

Parliament of Romania - Law no. 213/2015 of 21 July 2015

Law no. 213/2015 on the Policyholders Guarantee Fund

In force as of 27 July 2015

The consolidation is based on the publication in the Official Journal, Part I, no. 550 of 24 July 2015 and includes amendments made by the following acts:

GEO 102/2021;

Last amended on 24 October 2021.

The Parliament of Romania hereby adopts this law.

CHAPTER I

General provisions

Art.1 - (1) The Policyholders Guarantee Fund, hereinafter referred to as the Fund, is established as a legal person under public law, which shall exercise its powers and duties in accordance with the provisions of this Law; the organization and functioning of the Fund shall be established by its own Articles of Association approved by the Council of the Financial Supervision Authority, on the proposal of the Board of Directors of the Fund, and the Articles of Association shall be published in the Official Journal of Romania, Part IV.

(2) The main office of the Fund shall be in the municipality of Bucharest; in order to carry out the duties provided for by law, the Fund may have one or more lucrative facilities.

Art. 2 - (1) The Fund, as an insurance guarantee scheme, aims to protect insurance creditors from the consequences of an insurer's insolvency.

(2) In order to facilitate private international law relations in the insolvency of an insurer, the Fund may enter into cooperation agreements with insurance guarantee schemes in other States and with other parties interested in developing policyholder protection.

(2¹) In order to facilitate the procedures for insurance creditors resident in other Member States to obtain compensation from the Fund, the Fund may mandate national motor bureaux, including the Romanian Motor Insurers' Bureau, hereinafter referred to as BAAR, and/or correspondents appointed by them to handle damage files, taking into account the agreements concluded by the national motor bureaux under the Green Card system, in so far as the insurance creditors' entitlement to compensation involves an element of foreignness.

(2²) By way of exception to the provisions of Art. 14 para. (1), BAAR may request payment from the Fund of the amounts paid in accordance with the provisions of the agreements concluded by the national motor vehicle bureaux within the framework of the Green Card system, within a maximum of 90 days from the date on which it made the payment to the national bureaux abroad.

(3) The Fund shall protect insurance creditors by paying insurance claims arising from voluntary and compulsory insurance contracts concluded, in the event of ASF finding that an insurer is insolvent, after the insurance creditor has gone through the administrative procedure governed by this law, in compliance with the guarantee cap provided for in this law and within the limit of the financial resources available at the time of payment, as provided for in Art. 5; if the Fund's liquid funds are not sufficient to cover the amount due to insurance creditors, their claims shall be honoured to the extent that the financial resources provided for by this Law are replenished to the Fund.

(3¹) Enforcement of enforceable titles obtained against the insurer may not be initiated against the Fund; in this case the insurance creditor shall submit a reasoned request for payment, in accordance with Art. 14 para. (1), in compliance with the procedure and the limit established by this Law.

(3²) Any obligations arising from reinsurance contracts concluded by the insurer in insolvency are excluded from the application of this Law.

(4) "repealed"

Art. 2¹ - (1) The Fund may act as special administrator in the financial recovery procedure of insurers or as liquidator in the voluntary liquidation procedure of insurers, under the conditions provided for by Law no. 503/2004 on financial recovery, bankruptcy, winding up and voluntary liquidation in the insurance business, republished, as amended, hereinafter referred to as Law no. 503/2004.

(2) The Fund may act as interim administrator of an insurer in accordance with the provisions of para. (4) to (7) and (9).

(3) The Fund shall be appointed for the functions referred to in para. (1) and (2) by the Financial Supervisory Authority by means of a reasoned decision.

(4) On the date on which the Financial Supervision Authority withdraws the operating license of an insurer, according to the insurance legislation, and at the same time finds indications of insolvency of the insurer, as defined in Art. 5 item 31 of Law no. 85/2014 on insolvency prevention and insolvency proceedings, as amended and supplemented, hereinafter referred to as Law no. 85/2014, the Financial Supervision Authority may appoint the Fund as interim administrator of the insurer in question with the powers set out in paragraph. (5).

(5) As interim administrator, the Fund shall ensure the administration and management of the insurer and shall take the necessary measures to prevent the reduction of the assets and the increase of the liabilities of the insurer, while preserving its assets; on the date of the appointment of the liquidator, the mandate of interim administrator shall automatically cease.

(6) From the date of communication of the decision appointing the Fund as interim administrator until the termination of its mandate, the powers of the management of the insurer shall be suspended ipso jure, with the exception of the power to bring an action provided for in Art. 250 (2) of Law no. 85/2014 and the duty to hand over the records according to the provisions of Art. 122, for the fulfilment of which it remains responsible.

(7) The expenses related to the interim administration shall be borne by the insurer to which it has been appointed; the allowance of the administrator shall be set by the Financial Supervisory Authority by the appointment decision, without exceeding the remuneration granted to the management of the insurer.

(8) The Fund shall manage the Resolution Fund for Insurers, the financial sources, functions and duties of which are established by Law no. 246/2015 on the recovery and resolution of insurers; for this purpose, the Fund shall establish, within its organisational structure, a directorate with specific functions in order to implement the duties established by this Law and by Law no. 246/2015.

(9) If the insurer has been subject to Law no. 246/2015 and the temporary administrator or resolution administrator is the Fund, it shall continue to perform the duties of the interim administrator.

Art. 3. - Insurers authorised by the Financial Supervisory Authority, including their branches operating in the territory of another Member State of the European Union, are obliged to contribute to the Fund under the conditions of this law.

Art. 4 - (1) For the purposes of this Law, the following terms and expressions shall have the following meaning:

(a) insurance claims - claims of insurance creditors, irrespective of when they arise in relation to the date of the opening of bankruptcy proceedings, arising out of an insurance contract, including amounts reserved for such creditors where some elements of the debt are not yet known; insurance claims shall mean amounts paid to insurance creditors out of the Fund's liquid assets, representing compensation/indemnities and premiums due by the debtor insurer for the period during which the risk was not covered by it following the termination of insurance contracts;

b) insurance creditors, holders of one or more insurance claims are, as the case may be:

(i) the insured person - the natural or legal person in a legal relationship with the insurer who is the debtor under the insurance contract;

(ii) the beneficiary of the insurance - the person defined in Art. (1) para. (2) item 7 of Law no. 237/2015 on the authorisation and supervision of insurance and reinsurance activity, as amended, hereinafter referred to as Law no. 237/2015;

(iii) third party injured - the person entitled to receive compensation for loss suffered as a result of the occurrence of a risk covered by a liability insurance contract, including the insurer entitled by law to recover from the insolvent insurer sums paid to that person by subrogation, regress or direct action;

c) contribution - the non-reimbursable amount due to the Fund by insurers authorised by the Financial Supervisory Authority, including branches of insurers operating in the territory of another Member State of the European Union, in accordance with the provisions of this Law;

d) compensation/indemnity - the amount that the Fund pays to each insurance creditor of the insurer in insolvency, within the limit of the guarantee and under the conditions laid down in this Law;

e) guarantee cap - the maximum level of guarantee for an insurance claim due under an insurance contract concluded by the insurer in insolvency.

(2) Terms and expressions used in this Law which have not been defined in para. (1) shall have the meaning provided for in Art. 5 of Law no. 85/2014, Art. 2 of Law no. 246/2015, Art. 1 para. (2) of Law no. 237/2015 and Art. 2 of Law no. 132/2017 on compulsory motor third party liability insurance for damage caused to third parties by vehicle and tram accidents, hereinafter referred to as Law no. 132/2017.

(3) The category of insurance creditors shall not include persons in the management of the insolvent insurer as defined in Art. 1 para (2) item 33 of Law no. 237/2015.

CHAPTER II

Financial resources and their use

Art. 5 - (1) The financial resources of the Fund come from the following sources:

- a)** contributions from insurers;
- b)** interest and penalties for late payment of contributions by insurers;
- c)** amounts from the accumulation of liquid assets;
- d)** amounts from the recovery of the Fund's claims;
- d¹)** statutory interest income on loans granted to the Resolution Fund for Insurers managed by the Fund;
- e)** amounts from other sources established by law;
- f)** loans from credit institutions or debenture loans through the issue of securities of the Fund.
- g)** interest or fees in relation to any loans or guarantees provided to the insurer subject to resolution, as provided for in Art. 59(b) of Law no. 246/2015.

(2) The Fund's liquid assets thus constituted may be invested in interest-bearing instruments with credit institutions, money market instruments, government or local government securities and other investments, including in foreign currency.

(3) The investment strategy of the Fund's resources aims at investing them in safe conditions, minimising risks, ensuring efficiency and liquidity. The investment strategy for the Fund's resources shall be drawn up by the Fund, endorsed by the Board of Directors of the Fund and approved by the Council of the Financial Supervisory Authority.

Art.6 - (1) Contributions due to the Fund by insurers shall be calculated separately for the two categories of insurance, namely general insurance and life insurance, on the basis of their monthly accounting records, applying a percentage rate established in accordance with the provisions of para (3).

(2) The percentage rate of contributions may not exceed 10% of the gross premiums received by insurers from direct insurance business.

(3) The percentage rate shall be established separately for the two categories of insurance by regulations of the Financial Supervisory Authority, on the proposal of the Board of Directors of the Fund.

(4) In order to cover the obligations arising from the application of this Law, the Financial Supervisory Authority may increase during the year the

percentage rate taken into account for the determination of the contribution, subject to the limit provided for in para. (2).

Art. 7 - (1) The contribution due to the Fund by the insurers shall be transferred monthly to the Fund's account, in national currency - leu, according to the regulations issued by the Financial Supervisory Authority.

(2) The contributions due and paid into the Fund by insurers shall not be refunded.

Art. 8 - (1) The insurers shall draw up and send monthly reports to the Fund, in accordance with the regulations issued by the Financial Supervisory Authority, on the establishment and transfer of the contribution due, separately for the two categories of insurance, namely general insurance and life insurance.

(2) With the submission of the reports, insurers shall attach an affidavit, under the signature of their legal representative, subject to the penalties provided for by Law no. 286/2009 on the Criminal Code, as amended and supplemented, for the offences of fraud and/or false statements, certifying that the data and/or information submitted are true, accurate and complete.

Art. 9 - (1) The instrument establishing and specifying the payment obligation of an insurer to the Fund, including amounts due to the Resolution Fund for Insurers, shall be drawn up by the Fund and shall constitute a debt claim; the debt claim shall include the total outstanding amount due by the insurer as a contribution to the Fund and any interest and late payment penalties, as well as the maximum period of 30 days from the date of communication of the instrument specifying the payment obligation, within which the insurer may pay the obligation voluntarily.

(2) If, on the due date laid down in para. (1) the outstanding debt provided for in the debt instrument has not been paid, the debt instrument shall become an enforceable title, on the basis of which the Fund shall initiate the procedure for the enforcement of claims, in accordance with the provisions of Law no. 134/2010 on the Code of Civil Procedure, republished.

(3) Sums paid into the Fund by way of contribution may be enforced only for the fulfilment of the obligations for which they were established.

(4) Interest and penalties for late payment shall be charged for failure to pay amounts due to the Fund on time, calculated in accordance with the regulations applicable to the collection of tax claims. Interest and penalties shall be paid into the Fund's account.

Art. 10 - (1) The financial resources of the Fund shall be used for:

a) the payment of compensation/indemnities resulting from voluntary and compulsory insurance contracts concluded with the insurer in insolvency;

b) the payment of amounts due to insurance creditors to be paid by the Fund in the event of termination of insurance contracts;

c) coverage of the costs of the Fund relating to the establishment, processing and settlement of claims and the costs relating to the organisation, administration and operation of the Fund in the exercise of its statutory functions.

(2) Payment of the sums referred to in para. (1) letters a) and b) shall be made from the Fund's available funds only after the non-judicial administrative procedure provided for by this Law has been completed; from the amount due to the insurance creditor shall be deducted the amounts owed by the creditor to the insurer, calculated in accordance with the insurance contract concluded between the parties.

(3) By way of derogation from the provisions of Art. 145 para. (1) of Law no. 246/2015, the direct expenses of the Fund for the management activity of the Resolution Fund for Insurers shall be borne, as a priority, from the revenues of the Resolution Fund for Insurers, to the extent that they are sufficient to cover these expenses; in their absence, the other financial resources of the Fund may be used.

CHAPTER III

Procedure and conditions for payments from the Fund's liquid assets

Art.11 - The Fund shall ensure the payment of compensation/indemnities from its available funds to the insurance creditors, according to the conditions and the guarantee cap established by this law.

Art. 12. - (1) Any person making a claim against the insurer as a result of the occurrence of risks covered by a valid insurance policy, between the date of publication in the Official Journal of Romania of the decision of the Financial Supervision Authority to withdraw the authorisation to operate and the finding of the existence of indications of the insurer's insolvency and the date of termination of the insurance contracts, but not later than 90 days from the date of the decision to open bankruptcy proceedings, may request the opening of a claim file by an application to the Fund; with a view to the recovery of the compensation/indemnity due from the Fund, the relevant person shall submit a reasoned application for payment, in accordance with the conditions laid down in Art. 14.

(1¹) For claims reported to insurers before the date of publication in the Official Journal of Romania of the decision of the Financial Supervision Authority to withdraw the operating licence and to establish the existence of indications of the insurer's state of insolvency and for which the insurer has not opened the claim file, the Fund shall open the file at the written request of the claimant at the head office or by post, by electronic mail or by other means ensuring the transmission of the text of the document.

(1²) Where additional findings are required for files already opened by the insurer, the Fund shall carry out such findings on the basis of a written request to that effect submitted by the claimant to the Fund's office or by post, electronic mail or other means ensuring transmission of the text of the document.

(2) In order to protect the rights of insurance creditors, the Fund shall take the necessary measures with regard to the opening of claims, the technical assessment of damage, the processing of claims and the technical approval of claims. The handling of claims shall be carried out in compliance with the legal provisions in force at the time of the insured event and with the general and specific insurance conditions laid down in the insurance contracts.

(3) In order to carry out its tasks with regard to claims handling, the Fund may, on the basis of transparent selection procedures approved by decision of the Financial Supervisory Authority, conclude agreements with companies the business of which is claims settlement services or appoint an insurer for the purpose of establishing, assessing and settling claims. Amounts paid out of the Fund's resources to service providers for the settlement of claims shall represent insurance claims, and the provisions of Art. 267 para. (2) of Law no. 85/2014 shall apply accordingly.

(4) The amounts determined in accordance with para. (3) and accepted for payment by the special committee set up in accordance with the provisions of this Law shall be paid out of the Fund's liquid assets, under the conditions and in compliance with the provisions of this Law and the regulations issued by the Financial Supervisory Authority and/or by the Fund in application thereof.

Art. 12¹ - The right of insurance creditors to request payment of the amounts due from the Fund shall arise on the date of publication in the Official Journal of Romania, Part I, of the decision of the Financial Supervision Authority establishing the existence of indications of the insurer's insolvency and the impossibility of its recovery.

Art. 12² . - **(1)** Within 30 days from the date of publication in the Official Journal of Romania of the decision of the Financial Supervision Authority to withdraw the operating licence and to establish the existence of indications of insolvency of the insurer, the insurer shall deliver to the Fund the records of insurance contracts in force on the date of communication of the above-mentioned decision, the complete records of the damage files, as well as the technical-operational and accounting records related to these contracts and files, for the purpose of publishing the list of potential insurance creditors; the insurer's management shall be liable for any failure to fulfil or inadequate fulfilment of the obligation.

(2) The insurer shall hand over the records referred to in para. (1) in both paper and, if available, electronic/digital format; together with them, the insurer shall hand over to the Fund all insurance contracts in force, unliquidated claims files, databases, registers, correspondence, any document relating to the files, contracts in force and any other records held in connection therewith.

(3) The Insurer shall forward to the Fund any documents or information relating to insurance contracts and claims files requested by the Fund for the purpose of considering claims submitted by potential creditors.

(4) On the basis of the records and documents taken from the insurer, the Fund shall draw up a list of potential insurance creditors and ensure its publication on its website.

(5) If the competent court rejects the application for the opening of bankruptcy proceedings, the Fund shall return the records and documents taken from the insurer within a maximum of 30 days after the final judgment rejecting the application for the opening of bankruptcy proceedings.

(6) If the competent court definitively rejects the application for the opening of bankruptcy proceedings, the insurer shall be obliged to pay all sums paid/borne by the Fund in the management of both the claims taken over from it and those

opened by the Fund pursuant to the provisions of Art. 12, including compensation/indemnities paid by the Fund in respect of claims held by the insurer's insurance creditors.

(7) In applying the provisions of para. (6), for the purpose of recovering the sums paid by the Fund, the Fund shall issue a document establishing and specifying the insurer's obligation to pay, which shall constitute a debt claim; the debt claim shall include the amount due by the insurer to the Fund and a maximum payment period of 30 days, starting from the date of communication of the document specifying the obligation to pay, within which the insurer may pay the obligation voluntarily.

(8) If, on the due date laid down in para. (7) the amount mentioned in the claim title is not paid, it shall become an enforceable title, on the basis of which the Fund shall initiate the procedure for the enforcement of claims, in accordance with Law no. 134/2010 on the Code of Civil Procedure, republished, as amended.

Art. 12³ - (1) The Fund shall appoint a special committee, consisting of seven members of the Fund, with the following composition:

- a)** the General Manager;
- b)** 2 representatives of the Economic Directorate with at least 3 years of experience in the financial field;
- c)** 2 representatives of the Technical Claims Department with at least 3 years of experience in claims instrumentation/liquidation;
- d)** 2 representatives of the Legal Directorate with at least 3 years of experience in the legal field.

(2) The Special Committee shall deliberate validly in the presence of at least five of its members; in the event of a tie, the vote of the Chairperson or his substitute shall be decisive.

(3) The General Manager of the Fund shall act as Chairperson of the Special Committee and, in his/her absence, his/her duties shall be performed by one of the members of the Committee designated by him/her.

(4) The secretariat of the committee shall at least ensure the preparation of the lists of insurance creditors with proposals for approval of the amounts claimed, as well as the lists of claims with proposals for rejection of the amounts claimed, the convocation, the agenda and the minutes of the meetings of the special committee.

Art. 13 - (1) Within 60 days from the date of publication in the Official Journal of Romania of the decision of the Financial Supervision Authority to withdraw the operating licence and to establish the existence of indications of the insurer's insolvency, the Fund shall be entitled to make payments from its liquid assets in order to pay the amounts due to insurance creditors, in compliance with the legal provisions, after the insurance creditor has gone through the administrative payment procedure regulated by this Law.

(2) The Fund shall publish on its website information on the steps required to obtain from the Fund the amounts due to insurance creditors under this Law.

(3) For the purpose of making payments to insurance creditors, the Fund shall verify the claims and insurance claims registered in its records, taking into

account the applicable rules and the general and specific insurance conditions laid down in the insurance contracts concluded with the insurer the insolvency of which has been established.

(3¹) In the event of injury to body or health or death resulting from a motor vehicle accident, compensation for non-material damage shall be determined in accordance with the principle of equity, by reference to the negative physical and psychological consequences suffered, taking into account objective and reasonable criteria.

(4) The approval or, as the case may be, the rejection of the amounts claimed by the claimants shall be the responsibility of the special committee set up under Art. 12³; the special committee may order the suspension of the settlement of the claim for payment under Art. 16 para. (2).

(5) In the event of rejection of the amounts claimed, a reasoned rejection decision shall be issued; an appeal against the decision may be lodged within 30 days of its communication, under penalty of forfeiture, with the civil courts at the Fund's headquarters, in accordance with the general jurisdiction rules of Law no. 134/2010, republished, as amended and supplemented.

(5¹) Judgments given pursuant to para. (5) shall be subject to the appeals provided for by Law no. 134/2010, republished, as subsequently amended and supplemented.

(6) The claimants' right of action against the Fund for payment of insurance claims, after they have registered their claims for payment, shall lapse within 5 years calculated from the date on which the right arose, but not before 60 days from the date of publication in the Official Journal of Romania of the decision of the Financial Supervision Authority to withdraw the operating authorisation and to establish the existence of indications of the insurer's insolvency, from which time the Fund shall be entitled to make payments.

Art. 14 - (1) Any person claiming an insurance claim against the insurer in a state of insolvency may submit a reasoned request for payment to the Fund under the conditions set out in Art. 12¹ and para. (4), but not later than 90 days from the date of the final decision to open bankruptcy proceedings or from the date of the claim, if it arose later, under penalty of forfeiture of the right.

(2) The application for payment referred to in para. (1) shall be formulated in writing by the potential creditor and shall be communicated to the Fund, directly or through its agents, at its registered office or by post, by electronic mail or by other means ensuring the transmission of the text of the document, with the attachment of supporting documents, in certified copy, showing the exact amount of the sums requested; if the claim relates to more than one damage file or insurance contract, the potential insurance creditor shall attach a record containing the identification data and amounts relating to each damage file/insurance contract and any relevant documents, if applicable.

(3) If it is impossible to produce certified copies of the supporting documents, the insurance creditor may submit either copies thereof or an affidavit in support of such supporting documents, the request shall state the reason for the impossibility of producing them in certified copy; these documents shall be checked against the records taken by the Fund from the insurer in insolvency.

(4) The request for payment shall contain at least the following information: the identification and contact details of the claimant and, where applicable, of his representative, the amount of the sum requested, the identification details of the insurance contract and, where applicable, of the damage file opened by the insurer, the method of payment; the models for requests for payment of compensation/indemnities and for premium refunds shall be established by regulations issued in application of this Law.

(5) The application and the documents and information required under para. (2) - (4) shall be submitted in Romanian; if they are written in an international language, they shall be accompanied by a translation authorised by law.

Art. 15 - (1) As the claimants' payment requests are registered and analysed, together with the attached documents, a list shall be drawn up of the insurance creditors the claims of which are certain, liquid and payable and which are to be paid out of the Fund's assets, as well as a list of the payment requests that are to be rejected in part or in full; the lists shall be submitted to the special committee with the proposal to approve or reject the payment of the amounts requested, and after the Special Committee has approved these lists, the insurance claims shall be paid to the insurance creditors.

(2) Payment by the Fund of insurance claims established as certain, liquid and due shall be made within the limit of a guarantee cap of 500,000 lei established in accordance with Art. 4 para. (1) letter e).

(3) Payment shall be made in the national currency - leu, and in the case of claims in foreign currency, payment may also be made in the currency of the claim by opening appropriate bank accounts.

(4) The amounts due to insurance creditors shall be paid by the Fund by post up to a maximum level established by regulations issued by the Financial Supervisory Authority in application of this law and/or by credit institutions authorised by the National Bank of Romania; in order to pay the amounts due to insurance creditors, the Fund may conclude service agreements/contracts with any of these entities.

Art. 16 - (1) In all cases where it deems it necessary, the special committee may request the claimants to complete the documentation and/or to specify or provide additional information on their claim for payment; the requested information shall be sent to the committee, under penalty of rejection of the claim, within 30 days from the date of receipt of the request.

(2) For good cause, at the request of the applicant, the time limit for submitting the requested documentation may be extended if the applicant needs to supplement the documentation submitted with documents issued by other public or private entities.

(3) In the situation referred to in para. (2), the Fund may issue a decision suspending the settlement of the payment claim until the reasons for taking such a measure have been removed.

Art. 17 - The insurance creditor may also separately pursue the bankruptcy proceedings of the insurer provided for by Law no. 85/2014, in order to recover its claim from the assets of the bankrupt insurer, including for the amount due exceeding the guarantee cap provided for in Art.15 para. (2).

Art. 18 - (1) The Fund shall be subrogated to all rights of insurance creditors to the extent of the amounts it has paid out of its assets.

(2) By way of derogation from the provisions of Art. 100 para. (1) letter b) of Law no. 85/2014, the Fund may register any amounts, interest and/or expenses that it has paid from its own resources with the statement of affairs throughout the bankruptcy proceedings with a view to their recovery.

(3) Under the conditions of para. (1) and (2), the Fund shall be entitled to register and recover in the bankruptcy proceedings of the debtor insurer all amounts paid to creditors, to the extent of payments made, as a result of the occurrence of insured risks after the opening of the bankruptcy proceedings.

(4) Claims of the Fund may be subject to verification by the liquidator only in respect of the analysis of payments against the technical reserves in the records of the insurer in bankruptcy; in support of the statements of claim, the Fund shall attach the payment orders relating to the payments made, a file of each claim file containing the relevant data/information.

Art. 18¹ - The Fund shall take action against persons who have unduly received sums from the Fund with a view to recovering them, and may also take such action against persons who perform services in the public interest and who have unduly received sums from the Fund in the performance of such services.

CHAPTER IV

Fund management and administration

Art.19 - (1) The Fund is managed by a Board of Directors consisting of 5 members.

(2) The Board of Directors of the Fund shall be composed of:

a) 3 members appointed by the Council of the Financial Supervisory Authority, one of whom will be appointed Chairperson of the Board of Directors of the Fund;

b) 2 members appointed by the Ministry of Finance.

(2¹) The Act of Appointment/Proposal for Revocation of Members by the Ministry of Finance, in compliance with the conditions laid down in this Law, shall be communicated to the Financial Supervisory Authority; the members of the Board of Directors of the Fund referred to in para. (2) shall be revoked by decision of the Financial Supervisory Authority.

(3) The members of the Board of Directors of the Fund shall be appointed for a term of 5 years by decision of the Financial Supervisory Authority.

(4) Members of the Board of Directors of the Fund whose terms of office have expired shall remain in office until their successors are appointed.

(5) The Chairperson of the Board of Directors of the Fund may be replaced, in case of absence or temporary inability to perform his/her duties, by another member appointed by decision of the Financial Supervisory Authority.

(6) In the event of revocation, resignation, incompatibility or definitive impossibility of exercising the mandate by one of the members of the Board of

Directors of the Fund, the replacement shall be appointed for the remaining duration of the mandate; any circumstance that creates an unavailability of at least 90 consecutive days shall be considered a definitive impossibility of exercising the mandate.

(7) The members of the Board of Directors of the Fund shall receive a monthly allowance proportionate to the salary of the Chief Executive Officer of the Fund, up to a maximum of 25% for the Chairperson and 20% for the other members.

Art. 20 - The members of the Board of Directors of the Fund must cumulatively fulfil the following conditions:

a) must be graduates of long university studies with a bachelor's degree or of short university studies with a bachelor's or master's degree;

b) be of good repute and good character;

c) have at least 8 years of proven professional experience in the field of finance or in banking, finance or insurance regulation/supervision or in teaching in higher education in the field of economics.

Art. 21 - **(1)** Members of the Board of Directors of the Fund:

a) cannot be spouses, relatives or related up to the second degree;

b) may not be an employee or a director, a member of the administrative board, the supervisory board or the management board, as the case may be, of an insurer;

c) may not be senators, deputies, members of the Government or hold a leading position in any political party or political organisation during their term of office;

d) have no criminal record;

e) do not have any penalties provided for by law on their tax record;

f) are not employees of the Fund.

(2) Members of the Board of Directors of the Fund may not take part in decisions relating to an insurer in which a person with whom they are in one of the relationships listed in para. (1) is a member of the management of the insurer as defined in Art. 1 para. (2) item 10 of Law no. 237/2015.

Art. 22 - Membership of the Board of Directors of the Fund shall cease in the following circumstances:

a) at the end of the mandate;

b) by resignation;

c) in the event of incompatibility;

d) in the event of definitive impossibility of exercising the mandate, by replacement in accordance with Art.19 para. (6);

e) by revocation.

Art. 22¹ - In order to remove the incompatibility resulting from the provisions of this law, if applicable, the members of the Board of Directors of the Fund shall have a period of 30 days from the date of their appointment by decision of the Financial Supervisory Authority.

Art. 23 - **(1)** The Board of Directors of the Fund shall meet at least once a month in ordinary session, convened by the Chairperson or his/her substitute.

(2) An extraordinary meeting of the Board of Directors of the Fund may be convened by the Chairperson on his/her own initiative or at the request of three members.

(3) The Board of Directors of the Fund must be convened in writing or electronically at least 3 working days before the date of the meeting.

(4) The notice convening the meeting shall contain the agenda, the date and documents to be discussed and the venue of the meeting.

(5) Meetings shall be held at the headquarters of the Fund or at any other agreed place.

(6) Where urgent action is required, the 3-day period may be reduced and the summons will be made verbally and subsequently confirmed in writing.

(7) The Board of Directors of the Fund shall validly deliberate in the presence of at least three of its members.

(8) Decisions of the Board of Directors of the Fund shall be taken by a majority vote of its members.

(9) The minutes of the meeting, containing the order of deliberations, decisions taken, the number of votes cast and separate opinions, if any, shall be signed by all members present at the meeting.

Art. 24 - The powers of the Board of Directors of the Fund are as follows:

a) consider, endorse and submit for approval to the Council of the Financial Supervisory Authority the following:

(i) the Articles of Association of the Fund;

(ii) the organisational and staff structure and the salary policy of the staff of the Fund;

(iii) proposals for the appointment of the General Manager;

(iv) the designation of the Fund as special administrator of insurers in financial recovery, temporary administrator or settlement administrator;

(v) the appointment of the Fund as liquidator in the voluntary liquidation procedure;

(vi) determination of the contribution;

(vii) the annual financial statements;

(viii) the Fund's annual activity report;

(viii¹) the Fund's fee in application of the provisions of Law no. 246/2015;

(viii²) investment strategy for the financial resources of the Resolution Fund for Insurers;

(ix) any other tasks resulting from the application of legal provisions;

b) review and approve:

(i) the terms, maximum limits, time limits and conditions of investment for the purpose of the Fund's liquid assets;

(ii) the conclusion of service contracts relating to claims settlement, assistance and specialist consultancy services;

(iii) the reports drawn up by the Fund, in its capacity as special, interim, temporary or resolution administrator or liquidator in voluntary liquidation proceedings, as provided for by law;

(iv) the report on the selection of the financial auditors;

(v) the internal audit system;

(v¹) income and expenditure budget;

(vi) any other tasks resulting from the application of legal provisions.

Art. 25 - (1) The Chairperson of the Board of Directors of the Fund shall have the following duties:

a) set the agenda and convene the Board of Directors of the Fund;

b) chair the meetings of the Board of Directors of the Fund;

c) ensure the organisation and exercise of internal audit in accordance with the legislation in force;

d) approve bonuses and other incentives for executive management;

e) perform any other tasks in application of the legal provisions.

(2) The Chairperson of the Board of Directors of the Fund, together with the General Manager, shall submit and present, where appropriate, to the Council of the Financial Supervisory Authority the documents referred to in Art. 24 letter a).

Art. 26 - (1) The General Manager of the Fund shall manage the day-to-day business of the Fund, ensure the implementation of the decisions of the Council of the Financial Supervisory Authority and the Board of Directors of the Fund.

(2) The General Manager shall have the following tasks:

a) represent the Fund in relations with the Financial Supervisory Authority, insurers, credit institutions, ministries and other specialised bodies of the public administration, other national or international natural and legal persons, other international entities, as well as before courts and arbitration tribunals;

b) propose to the Board of Directors of the Fund, for endorsement and approval respectively, the documents referred to in Art. 24;

c) ensure the placement of the Fund's liquid assets, aiming at minimising the risk and liquidity of the placements as main objectives, as well as the yield of the placements as a complementary objective, according to the strategy set out in Art. 5 para. (3);

d) coordinate the necessary steps for the payment of insurance claims provided for by law;

e) monitor and supervise the activity of the Fund in relation to its administration and the voluntary winding-up of insurers;

f) conclude, sign, amend and terminate the individual employment contracts of the Fund's employees, in compliance with the relevant legal provisions;

g) incur expenditure relating to the operation of the Fund;

h) approve proposals for staff awards;

i) propose to the Chairperson of the Board of Directors of the Fund bonuses and other incentives for executive management;

j) ensure the organisation and exercise of internal control in accordance with the legislation in force;

k) carry out any other duties given in application of the legal provisions or given to it by the Board of Directors of the Fund.

CHAPTER V

Penalties

Art. 27 - (1) The following acts constitute an offence:

a) non-compliance by insurers with the obligations relating to the payment of contributions referred to in Articles 3, 6 and 7;

b) non-compliance by insurers with the obligation to submit the report provided for in Art. 8;

c) failure by the management of insurers to comply with the obligations to hand over records and documents to the Fund, as provided for in Art. 12² para. (1) - (3);

d) failure by the Fund to comply with the publication obligations laid down in Art. 12² para. (4) and Art. 13 para. (2);

e) failure by the Board of Directors of the Fund to comply with the obligations laid down in Art. 24;

f) failure by the Chairperson of the Board of Directors of the Fund to comply with the obligations laid down in Art. 25 para. (1) letters (a) and (c) and para. (2);

g) failure by the General Manager of the Fund to comply with the obligations laid down in Art. 26 para. (2) letters (b) to (e) and (j).

(2) The commission of the offences referred to in para. (1) shall be punishable by a written warning or a fine from 1,000 lei to 50,000 lei.

(3) In addition to the main contravention penalties provided for in para. (2), depending on the nature and seriousness of the offence, one or more complementary contravention penalties may be imposed:

a) temporary or permanent disqualification from carrying on insurance business in respect of one or more classes of insurance;

b) withdrawal of insurers' authorisation;

c) disqualification from holding positions requiring the approval of the Financial Supervisory Authority for a period of between one and five years from the date of notification of the sanctioning decision or another date expressly mentioned therein.

(4) The establishment of the contraventions referred to in para. (1) shall be carried out by the persons responsible for supervision and control within the Financial Supervisory Authority, and the sanctions shall be applied by the Council of the Financial Supervisory Authority, in accordance with the provisions of Art. 21² of Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and additions by Law no. 113/2013, as amended.

(5) Notwithstanding the provisions of Art. 13 para. (1) of the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and additions by Law no. 180/2002, as amended, the application of the contravention sanctions provided for by this Law shall be prescribed within 3 years from the date of the offence.

(6) For the insurers referred to in Art. 3, the Fund shall inform the Financial Supervisory Authority of non-compliance with the provisions of this Law, in order to take the necessary measures in accordance with the provisions of this Law and Law no. 237/2015.

Art. 28 - By derogation from the provisions of Art. 10 para. (2) of Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, in the case of two or more contraventions, when they have been found by the same act, the fine provided for the most serious contravention shall be applied.

Art. 29 - Insofar as this law does not provide for otherwise, the provisions of Art. 27 and 28 relating to contraventions shall be supplemented by the provisions of Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions.

CHAPTER VI

Transitional and final provisions

Art. 30 - (1) The Fund and the Financial Supervisory Authority, where applicable, shall issue regulations in application of this Law regarding the activity of the Fund.

(2) The regulations issued by the Fund shall be in the form of instructions, which shall be approved by the Financial Supervisory Authority and published in the Official Journal of Romania, Part I.

Art.31 - The organisational structure, the Articles of Association of the Fund and the salary level of the staff employed within the Fund are approved by decision of the Council of the Financial Supervision Authority.

Art. 32 - "repealed"

Art. 33 - (1) The Fund shall take over from the Policyholder Guarantee Fund of the Financial Supervisory Authority, on the basis of handover protocols, the staff, the cash assets and all its rights and obligations. The employees of the Insurance Guarantee Fund of the Financial Supervisory Authority shall be assigned to similar positions in the Fund established under the provisions of this Law.

(2) The Fund shall exercise its prerogatives as from the date of conclusion of the transfer protocol referred to in para. (1), but not later than 60 days from the date of publication of this Law. On that date, the Policyholders Guarantee Fund managed by the Financial Supervisory Authority shall be automatically abolished.

Art. 34 - In order to carry out its duties, the Fund must have an adequate governance system, including internal control and internal audit mechanisms, which will be established by its own instructions, in accordance with legal provisions.

Art. 35 - (1) For the purpose of auditing the annual financial statements, the Fund shall enter into a contract with a financial auditor, a legal entity authorised by the Romanian Chamber of Financial Auditors, according to the law.

(2) The financial auditor's report, together with its opinion, shall be submitted to the Board of Directors of the Fund or to the Council of the Financial Supervisory Authority, respectively, together with the annual financial statements.

Art. 36 - (1) The financial year of the Fund shall begin on 1 January and end on 31 December of each year; the first financial year shall begin on the date of the establishment of the Fund as a legal person governed by public law.

(2) The Fund is obliged to organize and conduct its accounting in accordance with the provisions of the Accounting Law no. 82/1991, republished, as amended and supplemented, and its specific accounting regulations issued by the Financial Supervisory Authority.

Art. 37 - (1) The annual financial statements shall be approved by the Council of the Financial Supervisory Authority, after endorsement by the Board of Directors of the Fund.

(2) The annual activity report, together with the annual financial statements, approved by the Council of the Financial Supervisory Authority, and the report of the financial auditor shall be published on its website by 15 June of the year following the end of the financial year at the latest.

Art. 38 - (1) The Financial Supervisory Authority shall communicate any available information in order to carry out the Fund's duties, including at the request of the Fund's Board of Directors.

(2) At the request of the Board of Directors of the Fund, the insurers shall communicate any information necessary for the performance of the tasks of the Fund.

(3) The information obtained will be used by the Fund exclusively for the performance of its duties.

Art. 39 - (1) Insurers are obliged to communicate to insurance creditors all the information they need concerning the Fund, the conditions and formalities to be fulfilled in order to obtain the indemnity/compensation from the Fund's assets.

(2) The information referred to in para. (1) must be available at all insurers'/reinsurers' offices in an accessible place and be presented in an easily understandable form.

(3) The Fund shall establish rules for the presentation of the information referred to in para. (1).

(4) Police units, county inspectorates for emergency situations, medical units of the public and private medical system, family physician and other public authorities competent to investigate vehicle accidents or to assess the state of health of victims of such an event, as the case may be, shall, at the request of the Fund, communicate, within 30 days of the request, the information held on the causes and circumstances of the occurrence of the insured risks and the damage or injury caused, with a view to determining and paying the compensation due.

(5) For the purpose of the correct quantification of compensation, motor vehicle repair units shall, at the request of the Fund, provide data or documents on the basis of which the price of a repair was determined.

(6) Actions, applications, objections, appeals filed with the courts under this law shall be charged 200 lei.

Art. 40 - (1) The Financial Supervisory Authority shall supervise and control the manner in which the Fund conducts its business.

(2) The Fund shall be obliged to make available to the Financial Supervisory Authority, upon request, in the form and within the time limit established by the Financial Supervisory Authority, the information and documents evidencing and justifying the operations relating to the activity carried out, in all its aspects.

(3) The Financial Supervisory Authority may take any measures, including administrative measures, against the Fund and the responsible individuals, as the case may be, in order to prevent or remedy any situation which is liable to prejudice the rights of creditors of guaranteed insurance under the provisions of this Law.

(4) With the exception of the information for which the Fund is obliged to publish, according to this law, information related to the activity of the Fund may be communicated only to the Financial Supervisory Authority, as well as to judicial bodies during judicial proceedings, insolvency proceedings or liquidation proceedings.

Art. 41.- On the date of entry into force of this Law, the following are repealed:

a) Art. 60 and Art. 61¹ of Law no. 136/1995 on insurance and reinsurance in Romania, published in the Official Journal of Romania, Part I, no. 303 of 30 December 1995, with subsequent amendments and additions;

b) Art. 5 letter l¹) of Law no. 32/2000 on insurance activity and insurance supervision, published in the Official Journal of Romania, Part I, no. 148 of 10 April 2000, with subsequent amendments and additions;

c) Art. 23 para. (4) and Art. 24-27 of Law no. 503/2004 on financial recovery, bankruptcy, dissolution and voluntary liquidation in insurance activity, republished in the Official Journal of Romania, Part I, no. 453 of 23 July 2013, as amended.

Art. 42 - The Fund shall draw up its Articles of Association and submit it for approval to the Council of the Financial Supervision Authority within 90 days from the date of entry into force of this Law.

Art. 43 - Art. 62 and letter b) of para. 1 of Art. 63 of Law no. 136/1995 on insurance and reinsurance in Romania, published in the Official Journal of Romania, Part I, no. 303 of 30 December 1995, with subsequent amendments and additions, are amended and shall read as follows:

Art. 62 - For failure to pay on time of the amounts due to the Fund for the Protection of Street Victims established under the provisions of Art. 25¹ of Law no. 32/2000, with subsequent amendments and additions, interest and late payment penalties are due, calculated in accordance with the legal regulations in force, applicable to the collection of budget claims. Interest and penalties shall be paid into the account of the fund concerned.

.....

b) failure to pay on time the amounts intended for the Fund for the Protection of Street Victims and the percentage contribution to the value of gross premiums collected in respect of compulsory insurance;”

Art. 44 - This Law shall enter into force 3 days after the date of publication in the Official Journal of Romania, Part I.

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

PRESIDENT OF THE CHAMBER OF
DEPUTIES
VALERIU-ȘTEFAN ZGONEA

PRESIDENT OF THE SENATE
CĂLIN-CONSTANTIN-ANTON POPESCU-
TĂRICEANU

Bucharest, 21 July 2015.

No. 213.