneficiary of the deceased participant, the proxy being the representative of the beneficiary only for the submission of the application and the accompanying documents.

**(3)** In the application provided by art. 13 paragraph (1) letter a), the beneficiary or the proxy shall indicate the variant of payment of the net personal asset, according to art. 11 paragraph (2) as well as the way of payment of the beneficiary's rights, respectively by bank transfer or by postal mandate, specifying all the necessary information for the payment.

**(4)** If the beneficiary requests the payment of the net personal asset by transfer to a bank account, the latter has the obligation to complete the documentation provided in art. 13 paragraph (1) with an account statement certifying the IBAN and the holder, or any document issued by credit institutions attesting to the account holder and the associated IBAN.

**(5)** The payment of the amount provided in paragraph (1) shall be made within a maximum of 10 working days from the date of filing the application together with the documents referred to in art. 13.

**(6)** If the submitted documents are incomplete, illegible or they are found to be in an inappropriate form, as well as the lack of documents, the beneficiary/beneficiaries will be

required to complete or replace them, as the case may be, and the request shall lead to the interruption of the deadline stipulated in paragraph (5), a new deadline starting from the date of submission of the complete documentation.

(7) If the beneficiary opts for a single payment, the due amount to be transferred from the transaction account to the single payment DIP account shall be calculated on the basis of the last unit value of the net asset, calculated and reported by the manager and the depositary for the working day preceding that in which the transfer is made and from the amount to be paid out of the single payment DIP account shall be deducted the legal deductions and bank charges for making transfers or postal charges, as the case may be.

(8) The cancellation of the fund units related to the payment of the equivalent value of the participant's net asset shall be made on the same day with the payment of the amount stipulated in paragraph (7) from the operational account to the DIP account for the unique payment of the voluntary pension fund, the payment from the DIP account to the participant being made no later than the next business day.

(9) If the participant opts for staggered payments, the due amount to be transferred from the transaction account to the DIP for staggered payments account shall be calculated on the basis of the last unit value of the net asset calculated and reported by the manager and the depositary for the working day prior to the one in which the transfer is made, and deductions and bank charges for postal transfers or postal charges, as the case may be, are deducted from the amounts to be paid out of the DIP account for staggered payments.

(10) The cancellation of the fund units related to the transfer of the equivalent value of the dead participant's net asset shall be made on the same day with the transfer of the amount provided in paragraph (9) from the operational account in the DIP account for staggered payments of the voluntary pension fund, the payment from the DIP account for staggered payments to the beneficiary being made in accordance with the schedule established by the fund manager.

(11) The manager has the obligation to transfer the amount due to the beneficiary in staggered payment into the DIP account for staggered payments at the higher value between the net asset value calculated in accordance with the provisions of paragraph (8) and the amount resulting from the application of the securities provided in the prospectus.

**Art. 15 - (1)** In the case of minor beneficiaries, the application provided in art. 13 paragraph (1) is signed, as appropriate, by:

**a)** the legal guardian;

**b)** the curator specifically designated for this purpose.

**(2)** Minor beneficiaries with limited exercise capacity shall sign the application together with the legal guardian provided in paragraph (1) letter a) or the curator referred to in paragraph (1) letter b) as appropriate.

**(3)** In the cases provided in par.(1) and (2), the payment of the net personal asset of the deceased participant shall be made to a bank account opened on the minor's name or by postal order at the address of the minor's domicile.

**Art. 16. - -** The manager shall pay to each beneficiary the appropriate share of the highest value of the deceased participant's net asset calculated in accordance with the provisions of Art. 14 paragraph (7) and the amount resulting from the application of the securities provided in the prospectus.

**Art. 17. -** The limitation of the right to claim payment of the equivalent value of the net personal asset of the deceased participant starts on the date of the death or on the date of the final judgment declaring the death.

**Art. 18. -** The rights due as a beneficiary and unclaimed within the 3-year general limitation period shall become financial resources of the fund, and shall be distributed in a proportionate manner to all fund participants on the first working day following the date of the limitation period or the day following the day on which the manager acknowledges the fulfilment of the general limitation period.

**Art. 19. - (1)** The capacity as a participant for the participant who benefits from the old-age pension and opts for it, 1<sup>st</sup> or 2<sup>nd</sup> degree disability pension for a disability that irreversibly impacts on the work capacity and for the deceased participant before the latter requested the pension right, respectively for the beneficiaries of the deceased participant opting for the single

payment of the net asset, ceases at the date of the single payment representing the equivalent value of the net personal asset.

(2) In the situations provided in paragraph (1), the capacity as participant of the participants/beneficiaries opting for staggered payments ceases after the payment of the last instalment.

## SECTION 4

### *Provisions regarding the payment of the net personal asset*

**Art. 20.** – (1) Participants/Beneficiaries in staggered payment are entitled, throughout the payments, to request the change of the type of payment of the net personal asset, i.e. from staggered payment into single payment, the change of the amount of the rate and the method of payment.

(2) If participants/beneficiaries request the change in the rate value, the manager is obliged to send them a new schedule for the staggered payment, within 10 working days from receipt of the request.

(3) For the requests under paragraph (1), participants/beneficiaries are required to submit the following documents:

- a) written application;
- b) the identity document valid on the date of filing the application;
- c) special and authentic power of attorney in the case of the proxy;
- d) the account statement certifying the IBAN code and the holder or any document issued by the credit institutions attesting to the account holder and the associated IBAN, as appropriate;

(4) The effects of the modifications provided in paragraph (1) shall enter into force no later than the month following the submission of the written applications.

**Art. 21.** - The payment deadline for staggered payments for the cases provided by art. 7 paragraph (10), art. 10 paragraph (10) and art. 14 paragraph (9) is the 10<sup>th</sup> of each month.

## CHAPTER III

### Other duties of the managers

**Art. 22. - (1)** Within 5 business days as of the date of the single payment, i.e. from the date of the last staggered payment to the participant who requested the payment for old-age pension, i.e. the payment for disability pension, the manager of the voluntary pension fund shall send him the information on the equivalent value of the due personal net asset, on paper, by postal services or any other means that can be subsequently verified, specified by the participant / proxy in the application requesting the payment of the due rights.

**(2)** Within 5 business days from the date of the single payment or from the date of the last staggered payment, the pension fund manager shall transmit to the beneficiary / beneficiaries / guardian / curator on paper, by postal services or any other means that can be subsequently verified, specified by the beneficiary/proxy/ guardian/curator in the application requesting the payment of the due rights, an information comprising the following:

- a)** the equivalent value of the net personal asset of the deceased participant;
- b)** the amount due to the beneficiary to whom the information is addressed.

**(3)** At the request of the participant / beneficiary, the manager shall, free of charge, send the history of the operations made to the participant up to the date of the single payment of his / her net asset, respectively, until the date of the last staggered payment.

**Art. 23. - (1)** The net personal asset of the participant pensioned for old-age or for disability continues to be managed until the date of payment of all the rights due to him / her.

**(2)** The net personal asset of the deceased participant continues to be managed during the period between the last contribution of the participant to the fund before his/her death and:

- a)** the date of the transfer of the due rights to the beneficiaries, in compliance with art. 14;
- b)** the date of the lapse of the general limitation period of the beneficiary's/beneficiaries' right to demand payment of the equivalent value of the deceased person's net asset not claimed, in which case the asset of the deceased participant is transformed into income the fund, according to the provisions of art. 47 paragraph (2) letter b) of the Law.

**Art. 24.** - Managers shall publish on their website the model of the application for payment of the participant's net personal asset in the cases provided for in Chapter II, together with an information on the payment of the asset and the applicable tax regime.

**Art. 25.** - (1) The schedule for the staggered payment provided in art. 7 paragraphs (3) and (9), art. 10 paragraph (3) and (9) and art. 14 paragraph (10) shall contain at least the following information, but not limited to:

- a) the date and amount of each staggered payment;
- b) the balance remaining after each payment;
- c) the value of the residual rate.

(2) The schedule provided in paragraph (1) shall be submitted to the participants/beneficiaries within 10 working days as of the submission of the complete documentation.

**Art. 26.** - The manager has the obligation to keep and archive the participant's history of transactions from the first contribution to the full payment of the equivalent value of the net personal asset, together with the documents related to them, in accordance with the legal provisions.

**Art. 27.** - The time limits provided for in this rule, which expire on a public holiday or a non-working day, shall be extended until the end of the next working day.

## **CHAPTER IV**

### **Liability**

**Art. 28.** - The non-compliance by the manager with the obligations provided for in this rule shall be sanctioned according to the provisions of art. 120, art. 121 paragraph (1), letter k), paragraphs (2) - (4), (6), (7), (9) and (10) of the Law.

## **CHAPTER V**

### **Final provisions**

**Art. 29. - (1)** This rule shall be published in the Official Gazette of Romania, Part I, and shall enter into force on April 1, 2018.

**(2)** On the date of entry into force of this rule, the Rule of the Financial Supervisory Authority no. 8/2015 on the use of the net personal net asset of the participant in a voluntary pension fund, published in the Official Gazette of Romania, Part I, no. 267 of April 21, 2015 shall be repealed.

*Chairman of the Financial Supervisory Authority,*

*Leonardo BADEA*

*Bucharest, November 23, 2017*

*No. 28*