

**Legea 246/26-oct-2015 LAW no. 246 of 26 October 2015 on the recovery and resolution of insurers (traducere)**

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**Legea 246/26-oct-2015 (traducere) LAW no. 246 of 26 October 2015 on the recovery and resolution of insurers (traducere)**

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**Emitent: Parlamentul**

The Parliament of Romania adopts this law.

**TITLE I: Scope, definitions and authorities**

**CHAPTER I: General provisions**

**Article 1**

(1) The law establishes rules and procedures regarding the recovery and resolution of Romanian legal entity insurers.

(2) In exercising its powers deriving from this law in relation to the insurer, the Financial Supervisory Authority shall take into account the nature, extent and complexity of the activity carried out, the shareholder structure, the legal form, the risk profile, the size, the degree of interconnection with other financial institutions or with the financial system in general.

**Article 2**

According to the law, the terms and expressions below have the following meanings:

1. shareholder – shareholder or holder of other proprietary instruments;

2. resolution administrator – any natural or legal person, including the Insureds' Guarantee Fund, appointed by the Financial Supervisory Authority to implement resolution measures;
3. (text of Article 2(3) of Title I, Chapter I was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)
4. insurer - insurance company, Romanian legal entity, authorized by the Financial Supervisory Authority according to Law no. 32/2000 regarding the insurance activity and insurance supervision, with subsequent amendments and completions;
5. insurer subject to resolution – an insurer on which resolution measures are applied;
6. competent authority - the Financial Supervisory Authority, the national authority empowered to supervise the insurance market;
7. resolution authority - the Financial Supervisory Authority, the authority empowered to apply resolution tools and to exercise resolution powers;
8. the legal framework on state aid - the legislation of the European Union, respectively the provisions of Articles 107, 108 and 109 of the Treaty on the Functioning of the European Union and other binding regulations, as well as the provisions on national procedures in the field of state aid, as established by the Government Emergency Ordinance no. 77/2014 on national procedures in the field of state aid, as well as for the amendment and completion of the Competition Law no. 21/1996, approved with amendments and completions by Law no. 20/2015, with subsequent amendments;
9. recovery capacity – the ability of an insurer to restore its financial situation after a significant deterioration of financial indicators;
10. transfer power – the power to transfer shares, other instruments of ownership, debt instruments, assets, rights or obligations or any combination thereof from an insurer subject to resolution to a recipient;
11. senior management - natural persons who exercise management functions within an insurer and who are empowered with the current management activity and who are responsible for the manner of performing it towards the management body, according to the national legislation;
12. **Financial contracts - the following contracts and agreements:**
  - a) **securities contracts, including:**
    - (i) contracts for the purchase, sale or lending of securities, groups or indices of securities;
    - (ii) options on a security, group or index of securities;

(iii) repo or reverse repo transactions involving any such securities, groups or indices of securities;

**b) commodity contracts, including:**

(i) contracts for the purchase, sale or lending of goods, groups or indices of goods for future deliveries;

(ii) options on a commodity, a group or an index of commodities;

(iii) repo or reverse repo transactions involving any such commodities, commodity groups or indices;

c) futures and forward contracts, including contracts other than commodity contracts for the purchase, sale or transfer of commodities or goods of any kind, services, rights or interests for a particular price, at a particular time in the future;

**d) swap contracts, including:**

(i) interest rate swaps and options; agreements on the spot exchange rate or other type on the foreign exchange market; swaps on foreign currency, equity or equity indices, debt or debt indices, commodity indices or commodities, weather conditions; emissions or inflation;

(ii) total yield swaps, credit margin swaps or credit risk swaps;

(iii) any agreement or transaction similar to one of the agreements referred to in paragraph (i) or

(ii) and which is the subject of repeated trading on the swap or derivatives markets;

e) framework agreements relating to all types of contracts or agreements referred to in points (a) to (e);

13. insurance creditors - insured persons, insurance beneficiaries, injured persons - in the case of civil liability insurance -, as defined in Article 4 (1) letter b) of Law no. 213/2015 on the Insured Guarantee Fund;

14. systemic crisis in insurance - a disruption of the insurance system that can lead to serious negative consequences for the insurance market or the real economy;

15. recipient – the insurer, bridge institution or asset management vehicle to which shares, other proprietary instruments, debt instruments, assets, rights or other obligations or any combination thereof are transferred from an insurer subject to resolution;

16. directorate exercising the resolution function – a structure distinct from the structures exercising the supervisory function within the Financial Supervisory Authority, which ensures the fulfillment of the resolution duties of the Financial Supervisory Authority;

17. directorate exercising the supervisory function - structure within the Financial Supervisory Authority, which ensures the fulfillment of the supervisory duties of the Financial Supervisory

Authority;

18. right of termination – the right to terminate a contract, the right to speed up performance, to extinguish or set off obligations, or the right arising from any clause having similar effect on the basis of which obligations of one of the parties to a contract may be suspended, modified or extinguished, or from a clause preventing the creation of an obligation under the contract, obligation that would have existed in its absence;

19. critical functions - activities, services or operations whose interruption may lead to the disruption of the stability of the insurance market, to the loss of consumer confidence in the insurance system and/or which would jeopardize the protection offered by law to insurance policyholders, given the size, market share, internal and external interconnections, complexity of the insurer's activity;

20. bridge institution – a legal person that meets the requirements referred to in Article 89, authorized under the conditions of Article 104, or the Insured Guarantee Fund;

21. property instruments - shares and other instruments conferring the right of ownership, as defined in Article 2 (1) item 33 of Law no. 297/2004 on the capital market, with subsequent amendments and completions;

22. asset separation tool – the mechanism by which a resolution authority transfers an insurance portfolio of a resolution insurer to an asset management vehicle in accordance with Articles 112 to 124;

23. resolution tool – an Article 68 instrument;

24. business and portfolio sale instrument – the mechanism by which a resolution authority transfers shares or other proprietary instruments, issued by a resolution insurer, or assets, rights or obligations of a resolution insurer, in whole or in part, to an asset management vehicle, in accordance with Articles 74 to 88, or to an insurer that meets the solvency requirements;

25. bridge institution instrument – the mechanism by which a resolution authority transfers shares or other proprietary instruments issued by a resolution institution or assets, rights or obligations of a resolution insurer to a bridge institution, in accordance with Articles 38 to 95;

26. liquidation - the capitalization of the assets of an insurer;

27. basic lines of activity - the lines of activity that represent important sources of income for the insurer;

28. crisis management measures - resolution measures or the appointment of a resolution administrator in accordance with Articles 49 to 54;

29. (text of Article 2, point 29 of Title I, Chapter I was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)
30. crisis prevention measure – exercising powers to directly remove deficiencies or obstacles to recovery in accordance with Article 16, applying early intervention measures in accordance with Articles 26 to 23, appointing a temporary administrator in accordance with Articles 30 to 33 or exercising the power to write down or convert debts into relevant capital instruments in accordance with Articles 125 to 132;
31. resolution measure - the procedure by which an insurer is subject to resolution in accordance with the provisions of Article 42;
32. (text of Article 2, point 32 of Title I, Chapter I was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)
33. insurance portfolio - obligations arising from insurance contracts and related assets;
34. resolution plan – a plan drawn up for an insurer in accordance with the provisions of Articles 13 to 25;
35. Ordinary insolvency procedure - the bankruptcy procedure of insurance/reinsurance companies provided for in chap. IV of Title II of Law no. 85/2014 on insolvency prevention and insolvency procedures;
36. objectives of the resolution - the objectives stipulated in Article 40;
37. secured obligation – an element of debt for which the creditor's right to payment or other form of performance of this obligation is ensured by a privilege, pledge, guarantee, including collateral contracts;
38. management body of the insurer – the administrative and management body of an insurer established according to the articles of incorporation, in accordance with the provisions of the Companies Law no. 31/1990, republished, with subsequent amendments and completions, and of Law no. 32/2000, with subsequent amendments and completions;
39. resolution - a legal regime consisting of a set of instruments, at the disposal of the Financial Supervisory Authority, necessary to intervene promptly, at an early stage, in the activity of an insurer that is not viable or in the process of becoming in difficulty, so as to ensure the continuity of its critical financial and economic functions, while minimizing the impact of the insurer's distress on the economy and the financial system;
40. insurance guarantee scheme - The insurance guarantee fund, established according to Law no.

213/2015;

41. public financial support – State aid under Article 107(1) of the Treaty on the Functioning of the European Union or any other public financial support granted at national level intended to preserve or restore the viability, liquidity or solvency of an insurer;

42. asset management vehicle – the legal person controlled by the Financial Supervisory Authority, in its capacity as resolution authority, and created for the purpose of receiving, in part or in full, the assets, rights and obligations of one or more insurers subject to resolution or of a bridge institution;

43. day - working day, other than Saturday, Sunday or another day declared a public holiday according to Romanian legislation.

## **CHAPTER II: Recovery and resolution planning**

### **SECTION 1: General provisions**

#### **Article 3**

(1) Insurers with a significant share in the national insurance system shall draw up their own recovery plans in accordance with the provisions of Articles 5 to 17 and shall be subject to individual resolution plans in accordance with the provisions of Articles 13 to 23.

**(2) An insurer is considered to have a significant share in the national insurance system, if it meets any of the following conditions:**

a) the value of the gross technical reserves of the insurer exceeds 5% of the total value of the gross technical reserves at market level;

b) It has a market share of at least 5%.

**(3) The market share of the companies that hold a significant share in the national insurance system is determined on the basis of the financial results of the last financial year ended, taking into account the life insurance activity separately from the non-life insurance activity, as follows:**

a) for life insurance, by relating the value of the company's gross technical reserves to the total gross technical reserves of all companies that underwrite life insurance;

b) for non-life insurance, by relating the value of the company's gross written premiums, direct and from reinsurance acceptances, to the total value of the gross written premiums, direct and from reinsurance acceptances, of all the companies that underwrite non-life insurance.

## Article 4

**(1) By way of exception to the provisions of Articles 5-17 and 13-23 and taking into account the assessment of the impact that the situation of major difficulty of an insurer and its subsequent liquidation through ordinary insolvency procedures could have on the market, on other insurers and on the national economy as a whole, as well as the potential negative effects generated by the situation of major difficulty of the insurer, The Financial Supervisory Authority, as competent authority and resolution authority, may establish, by decision issued pursuant to Article 6(3) of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as subsequently amended and supplemented, simplified requirements regarding the recovery plan and the resolution plan of the respective insurer, with regard to the following:**

- a) the content and details of the recovery and resolution plans;
- b) the date by which the first recovery and resolution plans will be drawn up and the frequency of updating these plans, which may be less than that provided for by law;
- c) the content and level of detail of the information requested from insurers;
- d) the level of detail of the information necessary to assess the possibility of settlement provided by law.

(2) The decision referred to in paragraph (1) shall be communicated to the respective insurer within 10 days of the finding of the applicability of the simplified requirements regarding the resolution plan of that insurer.

(3) The Financial Supervisory Authority, as the competent authority and, as the case may be, resolution authority, may order, by decision, the termination of the reasons that determined the application of the simplified requirements according to paragraph (1), the transition of the insurer to the full application of the requirements provided for in Articles 5-17 and Articles 13-25, with the establishment and communication of the deadline for its compliance with the new requirements.

(4) The application of the simplified requirements set out in paragraph 1 shall not affect the powers of the Financial Supervisory Authority, as the competent authority and, where applicable, the resolution authority, to order crisis prevention or crisis management measures.

## SECTION 2: Recovery planning

## Article 5

(the text of Article 5 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

#### **Article 6**

(the text of Article 6 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

#### **Article 7**

(the text of Article 7 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

#### **Article 8**

[the text of Article 8 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024]

#### **Article 9**

(the text of Article 9 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

#### **Article 10**

(the text of Article 10 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

#### **Article 11**

(text of Article 11 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

#### **Article 12**

(the text of Article 12 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

#### **Article 13**

(the text of Article 13 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

#### **Article 14**

(the text of Article 14 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

### **Article 15**

(the text of Article 15 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

### **Article 16**

(the text of Article 16 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

### **Article 17**

(the text of Article 17 of Title I, Chapter II, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

## **SECTION 3:Resolution planning**

### **Article 18**

(1)The Financial Supervisory Authority, as the resolution authority, develops a resolution plan for Romanian legal person insurers.

(2)The Financial Supervisory Authority shall ensure that the resolution department prepares the resolution plan after consulting the supervisory department.

### **Article 19**

(1)The resolution plan shall include the resolution measures that the Financial Supervisory Authority, as the resolution authority, may take in the event that the insurer meets the conditions for triggering the resolution procedure.

(2)The Financial Supervisory Authority, as the resolution authority, shall communicate the information referred to in Article 23(a) to the insurer concerned.

### **Article 20**

When drawing up the resolution plan, the Financial Supervisory Authority, as the resolution authority, must take into account relevant scenarios, including the possibility that the insurer's major distress situation is due to particular circumstances specific to the insurance market or the economy as a whole.

## **Article 21**

At the request of the Financial Supervisory Authority, as the resolution authority, the insurer provides assistance in the preparation and updating of the resolution plan.

## **Article 22**

(1) The Financial Supervisory Authority, as the resolution authority, shall reassess and, where appropriate, update the resolution plans, annually and after any significant change in the organisational structure, activity or financial situation of the insurer, which could have a significant impact on the effectiveness of the resolution plans or which would require a change in them.

(2) For the purposes of applying paragraph 1, insurers shall inform the Financial Supervisory Authority, as resolution authority, of any changes that may require a reassessment or update of the plans. The Financial Supervisory Authority shall ensure that the Directorate exercising the supervisory function promptly informs the Directorate exercising the resolution function of any changes that may require a reassessment or updating of the plans.

## **Article 23**

Without prejudice to the provisions of Article 3 and 4, the Financial Supervisory Authority, as the resolution authority, shall provide, in the resolution plan, for the possibility of applying resolution tools and exercising the resolution powers provided for by law and shall include the following aspects:

- a) a summary of the main elements of the plan;
- b) a summary of material changes within the insurer, according to the latest information relevant for resolution purposes;
- c) a presentation of how critical functions and basic lines of activity could be separated from other functions, from a legal and economic point of view, in order to ensure their continuity in case of major difficulty for the insurer;
- d) an estimate of the timing of the implementation of each important aspect of the plan;
- e) a description of the procedure for determining the value and saleability of the insurer's critical functions, core business lines and assets;
- f) a detailed description of the measures to ensure that the information required under Article 25 is updated and made available to the Financial Supervisory Authority, as the resolution authority, at all times;
- g) the presentation of how the Financial Supervisory Authority, as the resolution authority, considers that resolution measures could be financed;

- h) a detailed description of the different resolution strategies that could be applied depending on the possible scenarios and applicable deadlines;
- i) an analysis of the impact of the plan on the insurer's employees, including an assessment of any associated costs and a description of the consultation procedures during the resolution process of the staff, the employers' organisation and the trade union or employee representatives, as appropriate;
- j) a communication plan with the media and the public;
- k) the need for solvency capital and minimum capital, as well as the qualitative and quantitative need for own funds and the time frame within which this level is to be reached, if applicable;
- l) a description of the operations and systems essential to maintain the continuous operation of the insurer's operational processes;
- m) where applicable, any opinion expressed by the insurer regarding the resolution plan;
- n) a detailed description of the assessment of the possibilities of implementing the resolution plan;
- o) a description of all the measures necessary to remove obstacles to the implementation of the resolution plan.

#### **Article 24**

- (1) The Financial Supervisory Authority, as the resolution authority, may require insurers to keep detailed records of the financial contracts to which they are parties and may establish the deadline within which they must provide such records.
- (2) The Financial Supervisory Authority, as the resolution authority, may set different deadlines, depending on the types of financial contracts defined in Article 2(12).
- (3) The time limits set out in paragraph 2 for the provision of information shall apply to all insurers.
- (4) The Financial Supervisory Authority, as the resolution authority, may determine, following the assessments carried out, whether it is appropriate for the insurer to be liquidated through the ordinary insolvency procedure or to trigger the resolution procedure, applying the various resolution tools and powers to the insurer, avoiding any significant adverse effect on the insurance market in Romania, including in the event of more extensive financial instability or events on a larger scale. financial system, in order to ensure the continuity of the critical functions performed by the insurer.
- (5) In order to assess the possibilities for the implementation of the resolution plan, the Financial Supervisory Authority, as the resolution authority, shall examine at least the following elements:**

- a) the extent to which the insurer can establish correspondences between the basic lines of activity, respectively the critical operations and the legal entities;
- b) the extent to which legal and corporate structures are aligned with core business lines and critical operations;
- c) the extent to which mechanisms are in place to secure personnel, infrastructure, financing, liquidity, solvency, insurance portfolio, technical reserves and capital to support and maintain core business lines and critical operations;
- d) the extent to which the insurer's service agreements are fully enforceable in the event of the insurer's termination;
- e) the extent to which the insurer's administrative structure is adequate to manage and ensure compliance with its internal policies regarding its service provision agreements;
- f) the extent to which the insurer has a process in place for the gradual transfer to third parties of the services provided under service contracts in the event of separation of critical functions or core business lines;
- g) the ability of management information systems to ensure that the Financial Supervisory Authority is able to collect accurate and complete information on core business lines and critical operations, so as to facilitate rapid decision-making;
- h) the ability of management information systems to provide the information essential for the effective resolution of the insurer at all times, even when conditions change rapidly;
- i) the extent to which the insurer has tested its management information systems on the basis of the crisis scenarios as established by the Financial Supervisory Authority through regulations issued pursuant to Article 160;
- j) the extent to which the insurer can ensure the continuity of the operation of its management information systems for both itself and the new insurer where critical operations and core business lines are separated from the rest of the operations and business lines;
- k) the extent to which the insurer has developed appropriate procedures to ensure that it provides the Financial Supervisory Authority with the information necessary to identify insurance creditors and the amounts covered by the Insureds' Guarantee Fund;
- l) the value and type of the insurer's assets and technical reserves;
- m) where the valuation involves an insurer that is part of a mixed holding company, the extent to which the insurer's resolution could have a negative impact on the non-financial part of the group;
- n) the existence and soundness of agreements on the provision of services;
- o) the feasibility of using resolution tools in accordance with the resolution objectives, taking into account the available tools and the structure of the insurer;

p)the credibility of the use of resolution tools in accordance with the objectives of the resolution, taking into account the possible impact on insurance creditors, counterparties and employees, as well as any action that other resolution authorities might take;

q)the extent to which the impact of the insurer's resolution on the financial system and on confidence in the insurance market can be adequately assessed;

r)the extent to which the insurer's resolution could have a significant negative effect, directly or indirectly, on the financial system, on confidence in the insurance market or on the economy;

s)the extent to which contamination of other insurers or financial markets could be controlled by the application of resolution tools and powers.

(6)If, following the assessment of the possibilities of applying an insurer's resolution plan, the Financial Supervisory Authority, as the resolution authority, finds that there are significant obstacles to the resolution possibilities of that insurer, it will notify those findings in writing to the insurer concerned and to the resolution authorities of the jurisdictions where the insurer's branches are located.

(7)Within four months from the date of receipt of a notification in accordance with paragraph 6, the insurer shall propose to the Financial Supervisory Authority possible measures aimed at removing the significant obstacles identified in the notification. The Financial Supervisory Authority assesses the effectiveness of the proposed measures to remove the significant obstacles in question.

(8)If it considers that the measures proposed by an insurer in accordance with paragraph 7 do not effectively reduce or remove the obstacles in question, the Financial Supervisory Authority may request the insurer to take alternative measures that may lead to the achievement of that objective and notify those measures in writing to the insurer, which within one month shall propose a plan to bring it into compliance.

(9)In identifying the alternative measures referred to in paragraph 8, the Financial Supervisory Authority shall demonstrate that the measures proposed by the insurer would not succeed in removing the obstacles to resolution and how the proposed alternative measures are appropriate for removing them. The Financial Supervisory Authority shall take into account the threat to financial stability posed by these obstacles to the possibility of resolution and the effect of the measures on the insurer's economic activity, on its stability and on its ability to contribute to the economy.

**(10)In applying the alternative measures referred to in paragraph (9), the Financial Supervisory Authority shall have the power to take any of the following measures:**

a)to request the insurer to review any intra-group financing agreements or to examine the reasons

for their absence or to conclude service agreements, either intra-group or with third parties, in order to ensure the provision of critical functions, under the conditions of the law;

b) require the insurer to limit its individual exposures to certain insurance classes and maximum aggregates for the entire insurance portfolio;

c) impose additional requirements for punctual or periodic information relevant to the resolution procedure;

d) to request from the insurer the partial or total transfer of the insurance portfolio;

e) to request the insurer to limit or cease certain activities in progress or proposed;

f) to limit or prevent the creation of new lines of economic activity, the development of existing ones, the sale of new products or the sale of existing products;

g) to call for changes to the legal structures relating to the insurer's contractual or operational commitments in order to reduce complexity and thus guarantee the possibility of legally and operationally separating critical functions from other functions through the application of resolution tools;

h) require an insurer to increase the level of own funds in order to meet solvency requirements;

i) require an insurer to take other measures to meet the minimum capital requirement, including seeking to renegotiate any own funds instrument it has issued, to ensure that any decision by the Financial Supervisory Authority to reduce the carrying amount of the instrument in question or to convert it would be applied under the law of the jurisdiction that regulates it.

## **Article 25**

**(1) At the request of the Financial Supervisory Authority, as resolution authority, each insurer:**

a) cooperate in the preparation of the resolution plan;

b) provide all the information necessary for the preparation and implementation of the resolution plan.

(2) The Financial Supervisory Authority shall ensure that the Directorate exercising the supervisory function cooperates with the Directorate exercising the resolution function in order to verify the extent to which the information referred to in paragraph 1 is already available. The Financial Supervisory Authority shall ensure that, if this information is available, the Directorate exercising the supervisory function transmits it to the Directorate exercising the resolution function.

## **CHAPTER III: Early intervention**

## **SECTION 1: Early intervention measures**

### **Article 26**

(text of Article 26 of Title I, Chapter III, Section 1 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

### **Article 27**

(the text of Article 27 of Title I, Chapter III, Section 1 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

### **Article 28**

(the text of Article 28 of Title I, Chapter III, Section 1 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

### **Article 29**

(the text of Article 29 of Title I, Chapter III, Section 1 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

## **SECTION 2: Designation of the temporary administrator**

### **Article 30**

(text of Article 30 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

### **Article 31**

(the text of Article 31 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

### **Article 32**

(text of Article 32 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

### **Article 33**

(text of Article 33 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

**Article 34**

(text of Article 34 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V(2)(B) of Law 17/2024)

**Article 35**

(text of Article 35 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

**Article 36**

(the text of Article 36 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

**Article 37**

(text of Article 37 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

**Article 38**

(the text of Article 38 of Title I, Chapter III, Section 2 was repealed on 19 January 2024 by Article V, paragraph (2), letter B. of Law 17/2024)

**TITLE II:Resolution****CHAPTER I:Objectives, conditions and general principles****SECTION 1:Objectives****Article 39**

In the event that it applies resolution tools and exercises resolution powers, the Financial Supervisory Authority, in its capacity as resolution authority, must take into account the objectives of resolution and choose those tools and powers that allow the objectives relevant to each situation to be achieved to the highest degree.

**Article 40**

**(1)The objectives of the resolution referred to in Article 39 are as follows:**

- a)protection of insurance creditors;
- b)minimizing the impact on protection funds, protecting public funds by minimizing dependence

on public financial support;

c) avoiding significant negative effects on the financial stability of the insurance market, in particular by preventing contagion, including on market infrastructures, and by maintaining market discipline;

d) ensuring the continuity of critical functions.

(2) Where it pursues the objectives set out in paragraph 1, the Financial Supervisory Authority, in its capacity as resolution authority, shall seek to minimise the cost of resolution and avoid the destruction of value, unless they do not allow the objectives of resolution to be achieved.

#### **Article 41**

In compliance with the provisions of this law, the objectives of resolution have equal importance, and the Financial Supervisory Authority, in its capacity as resolution authority, must apply them in a balanced manner, depending on the nature and circumstances of each case.

### **SECTION 2: Resolution trigger conditions**

#### **Article 42**

(1) The Financial Supervisory Authority, in its capacity as resolution authority, may take a resolution action with respect to an insurer if the following conditions are cumulatively met:

a) if it establishes that the insurer enters or is likely to enter a state of major difficulty. In this respect, the directorate exercising the supervisory function shall consult with the directorate exercising the resolution function;

**b) The resolution action is necessary in the public interest within the meaning of Article 43(2).**

(2) The determination that the insurer enters or is likely to enter a state of major difficulty may be made by the Directorate of the Financial Supervisory Authority exercising the resolution function, after consulting the Directorate exercising the supervisory function, if the Directorate exercising the resolution function has the necessary tools to establish this, in particular adequate access to relevant information. The supervisory directorate shall submit to the resolution directorate any relevant information that the latter requests in order to be able to carry out its assessment without delay.

(3) The prior adoption of an early intervention measure in accordance with the provisions of Articles 26 to 28 shall not constitute a condition for the undertaking of a resolution measure.

#### **Article 43**

**(1) For the purposes of Article 42(1)(a), an insurer shall be deemed to enter or is likely to enter a state of major difficulty if one of the following conditions is met:**

- a) the insurer infringes the requirements for continuing to hold the authorisation or is likely to infringe them, in the near future, as a result of a rapid deterioration in the financial situation including a deterioration in the position of the solvency capital and own funds covering the solvency capital requirement to an extent that would justify the withdrawal of the authorisation by the Financial Supervisory Authority, in its capacity as competent authority, including where the insurer has incurred or is likely to incur losses that will exhaust all or a significant part of its own funds;
- b) the insurer's assets are lower than the obligations or, according to objective elements, it can be concluded that this will happen in the near future;
- c) The insurer is unable to pay the compensations/indemnities due to the insurance creditors or, according to objective elements, it can be concluded that this will happen in the near future.

(2) For the purposes of Article 42(1)(b), a resolution measure is considered to be in the public interest if it is necessary to achieve in an appropriate manner one or more of the resolution objectives referred to in Article 40 and the liquidation of the insurer under normal insolvency proceedings would not achieve the resolution objectives to the same extent.

### **SECTION 3: General principles of the resolution**

#### **Article 44**

In the event that it exercises resolution powers and, respectively, when applying to an insurer the instruments provided for in Article 68, the Financial Supervisory Authority shall ensure that resolution measures are taken in accordance with the following principles:

- a) the shareholders of the insurer subject to termination are the first to bear the losses;
- b) the creditors of the insurer subject to resolution bear losses subsequently to the shareholders, in accordance with the order of priority of their claims in the ordinary insolvency procedure, unless expressly provided otherwise by law;
- c) the management body and senior management of the insurer subject to resolution shall be replaced, except in cases where the retention of all or part of the management body or senior management, depending on the circumstances, is deemed necessary to achieve the objectives of the resolution;
- d) the management body and senior management of the insurer subject to resolution shall provide all necessary assistance to achieve the objectives of the resolution;

- e) the natural and legal persons who contributed to the insurer's reaching a state of major difficulty subject to resolution are held liable according to the civil or criminal law;
- f) creditors of the same category are treated equally;
- g) no creditor incurs losses greater than they would have incurred if the insurer had been liquidated through the ordinary insolvency procedure;
- h) the assets admitted to cover technical reserves are fully protected; and
- i) Resolution measures shall be taken in compliance with the safety mechanisms provided for in Articles 133 to 137.

#### **Article 45**

The application of resolution tools and the exercise of resolution powers by the Financial Supervisory Authority, in its capacity as resolution authority, shall be carried out, as the case may be, in compliance with the legal framework on state aid and in compliance with the relevant competition rules.

#### **Article 46**

If one of the resolution instruments is applied to an insurer, namely the sale of the business and portfolio, the bridge institution or the separation of assets, the legal provisions on the protection of employees' rights in the event of the transfer of the enterprise, the unit or parts thereof, the insurer being considered to be subject to bankruptcy proceedings within the meaning of Article 5 paragraph (2) of Law no. 67/2006 on the protection of employees' rights in case of transfer of the enterprise, unit or parts thereof.

#### **Article 47**

In the event that it applies resolution tools and exercises resolution powers, the Financial Supervisory Authority, in its capacity as resolution authority, informs and consults with the representatives of the employees of the insurer subject to resolution, if applicable.

#### **Article 48**

The Financial Supervisory Authority, in its capacity as resolution authority, applies resolution tools and exercises resolution powers without prejudice to practices regarding employee representation on the insurer's management bodies.

## **CHAPTER II: Resolution Manager**

**Article 49**

The Financial Supervisory Authority, in its capacity as resolution authority, in compliance with the legal framework on State aid, may appoint a resolution administrator to replace the management body of the institution subject to resolution, in which case it makes public his appointment. The resolution administrator shall possess the qualifications, knowledge and capacity necessary to perform his or her duties. The insureds' guarantee fund may be appointed as a resolution administrator.

**Article 50**

The resolution administrator has all the powers of the shareholders and the management body of the insurer. However, the resolution administrator may only exercise these powers under the control of the Financial Supervisory Authority, in its capacity as resolution authority.

**Article 51**

The resolution administrator shall be required to take all measures necessary to achieve the resolution objectives referred to in Article 40(1) and to implement resolution measures in accordance with the decision of the Financial Supervisor in its capacity as resolution authority. Resolution measures may include a capital increase, a change in the shareholding structure of that insurer or the takeover of control of the insurer by insurers with adequate financial strength.

**Article 52**

The Financial Supervisory Authority, in its capacity as resolution authority, may set limits on the actions of the resolution administrator or may require that certain of its acts be subject to prior approval. The Financial Supervisor, in its capacity as resolution authority, may replace the resolution administrator at any time.

**Article 53**

The resolution administrator has the obligation to prepare and submit to the Financial Supervisory Authority, in its capacity as resolution authority, at regular intervals established by it, as well as at the beginning and at the end of its mandate, reports on the economic and financial situation of the insurer to which it has been appointed resolution administrator and the actions taken in the exercise of its powers.

**Article 54**

The term of office of a resolution administrator may not exceed one year. The mandate may be

renewed, in exceptional cases, if the Financial Supervisor, in its capacity as resolution authority, considers that the conditions for the appointment of a resolution administrator are still met.

### **CHAPTER III:Evaluation**

#### **Article 55**

Before undertaking any resolution action in relation to an insurer, the Financial Supervisory Authority, in its capacity as resolution authority, shall ensure that a financial auditor, a legal person, carries out a fair, prudent and realistic valuation of the insurer's assets, liabilities and equity. In compliance with the provisions of Articles 66 and 138 to 140, if all the requirements set out in this Chapter are complied with, the evaluation shall be deemed to be final.

#### **Article 56**

If an independent valuation in accordance with the provisions of Article 55 is not possible, the Financial Supervisory Authority, as the resolution authority, may carry out a provisional valuation of the assets and liabilities of the insurer in accordance with the provisions of Article 63.

#### **Article 57**

The objective of the assessment shall be to determine the value of the assets and obligations of the insurer that meets the conditions for triggering resolution referred to in Articles 42 and 43(1).

#### **Article 58**

The purposes of the evaluation are:

- a) support the assessment of how the conditions for triggering resolution or conditions for write-down or converting debts into relevant capital instruments are met;
- b) if the conditions for triggering the resolution are met, to contribute to substantiating the decision on the appropriate resolution action to be taken in relation to the insurer;
- c) in the case of exercising the power to write down or convert debts into relevant equity instruments, to contribute to the substantiation of the decision on the extent to which the shares or other instruments of ownership are cancelled or diluted, as well as the extent to which the write-down or conversion of the debts into relevant equity instruments takes place;
- d) in the case of the application of the bridge institution instrument or the asset separation instrument, to contribute to the decision on the assets, rights, obligations, shares or other instruments of ownership to be transferred and of the decision on the amount of any consideration to be paid to the insurer subject to resolution or, where applicable, to the owners of the shares or other instruments of

ownership;

e) where the asset and portfolio sale instrument is applied, to contribute to the substantiation of the decision on the assets, rights, obligations, shares or other instruments of ownership to be transferred and to provide information enabling the Financial Supervisory Authority, in its capacity as resolution authority, to determine what measures are provided for in Article 75;

f) in all cases, ensure that any losses on the insurer's assets are fully assumed at the time of the application of the resolution tools.

### **Article 59**

Without prejudice to the legal framework on State aid, the assessment shall be based on conservative estimates and will take into account the following conditions:

a) The Financial Supervisory Authority, in its capacity as resolution authority, and the Insureds' Guarantee Fund, in its capacity as administrator of the Insurers' Resolution Fund, may recover any reasonable expenses justifiably incurred from the insurer subject to resolution, in accordance with the provisions of Article 72;

b) The Insureds' Guarantee Fund, in its capacity as administrator of the Insurers' Resolution Fund, may charge interest or fees in connection with any loans or guarantees provided to the insurer subject to resolution in accordance with the provisions of Articles 146 and 147.

### **Article 60**

The valuation must be accompanied by the following information, which must appear in the insurer's accounting records and records:

a) an updated balance sheet and a report on the financial situation of the insurer;

b) an analysis and estimation of the carrying amount of balance sheet assets and liabilities, including technical reserves;

c) a list of the balances of the debts on the balance sheet that appear in the insurer's accounting books and records, indicating the respective receivables and priority ranks, according to the applicable insolvency legislation.

### **Article 61**

In order to support the substantiation of the decisions referred to in Article 58(d) and (e), the information referred to in Article 60(b) may be accompanied by an analysis and estimate of the value of the insurer's assets and obligations on the basis of market value, as appropriate.

### **Article 62**

(1)The valuation indicates the distribution of creditors according to the priority ranks under the applicable insolvency law and provides an estimate of the treatment that each of the categories of shareholders and creditors could have benefited from if the insurer had been wound up under the normal insolvency procedure.

(2)This estimate shall not affect the application of the principle that 'no creditor shall be disadvantaged' in accordance with Article 134.

### **Article 63**

(1)If, for reasons related to the urgency of the situation, it is not possible to comply with the requirements laid down in Articles 60 and 62, a provisional assessment shall be carried out.

(2)The provisional valuation referred to in paragraph 1 shall also include a reserve for additional losses, duly justified.

(3)The valuation is provisional until it is carried out by a financial auditor, a legal person, according to Article 55. The final valuation carried out after the provisional valuation shall be distinct from the valuation referred to in Article 134, irrespective of whether it is carried out simultaneously with it or by the same financial auditor, a legal person.

**(4)The final ex-post evaluation shall be carried out for the following purposes:**

- a)to ensure that any losses on the insurer's assets are fully recognised in the accounting records;
- b)to contribute to substantiating the decision to adjust creditors' claims or to increase the amount of consideration paid, in accordance with the provisions of Article 64.

### **Article 64**

In the event that the final ex-post valuation estimates that the value of the insurer's net assets is higher than the value of the net assets, estimated according to the provisional valuation, the Financial Supervisory Authority, in its capacity as resolution authority, has the possibility:

- a)to exercise its power to increase the amount of claims of creditors or owners of relevant capital instruments that have been reduced;
- b)require the bridge institution or asset management vehicle to make an additional payment of consideration in respect of the assets, rights or obligations to the insurer subject to resolution or, where applicable, in respect of the shares or instruments of ownership to the owners of the shares or instruments of ownership.

### **Article 65**

Without prejudice to the provisions of Article 56, the provisional assessment carried out in

accordance with the provisions of Article 63 shall constitute a basis for the Financial Supervisory Authority, in its capacity as resolution authority, to take resolution actions, including taking control of an insurer that is in a state of major difficulty, or to exercise its power to write down or convert liabilities into relevant capital instruments.

#### **Article 66**

The valuation shall form an integral part of the decision to apply a resolution tool or to exercise a resolution power, or of the decision to exercise the power to write down or convert liabilities into relevant capital instruments. The valuation itself cannot be challenged separately, but it may be challenged together with the decision taken, in accordance with the provisions of Articles 138 to 140.

### **CHAPTER IV:Resolution tools**

#### **SECTION 1:General principles**

#### **Article 67**

The Financial Supervisory Authority, in its capacity as resolution authority, is empowered to apply resolution tools to insurers that meet the conditions for triggering resolution.

#### **Article 68**

According to the provisions of Article 67, the resolution tools are as follows:

- a)sale of the activity and portfolio;
- b)the bridge institution;
- c)separation of assets.

#### **Article 69**

The Financial Supervisory Authority, in its capacity as resolution authority, may apply resolution tools individually or in any combination, in compliance with the provisions of Article 70.

#### **Article 70**

The Financial Supervisory Authority, in its capacity as resolution authority, may apply the asset separation tool only in conjunction with another resolution tool.

#### **Article 71**

Where only the resolution tools referred to in Article 68(a) or (b) are used and they are used to transfer only partially the assets, rights or obligations of an insurer subject to resolution, the

residual insurer from which the assets, rights or obligations have been transferred shall be liquidated in accordance with normal insolvency proceedings. The liquidation shall be carried out within a reasonable time, taking into account any possible situation in which the residual insurer needs to provide services or support to enable the recipient to carry out its activities or provide services related to the transferred items, as well as any other reason that makes it necessary to continue the activity of the residual insurer in order to achieve the resolution objectives or to comply with the principles provided by law.

### **Article 72**

The Financial Supervisory Authority, in its capacity as resolution authority, and the Insured Guarantee Fund, in its capacity as administrator of the Resolution Fund for Insurers, acting pursuant to Articles 146 and 147, may recover any reasonable expenses justifiably incurred in connection with the use of resolution tools, the exercise of resolution powers, in one or more of the following ways:

- a) as a deduction from any consideration paid by the recipient to the insurer subject to resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
- b) from the insurer subject to resolution, as preferential creditor;
- c) from any proceeds resulting from the cessation of operation of the bridge institution or asset management vehicle, as preferential creditor.

## **SECTION 2: The tool for selling the activity and the portfolio**

### **Article 73**

**(1) The Financial Supervisory Authority, in its capacity as resolution authority, is empowered to transfer to a buyer that is not a bridge institution:**

- a) shares or other instruments of ownership issued by an insurer subject to resolution;
- b) any or all of the assets, rights or obligations of an insurer in resolution, including the transfer of the insurance portfolio.

(2) The transfer referred to in paragraph (1) shall take place, in compliance with the provisions of this law, without obtaining the consent of the shareholders of the insurer subject to resolution or of any third party other than the buyer, and without complying with any procedural requirement provided by civil law or legislation specific to the insurance market, except for those provided for in articles 89 and 90.

### **Article 74**

A transfer made in accordance with the provisions of Article 73 must be made according to Law no. 32/2000, as subsequently amended and supplemented, depending on the existing circumstances, and in accordance with the legal framework on state aid.

#### **Article 75**

For the purposes of Article 72, the Financial Supervisory Authority, in its capacity as resolution authority, shall take all necessary measures to carry out a transfer based on the assessment carried out in accordance with the provisions of this law, taking into account the circumstances of the situation.

#### **Article 76**

Any consideration shall be paid by the buyer, in compliance with the provisions of Article 72, in favour of:

- a) to the owners of the shares or other instruments of ownership, if the sale of the business and the portfolio was effected by the transfer to the buyer of the shares or instruments of ownership issued by the insurer subject to resolution, from the holders of those shares or instruments of ownership;
- b) to the insurer subject to resolution, if some or all of the assets or liabilities of the insurer in resolution has been transferred to the purchaser.

#### **Article 77**

In the event that it applies the asset and portfolio sale instrument, the Financial Supervisory Authority, in its capacity as resolution authority, may exercise the transfer power repeatedly, in order to carry out additional transfers of shares or other ownership instruments issued by an insurer subject to resolution or, as the case may be, to carry out additional transfers of assets, rights or obligations of the insurer subject to resolution.

#### **Article 78**

After the application of the sale of the business and portfolio, the Financial Supervisory Authority, in its capacity as resolution authority, may exercise, with the approval of the buyer, the powers of transfer in respect of the assets, rights or obligations transferred in order to transfer the assets, rights or obligations back to the insurer subject to resolution or of the shares or other instruments of ownership back to their original owners, and the insurer subject to resolution or the original owners shall have the obligation to repossess any such assets, rights or obligations, shares or other instruments of ownership.

## Article 79

The buyer must meet the legal conditions for carrying out the activities that he acquires through the transfer in the situation where the transfer is made in accordance with the provisions of Article 73. If the Financial Supervisory Authority is the buyer's competent authority, it shall assess a possible request for authorisation in this regard, together with the transfer, within a period of up to 30 days.

## Article 80

The Financial Supervisory Authority shall carry out the necessary assessment in such a way as to allow the prompt application of the instrument for the sale of the activity and the portfolio and to facilitate the achievement by the resolution measure of the relevant resolution objectives. In the event that a transfer of shares or other instruments of ownership taking place by virtue of the application of the instrument for the sale of the business and portfolio would lead to the acquisition or increase of a qualifying holding in an insurer, the Financial Supervisory Authority, in its capacity as the competent authority of that insurer, may carry out the assessment, by way of derogation from the national legal provisions regarding the procedure and evaluation criteria applicable to potential purchasers in order to acquire the status of significant shareholder of an insurer.

## Article 81

**(1) If the Directorate exercising the supervisory function within the Financial Supervisory Authority has not completed the valuation provided for in Article 80, on the date of the transfer of shares or other instruments of ownership, the following measures shall apply:**

a) the transfer of shares or other instruments of ownership to the buyer operates by right;

b) During the valuation period and during any disposal period referred to in paragraph 5(b), the buyer's voting rights in those shares or other instruments of ownership shall be suspended until the date of prior approval by the Financial Supervisory Authority. During the period of suspension, the Financial Supervisory Authority, as the resolution authority, may not exercise those voting rights.

(2) During the valuation period and during any disposal period referred to in paragraph (5)(b), the sanctions and sanctioning measures for violation of the requirements regarding the approval of significant shareholders of an insurer according to Law no. 32/2000, as subsequently amended and supplemented, shall not apply to the respective transfers of shares or other instruments of ownership.

(3) The Financial Supervisory Authority shall ensure that, immediately after the completion of the valuation, the directorate exercising the supervisory function notifies in writing the buyer and the

directorate exercising the resolution function of its decision to approve or, in accordance with the provisions of Law no. 32/2000, as subsequently amended and supplemented, and of the legal regulations issued pursuant to this law to oppose the respective transfer of shares or other property instruments to the buyer.

(4) If the Directorate exercising the supervisory function within the Financial Supervisory Authority approves the respective transfer of shares or other proprietary instruments to the buyer, the voting rights related to those shares or other proprietary instruments shall be deemed to have been granted in full to the purchaser, immediately upon receipt by the buyer and by the directorate exercising the function of resolving that approval notice.

**(5) If the Financial Supervisory Authority, in its capacity as competent authority, opposes the respective transfer of shares or other instruments of ownership to the buyer, in the following situations, then:**

- a) the voting rights related to those shares or other property instruments, referred to in paragraph 1(b), shall continue to be exercised;
- b) The Financial Supervisory Authority, in its capacity as resolution authority, may require the buyer to dispose of such shares or other proprietary instruments within a period set by it, which does not adversely affect the buyer, taking into account market conditions;
- c) if the buyer fails to complete the assignment within the time limit set out in paragraph (b), then the Financial Supervisory Authority, in its capacity as competent authority, may impose sanctions and sanctioning measures on the buyer for breaching the requirements regarding the approval of significant shareholders of an insurer. The Financial Supervisory Authority shall ensure that the respective sanctions and/or sanctioning measures are imposed with the agreement of the management exercising the resolution function.

## **Article 82**

The transfers made by virtue of the application of the instrument for the sale of the activity and the portfolio are subject to the safety mechanisms provided by the law.

## **Article 83**

For the purposes of exercising the right of establishment and the freedom to provide services in a Member State, the purchaser is deemed to be a continuation of the terminated insurer and may continue to exercise all rights exercised by the terminated insurer in relation to the transferred assets, rights or obligations as they result from the law and the insurance contracts to which it is a party.

## Article 84

The buyer referred to in Article 73 may continue to exercise the rights of the insurer subject to termination as they result from the law and the insurance contracts to which it is a party.

## Article 85

The insurer's shareholders or creditors subject to resolution and other third parties whose assets, rights or obligations are not transferred have no rights in or in connection with the transferred assets, rights or obligations.

## Article 86

In the event that it applies to an insurer the instrument for the sale of the activity and portfolio, the Financial Supervisory Authority, in its capacity as resolution authority, places on the market or takes measures to place on the market the assets, rights, obligations, shares or other proprietary instruments that it intends to transfer. Groups of rights, assets and obligations may be placed on the market separately for sale.

## Article 87

**(1) Without prejudice to the legal framework on State aid, if applicable, the placing on the market referred to in Article 86 shall be carried out in accordance with the following criteria:**

- a) it must be transparent and must disclose in detail the assets, rights, obligations, shares or other proprietary instruments that the Financial Supervisory Authority, in its capacity as resolution authority, intends to transfer, taking into account the circumstances and, in particular, the need to maintain financial stability;
- b) must not favour or discriminate against any potential buyer;
- c) it must be free of any conflict of interest;
- d) it must not confer any undue advantage on any potential buyer;
- e) must take into account the need for resolution action to be carried out quickly;
- f) The aim must be to maximise the sale price of the shares or other instruments of ownership, of the assets, rights or obligations in question.

(2) In compliance with the criterion set out in point (b) of paragraph 1, the criteria set out in paragraph 1 shall be without prejudice to the right of the Financial Supervisory Authority, in its capacity as resolution authority, to contact potential buyers.

## **SECTION 3: Bridge Institution Tool**

### **SUBSECTION 3<sup>1</sup>: General provisions**

#### **Article 88**

**(1) In order for the bridge institution instrument to be effective and to take into account the need to preserve critical functions within the bridge institution, the Financial Supervisory Authority, as the resolution authority, is empowered to transfer to a bridge institution:**

- a) shares or other instruments of ownership issued by an insurer subject to resolution;
- b) any of the assets, rights or obligations of one or more insurers subject to resolution.

(2) The transfer referred to in paragraph (1) may take place without obtaining the consent of the shareholders of the insurer subject to resolution or of any third party, other than the bridge institution, and without complying with any procedural requirement provided by Law no. 32/2000, as subsequently amended and supplemented, and by the regulations issued in its application, in compliance with the provisions of Article 139.

(3) Before the establishment of the bridge institution, the Financial Supervisory Authority, as the competent authority, will carry out an analysis of its viability, in order to achieve the objectives for which it will be authorized.

#### **Article 89**

**(1) The bridge institution is a legal entity that cumulatively meets the following requirements:**

- a) is controlled by the Financial Supervisory Authority, in its capacity as resolution authority;
- b) is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by a resolution insurer or some or all of the assets, rights and obligations of one or more of the insurers under resolution, in order to maintain access to and sale of critical functions.

(2) In the event that the Insureds' Guarantee Fund will function and will be authorized according to this law to exercise the competence of a bridge institution, its activity will be highlighted separately.

#### **Article 90**

In the event that it applies the bridge institution instrument, the Financial Supervisory Authority, in its capacity as resolution authority, shall ensure that the total value of the obligations related to

the insurance contracts transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the insurer subject to resolution.

### **Article 91**

Any consideration shall be paid by the bridge institution, in compliance with the provisions of Article 73, in favour of:

- a) to the owners of the shares or instruments of ownership, if the transfer to the bridge institution was effected by the transfer of the shares or instruments of ownership issued by the insurer under resolution from the holders of those shares or instruments to the bridge institution;
- b) insurers subject to resolution, if the transfer to the bridge institution was effected by transferring all or part of the assets or liabilities of the insurers subject to resolution to the bridge institution.

### **Article 92**

In the event that it applies the instrument to the bridge institution, the Financial Supervisory Authority, in its capacity as resolution authority, may exercise the transfer power repeatedly, in order to carry out additional transfers of shares or other proprietary instruments issued by the insurer under resolution or, as the case may be, of other assets, rights or obligations of the insurer subject to resolution.

### **Article 93**

**(1) Following the application of the bridge institution's instrument, the Financial Supervisory Authority, in its capacity as resolution authority, may transfer:**

- a) shares or other instruments of ownership or assets, rights or obligations from the bridge institution to a third party;
- b) rights, assets or obligations from the bridge institution back to the resolution insurer or the shares or other instruments of ownership back to their original owners, and the resolution insurer or original owners are required to take them back, provided that this is expressly stipulated in the instrument through which the transfer was made or if the conditions for the transfer are not met.

(2) Such a return transfer may be made at any time and in accordance with any other conditions stipulated in the respective instrument for the purpose in question.

### **Article 94**

(1) In the exercise of the freedom to provide services or the right of establishment, the bridge

institution is considered to be a continuation of the insurer subject to resolution and may continue to exercise all the rights exercised by the insurer.

(2) For other purposes, the Financial Supervisory Authority, in its capacity as resolution authority, may request that a bridge institution be considered as a continuation of the insurer under resolution and may continue to exercise all the rights exercised by the insurer.

## **Article 95**

The management body or the senior management of the bridge institution shall be civilly liable for the failure or omission to perform, in bad faith or gross negligence, the duties provided by law.

### **SUBSECTION 3<sup>2</sup>: Functioning of a bridge institution**

## **Article 96**

**(1) The operation of a bridge institution shall comply with the following requirements:**

- a) the content of the documents regarding the establishment of the bridge institution is approved by the Financial Supervisory Authority, in its capacity as resolution authority;
- b) depending on the shareholding structure of the bridge institution, the Financial Supervisory Authority, in its capacity as resolution authority, appoints or approves the management body of the bridge institution;
- c) The Financial Supervisory Authority, in its capacity as resolution authority, approves the remuneration of the members of the management body and establishes their responsibilities;
- d) The Financial Supervisory Authority, in its capacity as resolution authority, approves the strategy and risk profile of the bridge institution;
- e) the bridge institution is authorized in accordance with the provisions of Law no. 32/2000, as subsequently amended and supplemented, and with the relevant regulations issued by the Financial Supervisory Authority;
- f) the bridge institution operates in accordance with the European Union's State aid framework and the Financial Supervisory Authority, in its capacity as resolution authority, may provide for restrictions on its activity as appropriate.

(2) Without prejudice to paragraph 1(e) and where necessary to achieve the objectives of the resolution, the bridge institution may be established and authorised in accordance with Article 104 at the beginning of its operation. In this regard, the Directorate of the Financial Supervisory Authority exercising the resolution function shall submit a request to the Directorate exercising

the supervisory function. If it decides to grant such an authorization, the Financial Supervisory Authority, in its capacity as competent authority, shall indicate the interval in which the bridge institution will operate with the share capital below the level provided by law.

### **Article 97**

In compliance with any restrictions applied in accordance with European Union or national competition rules, the management of the bridge institution manages the bridge institution in order to maintain access to critical functions and the sale of the insurer's assets, rights or obligations to one or more insurers, if conditions are favourable.

### **Article 98**

The Financial Supervisory Authority, in its capacity as resolution authority, shall decide that a bridge institution is no longer a bridge institution in accordance with the provisions of Article 89 in any of the following situations:

- a) merger of the bridge institution with another entity;
- b) the bridge institution no longer complies with the requirements set out in Article 89;
- c) the transfer of all or part of the assets, rights or obligations of the bridge institution to a third party;
- d) up to two years from the date on which the last transfer was made from an insurer subject to resolution or at the end of the extension period granted in accordance with Article 100;
- e) The assets of the bridge institution shall be fully liquidated and its obligations shall be paid in full.

### **Article 99**

(1) Where the Financial Supervisory Authority, in its capacity as resolution authority, intends to sell the bridge institution or its assets, rights or obligations, it shall ensure that they are offered for sale in an open and transparent manner and that the sale does not significantly distort them, and that no potential buyer is unduly favoured or discriminated against in the sale.

(2) Sales in accordance with paragraph 1 shall be carried out under legal conditions, taking into account the circumstances and in accordance with the legal framework on State aid.

### **Article 100**

The Financial Supervisory Authority, in its capacity as resolution authority, may extend the period provided for in Article 98(d), with the notification of the Competition Council for the

exercise of legal powers, by one or more additional periods of one year, in the event that such an extension:

a) supports the realization of one of the situations provided for in Article 98 letter a), b), c) or e);

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b) is necessary to ensure the continuity of essential insurance services.

### **Article 101**

All decisions of the Financial Supervisory Authority, in its capacity as resolution authority, to extend the period provided for in Article 98(d) shall state the reasons for and include a detailed assessment of the situation justifying the extension, including market conditions and prospects.

### **Article 102**

(1) If the operation of a bridge institution ceases in the situations referred to in Article 98(c) or (d), the bridge institution shall be wound up in accordance with the insolvency proceedings.

(2) In compliance with the provisions of Article 73, all proceeds resulting from the cessation of operation of the bridge institution shall accrue to the shareholders of the bridge institution.

### **Article 103**

Where a bridge institution is used for the purpose of transferring assets and liabilities belonging to more than one insurer under resolution, the obligation referred to in Article 99(1) shall relate to the assets and liabilities transferred from each of those insurers under resolution and not to the bridge institution.

## **SUBSECTION 3<sup>3</sup>: Other provisions regarding the establishment and functioning of a bridge institution**

### **Article 104**

(1) The Financial Supervisory Authority, as the competent authority, may decide to approve the establishment of a bridge institution authorized in accordance with the provisions of Law no. 32/2000, as subsequently amended and supplemented, with a share capital set below the level provided by the regulations issued by the Financial Supervisory Authority in application of the provisions of Law no. 32/2000, with subsequent amendments and completions, but which cannot be less than the equivalent in lei of two million euros. The Financial Supervisory Authority notifies, in this case, the authorization of the bridge institution and the European Commission, together with the motivation of the level established for the share capital.

(2)The authorization of the bridge institution is made in compliance with the legal framework on state aid.

### **Article 105**

When setting up a bridge institution authorised by the Financial Supervisory Authority, as the competent authority, the Financial Supervisory Authority shall appoint the persons who ensure the management of the structures responsible for risk management, internal audit, compliance, as well as any other activities that may expose the bridge institution to significant risks.

### **Article 106**

(1)By way of derogation from the provisions of Article 10 paragraph (3) of Law no. 31/1990, republished, with subsequent amendments and completions, a bridge institution authorized by the Financial Supervisory Authority may be established as a joint-stock company with a sole shareholder.

(2)The provisions of Article 9(2) and Article 111(2)(b<sup>1</sup>) of Law no. 31/1990, republished, with subsequent amendments and completions, does not apply to the bridge institution authorized by the Financial Supervisory Authority. The application of this paragraph shall be made in compliance with the legal framework on State aid.

### **Article 107**

The Financial Supervisory Authority shall establish, through its own regulations, the documentation on the basis of which the establishment of the bridge institution is authorized in accordance with the provisions of this law, as well as the content of the decision on the establishment of such bridge institution.

### **Article 108**

(1)The registration of the bridge institution in the trade register shall be made on the basis of the articles of incorporation and, as the case may be, of the incorporation authorization, within 24 hours from the submission of the documents to the trade register office in whose district the headquarters of the bridge institution is located.

(2)Within up to 30 days from the date of submission of the articles of incorporation and, as the case may be, of the incorporation authorization, the other documents provided by law for the registration of a company according to Law no. 31/1990, republished, with subsequent amendments and completions.

(3) Failure to comply with the provisions of paragraph (2) shall be sanctioned according to the provisions of Article 44 of Law no. 26/1990 on the Trade Register, republished, with subsequent amendments and completions.

#### **Article 109**

The start of the activity by the bridge institution authorized by the Financial Supervisory Authority takes place on the first working day following the date of registration of the bridge institution in the trade register.

#### **Article 110**

In the insolvency proceedings applicable to the insurer subject to resolution, the liquidator must ensure the enforcement of the provisions of the management body of the bridge institution to be fulfilled by the staff of the insurer subject to resolution.

#### **Article 111**

(1) If the sale of the bridge institution authorized by the Financial Supervisory Authority is carried out through the sale of shares, from the moment of their sale, the insurer that operated as a bridge institution must meet all the conditions provided by Law no. 32/2000, as subsequently amended and supplemented, for the operation of an insurer, including the minimum capital requirement.

(2) In the situation provided for in paragraph (1), the authorization of the insurer that functioned as a bridge institution and that meets the requirements provided by Law no. 32/2000, with subsequent amendments and completions, continues to produce effects for an indefinite period.

### **SECTION 4: Asset Separation Tool**

#### **Article 112**

(1) In order for the asset separation tool to be effective, the Financial Supervisory Authority, in its capacity as resolution authority, is competent to transfer the assets, rights or obligations of a resolution insurer or bridge institution to one or more asset management vehicles.

(2) The transfer referred to in paragraph 1 may take place, in compliance with the provisions of Articles 138 to 140, without obtaining the consent of the shareholders of the insurers subject to resolution or of any third party, other than the bridge institution, and without complying with any procedural requirement provided by law.

### **Article 113**

For the purposes of the asset separation instrument, an asset management vehicle is a legal entity that cumulatively meets the following requirements:

- a) is controlled by the Financial Supervisory Authority, in its capacity as resolution authority;
- b) has been created for the purpose of receiving, in whole or in part, the assets, rights and obligations of one or more insurers subject to resolution or of a bridge institution.

### **Article 114**

The asset management vehicle manages the assets transferred to it for the purpose of protecting them for their orderly sale or liquidation.

### **Article 115**

An asset management vehicle operates if the Financial Supervisory Authority, in its capacity as resolution authority:

- a) approves the content of the documents regarding the establishment of the asset management vehicle;
- b) appoints or approves the management body of the asset management vehicle;
- c) approves the remuneration of the members of the management body and establishes their responsibilities;
- d) approves the strategy and risk profile of the asset management vehicle.

### **Article 116**

The Financial Supervisory Authority, in its capacity as resolution authority, may exercise the power provided for in Article 112 to transfer assets, rights or obligations, only subject to one of the following conditions:

- a) the specific market situation of those assets is such that their liquidation under normal insolvency proceedings could have a negative effect on one or more financial markets;
- b) such a transfer is necessary to ensure the proper functioning of the resolution insurer or bridge institution; or
- c) Such a transfer is necessary to maximize the proceeds resulting from the liquidation.

### **Article 117**

In the event that it applies the asset separation instrument, the Financial Supervisory Authority, in its capacity as resolution authority, determines the consideration in exchange for which the assets,

rights and obligations are transferred to the asset management vehicle, in accordance with the principles established by law and the legal framework on state aid.

### **Article 118**

Any consideration paid by the asset and portfolio management vehicle acquired directly from the insurer subject to resolution shall be made on behalf of the insurer subject to resolution, in compliance with the provisions of Article 72. The consideration may take the form of a claim from the asset management vehicle.

### **Article 119**

Where the bridge institution instrument has been applied, an asset management vehicle may, after the application of the bridge institution instrument, acquire assets, rights or obligations from the bridge institution.

### **Article 120**

(1)The Financial Supervisory Authority, in its capacity as resolution authority, may transfer assets, rights or obligations from the resolution insurer to one or more asset management vehicles on more than one occasion and may transfer back assets, rights or obligations from one or more asset management vehicles to the resolution insurer, if the conditions laid down in Article 121 are met.

(2)The insurer subject to resolution has the obligation to repossess any such assets, rights or obligations.

### **Article 121**

**(1)The Financial Supervisory Authority, in its capacity as resolution authority, may transfer back rights, assets or obligations from the asset management vehicle to the insurer subject to resolution, in one of the following situations:**

a)where the possibility for those rights, assets or obligations to be transferred back is expressly specified in the instrument through which the transfer was made;

b)in the event that those rights, assets or obligations do not meet the conditions for the transfer or do not fall within the category of rights, assets or obligations specified in the instrument through which the transfer was made.

(2)In any of the situations referred to in paragraph 1, the return transfer may be carried out at any time and shall comply with any other conditions stipulated in that instrument for the purpose in question.

**Article 122**

Transfers between the insurer subject to resolution and the asset management vehicle must be subject to the statutory partial transfer of ownership safeguards.

**Article 123**

The shareholders or creditors of the insurer subject to resolution and other third parties whose assets, rights or obligations relating to the portfolios of insurance contracts are not transferred to the asset management vehicle or in connection with the asset management vehicle, management or senior management thereof.

**Article 124**

The objectives of the asset management vehicle do not imply any obligation or responsibility of the asset management vehicle towards the shareholders or creditors of the insurer subject to resolution, and the management body or senior management is civilly liable for the failure or omission to perform in bad faith or gross negligence the duties provided by law.

**SECTION 5: Reduction in the value of equity instruments****Article 125**

The power to write down or convert debts into relevant capital instruments may be exercised either:

- a) independent of the resolution measure; or
- b) together with a resolution measure, if the conditions for triggering the resolution procedure provided by law are met.

**Article 126**

The Financial Supervisory Authority, as the resolution authority, has the power to reduce or convert liabilities into relevant capital instruments.

**Article 127**

The Financial Supervisory Authority, as the resolution authority, shall exercise its competence provided for in Article 126 in accordance with the legal provisions, without delay, regarding the relevant capital instruments issued by an insurer, if one of the following conditions is met:

- a) whether the Financial Supervisory Authority has determined that all the conditions for triggering resolution provided by law were met before the application of a resolution action;

b)The Financial Supervisory Authority, as the competent authority, determines that, if this competence is not exercised with regard to the relevant capital instruments, the insurer will cease to be viable.

### **Article 128**

An insurer is considered no longer viable if the following conditions are cumulatively met:

- a)the insurer is in the process of or is likely to enter into a situation of difficulty;
- b)alternative private sector measures, supervisory measures, including an early intervention measure, with the exception of the write-down or capital conversion measure, taken individually or in combination with another resolution measure, are not such as to remove the insurer's predicament;
- c)there is no reasonable prospect that the insurer's distress could be prevented in a timely manner by any measure, be it an alternative private sector measure or a supervisory measure, including an early intervention measure, other than a measure to reduce the value or convert debts into relevant capital instruments, taken individually or in combination with a resolution action.

### **Article 129**

For the purposes of Article 128(a), an insurer shall be deemed to enter or is likely to enter into difficulty if one of the conditions laid down in Article 43(1) is met.

### **Article 130**

The Financial Supervisory Authority shall ensure that, in the event that the conclusion referred to in Article 129 is reached, the Directorate exercising the supervisory function shall immediately inform the Directorate exercising the resolution function.

### **Article 131**

(1)Before exercising its power to reduce or convert liabilities into equity instruments, the Financial Supervisory Authority, as the resolution authority, shall ensure that an assessment of the insurer's assets, liabilities and equity is carried out in accordance with the provisions of this law.

(2)For the purposes of paragraph 1, the valuation shall be based on the calculation of the reduction of the amount to be applied to the relevant capital instruments for the purpose of absorbing losses and the level of conversion to be applied to the relevant capital instruments for the purpose of recapitalising the insurer.

### **Article 132**

In the event that the principal value of the relevant equity instruments is reduced, the following shall apply:

- a) the reduction of the value of that instrument is permanent, subject to any increase in accordance with the repayment mechanism following the final valuation carried out, in which case a mechanism for increasing the value of claims may be applied in order to repay creditors and, subsequently, shareholders, up to the level deemed necessary;
- b) there is no debt to the holder of the relevant equity instrument within or in relation to the amount by which the instrument has been reduced, except for debts that have already matured and the compensation due, which may arise as a result of a court challenge to the lawfulness of the exercise of the power to write down or convert the debts into relevant capital instruments;
- c) No compensation is paid to holders of relevant equity instruments.

## **CHAPTER V: Safety mechanisms**

### **Article 133**

The Financial Supervisory Authority shall ensure that, in cases where one or more resolution tools have been applied, and in particular within the meaning of Article 135, it transfers only certain parts of the rights, assets and liabilities of the insurer in resolution, shareholders and those creditors whose claims have not been transferred receive as settlement of their claims an amount at least equal to that which they would have received if the insurer in resolution would have been liquidated through the insolvency procedure at the time of the decision on the application of the resolution measures.

### **Article 134**

(1) In order to assess whether shareholders and creditors would have benefited from better treatment if the insurer in resolution had followed a normal insolvency procedure, the Financial Supervisory Authority, as the resolution authority, ensures that an assessment is carried out by a financial auditor, a legal person, as soon as possible after the resolution measure(s) have been taken. This assessment shall be distinct from the assessment carried out in accordance with the provisions of Articles 55 to 66.

**(2) The assessment referred to in paragraph 1 shall identify:**

- a) the treatment that insurance shareholders and creditors would have received, if the insurer in resolution had entered the ordinary insolvency procedure at the time of the resolution decision;
- b) the actual treatment of shareholders and creditors in the resolution of the insurer in resolution; and
- c) the existence of a possible difference between the treatment provided for in point a) and that

provided for in point b).

**(3)The evaluation takes into account:**

- a)the hypothesis that the insurer in resolution would have entered the ordinary insolvency procedure at the time of taking the decision on the resolution measures;
- b)the assumption that the resolution measure(s) would not have been taken.

**Article 135**

If the valuation carried out in accordance with the provisions of Article 134 establishes that any of the shareholders or creditors referred to in Article 133 have accrued losses greater than they would have incurred if the insurer had been wound up by ordinary insolvency proceedings, any of them shall be entitled to payment of the difference from the resolution financing mechanisms.

**Article 136**

The Financial Supervisory Authority, as the resolution authority, shall ensure that the safeguards are applied in the following cases:

- a)where the Financial Supervisory Authority, as the resolution authority, transfers part, but not all of the assets, rights or liabilities of an insurer in resolution to another insurer or, in the exercise of the resolution tool, from a bridge institution or asset management vehicle to another insurer;
- b)in the event that the Financial Supervisory Authority, as the resolution authority, exercises the power to request the competent court to annul or modify the clauses of a contract to which the insurer in termination is a party or the power to substitute another recipient insurer as a signatory party, in order to protect insurance creditors.

**Article 137**

The Financial Supervisory Authority, as the resolution authority, shall establish, through its own regulations, the categories of contracts to which the protection measures apply and the conditions for the implementation of the safety mechanisms provided for in this chapter.

**CHAPTER VI:Right to appeal and exclusion of other measures**

**Article 138**

(1)The decisions to take a crisis prevention measure or to exercise one of the powers provided for by law, other than the one regarding crisis management measures, may be challenged by the insurer at the Administrative and Fiscal Litigation Section of the Bucharest Court of Appeal, within 10 days from the date of communication, under penalty of forfeiture.

(2)The appeal is judged quickly and especially. The court's decision can be appealed, according to the law.

### **Article 139**

(1)Any person affected by a decision to take a crisis management measure may challenge the decision in accordance with Article 138(1).

(2)The courts, in order to resolve the appeal, use complex economic assessments of the situations made by the Financial Supervisory Authority, as the resolution authority.

### **Article 140**

(1)The use of a means of appeal does not suspend the effects of the decision of the Financial Supervisory Authority, as the contested resolution authority, which constitutes an enforceable title.

(2)Where this is necessary to protect the interest of third parties who, acting in good faith, have purchased shares or other instruments of ownership, assets, rights or obligations of a resolution insurer, by virtue of the use of resolution tools or the exercise of resolution powers by the Financial Supervisory Authority, in its capacity as resolution authority, the annulment of a decision taken by the Financial Supervisory Authority shall not affect any administrative act adopted subsequently and any transaction concluded subsequently on the basis of its annulled decision. In this case, the remedies that may be ordered in relation to a prejudicial decision or measure of the Financial Supervisory Authority, as the resolution authority, are limited to the granting of compensation by the Financial Supervisory Authority for the losses suffered by the claimant as a result of that decision or measure.

## **CHAPTER VII:Financing mechanisms**

### **Article 141**

In order to ensure the effective application of resolution tools and powers by the Financial Supervisory Authority as resolution authority, the Resolution Fund for Insurers shall be established, the resources of which shall be used in accordance with the resolution objectives and the principles set out in Articles 40 and 44.

### **Article 142**

The Insurers' Resolution Fund is managed by the Insureds' Guarantee Fund.

### **Article 143**

In order for the Insured Guarantee Fund to exercise its functions as administrator of the Insurers' Resolution Fund, the Financial Supervisory Authority shall issue regulations on its functioning, within 60 days from the date of entry into force of this law.

#### **Article 144**

**(1) The resolution fund for insurers is made up of the following financial sources:**

a) contributions from all insurers authorized in accordance with Law no. 32/2000, with subsequent amendments and completions;

b) interest and penalties for late payment of contributions by insurers;

c) loans or bonded loans through the issuance of securities of the Guarantee Fund, in its capacity as administrator of the Resolution Fund, and other forms of financial support from institutions, financial institutions or other third parties, in cases where the amounts received as contributions referred to in point (a) are insufficient to cover losses, costs or other expenses incurred in the application of resolution tools. By exception to the provisions of Law no. 213/2015, these operations are carried out by the Guarantee Fund as administrator of the Resolution Fund.

(2) The insurers shall pay to the Insured Guarantee Fund the contributions provided for in paragraph (1) letter a) in the national currency - leu.

(3) The Insureds' Guarantee Fund, in its capacity as administrator of the Insurers' Resolution Fund, has the obligation to invest the available financial resources of the Insurers' Resolution Fund in low-risk assets, in a sufficiently diversified manner.

(4) The Insured Guarantee Fund, in its capacity as administrator of the Insurers' Resolution Fund, must establish the strategy for the investment of the resources of the Insurers' Resolution Fund and review it annually or more frequently, if necessary.

(5) The strategy on the investment of the resources of the Resolution Fund for Insurers has as its main objectives the minimization of the risk and liquidity of the investments, and as a complementary objective the return on investments. The criteria for selecting placements will be quantified and ranked according to these 3 objectives.

#### **Article 145**

(1) The resources of the Resolution Fund for Insurers shall be used on the basis of the decision of the Financial Supervisory Authority, as the resolution authority, and only for the purposes set out in Article 146.

(2) The financing mechanisms provided for in Article 146(1) shall be implemented in compliance

with the legal framework on State aid.

#### **Article 146**

**(1)The use of the resources of the Resolution Fund for Insurers may be decided by the Financial Supervisory Authority, as the resolution authority, to cover the needs related to the application of resolution tools, in order to:**

- a)the guarantee of the assets or obligations of the insurer subject to resolution, of a bridge institution or of an asset management vehicle;
- b)providing loans to the resolution insurer, bridge institution or asset management vehicle;
- c)the transfer of assets and the insurer's insurance portfolio under resolution;
- d)the necessary financing of a bridge institution or asset management vehicle;
- e)the payment of compensation to shareholders or creditors, in the event that they have accumulated losses greater than those they would have registered, if the insurer had been liquidated through the insolvency procedure;
- f)repayment of the contracted loans and the costs associated with them;
- g)any combination of the measures referred to in points (a) to (f).

(2)The resources of the Resolution Fund for Insurers may be used to take the measures referred to in paragraph 1 also in relation to a potential acquirer, within the scope of the asset and portfolio sale instrument.

#### **Article 147**

The resources of the Insurer Resolution Fund cannot be used directly to absorb an insurer's losses. Where the use of the resources of the Insurers' Resolution Fund for the purposes referred to in Article 146 has the indirect effect of transferring part of an insurer's losses to that financing mechanism, the principles laid down in Article 44 shall apply.

#### **Article 148**

The financial resources collected on the basis of Article 147 may be used exclusively for the purposes set out in Article 146.

#### **Article 149**

The amounts received from the insurers subject to resolution or from the bridge institution, the interest and other income generated by the investments are allocated to the replenishment of the Resolution Fund for insurers.

### **Article 150**

The Insured Guarantee Fund, as administrator of the Resolution Fund, shall be empowered to take out loans or other forms of support from credit institutions, financial institutions or other third parties, if the amounts collected in accordance with Article 144(1) are not sufficient to cover losses, costs, other expenses incurred in the use of the Resolution Fund for Insurers or for those intended for the application of the Resolution Funds. resolution.

### **Article 151**

Until the Insurers' Resolution Fund is established at a sufficient level in accordance with the provisions of Article 141, the financial resources of the Insureds' Guarantee Fund may be used to cover the needs related to the application of resolution measures, which shall be fully reimbursed by the Insurers' Resolution Fund, as it is replenished with the financial resources provided by law.

### **Article 152**

(1)The contributions due to the Resolution Fund by the insurers shall be calculated separately on the two categories of insurance, respectively general insurance and life insurance, based on their monthly accounting records, applying a percentage rate established according to the provisions of paragraph (3).

(2)The percentage rate of contributions may not exceed 1% of the gross premiums collected by insurers from the direct insurance activity.

(3)The percentage rate is established separately for the two categories of insurance, by regulations of the Financial Supervisory Authority, at the proposal of the Insured Guarantee Fund, as administrator of the Resolution Fund.

(4)In case of deficit of the Resolution Fund, in order to cover the obligations generated by the application of this law, the Financial Supervisory Authority may increase during the year the percentage rate taken into account when establishing the contribution, in compliance with the limit provided for in paragraph (2).

(5)The insurers' contribution to the Resolution Fund is distinctly highlighted in the accounts of the Insureds' Guarantee Fund, as administrator of the Resolution Fund.

### **Article 153**

(1)The contribution due to the Resolution Fund by the insurers shall be transferred monthly to the account of the Insureds' Guarantee Fund, as administrator of the Resolution Fund, by the insurers, in

the national currency - leu, until the last working day of the month following the month for which the report is made.

(2)The contributions due and transferred to the account of the Insured Guarantee Fund, as administrator of the Resolution Fund, by the insurers shall not be refunded.

#### **Article 154**

(1)Insurers are obliged to prepare and submit monthly to the Insured Guarantee Fund, as administrator of the Resolution Fund, until the last working day of the current month for the previous month, the reports on the manner of constitution and transfer of the contribution due, distinctly on the two categories of insurance, respectively general insurance and life insurance.

(2)Once the reports are submitted, the insurers attach a declaration on their own responsibility, under the signature of their legal representative, under the sanctions provided by Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented, for the crimes of deception and/or false statements, which certifies that the data and/or information transmitted are real, correct and complete.

#### **Article 155**

[the text of Article 155 of Title II, Chapter VII was repealed on 24 September 2021 by Article III, paragraph (3), letter B. of Emergency Ordinance 102/2021]

### **CHAPTER VIII:Privacy**

#### **Article 156**

The following persons and authorities have the obligation to maintain the confidentiality of all information to which they have access and which they manage according to this law:

- a)The Financial Supervisory Authority, as resolution authority and competent authority;
- b)resolution administrators or temporary administrators appointed in accordance with the provisions of this law;
- c)potential buyers, both those contacted by the Financial Supervisory Authority, as the competent authority, and those offered by the Financial Supervisory Authority, as resolution authority, regardless of whether or not this contact or offer took place in the preparation for the use of the asset and portfolio sale tool, or whether or not that offer led to a purchase;
- d)auditors, accountants, legal and professional advisers, valuers and other experts engaged directly or indirectly by the Financial Supervisory Authority, as a resolution authority or competent authority, or by the potential purchasers referred to in point (c);

- e) The Insured Guarantee Fund;
- f) other authorities involved in the resolution process;
- g) the bridge institution or asset management vehicle involved;
- h) any other person who provides or has provided services, directly or indirectly, permanently or occasionally, to the entities referred to in points (a)-(g);
- i) senior management, members of the management body and employees of the insurer under resolution, during and after their appointment.

### **Article 157**

**(1) Without prejudice to the general nature of the requirements laid down in Article 156, the persons referred to in Article 156 shall be prohibited from disclosing confidential information received in the exercise of their professional activities or from the Financial Supervisory Authority, as competent authority or resolution authority, in connection with their duties under this Law, to any person or authority, with the following exceptions:**

- a) the disclosure is made in the exercise of their duties under this law;
- b) information is provided in general or aggregate form so that insurers in resolution cannot be identified;
- c) there is the express and prior consent of the authority, of the insurer in resolution who provided the respective information.

(2) The persons referred to in Article 156 shall assess the effects that the disclosure of confidential information could have on the public interest in financial, monetary and economic policy, as well as on the commercial interests of natural and legal persons, and on the purpose of inspections, investigations and audit missions.

(3) The procedure for assessing the effects of the disclosure of confidential information shall include a specific assessment of the effects of any disclosure of the content and details of the recovery and resolution plan and of the outcome of the assessments carried out in accordance with the provisions of this law.

(4) The persons or entities referred to in Article 156 shall be civilly liable, in accordance with the law, for the damages caused by the disclosure of information in violation of the provisions of this chapter.

### **Article 158**

**(1) This Chapter shall not prevent:**

- a) employees and experts of the entities referred to in Article 156(a)-h) to exchange information with each other within each entity;

b) The Financial Supervisory Authority, as resolution authority and competent authority, including their employees and experts, to exchange information with each other, as well as with other resolution authorities or competent authorities in the European Union, subject to strict compliance with confidentiality requirements, with a potential buyer, for the purpose of planning or implementing resolution action.

**(2) Without prejudice to any other provisions of this chapter, the exchange of information shall be permitted:**

- a) with any other person, subject to strict confidentiality requirements, where necessary to plan or implement resolution action;
- b) with the commissions of inquiry of the Romanian Parliament and the Court of Accounts of Romania, under appropriate conditions;
- c) with the responsible authorities involved in the insolvency proceedings, the supervisory authorities of other entities in the financial sector, the authorities responsible for the supervision of banking markets, as well as with the staff with on-the-spot verification tasks acting on their behalf, with the authorities responsible for maintaining the stability of the financial system in the Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, as well as the persons responsible for carrying out the statutory audit.

### **Article 159**

The provisions of this Chapter shall be without prejudice to the provisions of criminal law on the disclosure of information in judicial proceedings in criminal or civil cases.

## **CHAPTER IX: Final provisions**

### **Article 160**

The Financial Supervisory Authority, both as a competent authority and as a resolution authority, shall issue regulations in application of the provisions of this law regarding:

- a) (text of Article 160, letter A. of Title II, Chapter IX was repealed on 19-Jan-2024 by Article V, paragraph (2), letter B. of Law 17/2024)
- b) (the text of Article 160, letter B. of Title II, Chapter IX was repealed on 19 Jan-2024 by Article V, paragraph (2), letter B. of Law 17/2024)
- c) identification of situations in which an insurer is considered to be in difficulty or is likely to fail;
- d) the process of evaluation and resolution decision-making;
- e) establishing the elements necessary for the effectiveness of the instrument for selling the activity;

- f)the appropriate circumstances for the application of the recapitalisation measures, taking into account the factors corresponding to those measures;
- g)transparency rules applied in case of the use of resolution tools;
- h)the critical services that the Financial Supervisory Authority may request from institutions in resolution proceedings to enable a recipient to effectively carry out an activity that has been transferred to it;
- i)the methodology used to determine the value of derivatives when an insurer is in resolution;
- j)(text of Article 160, letter J. of Title II, Chapter IX was repealed on 19-Jan-2024 by Article V, paragraph (2), letter B. of Law 17/2024)
- k)establishing the activities, services and operations that fall into the category of critical functions, as well as the criteria for establishing the lines of activity and associated services that fall into the category of essential lines of activity;
- l)criteria for assessing the impact of an insurer's failure on the insurance market, on other insurers;
- m)further details and circumstances under which resolution measures may be applied;
- n)the criteria necessary for assessing the possibilities of application and the procedure for implementing the measures in the resolution plan.

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

PRESIDENT OF THE CHAMBER OF DEPUTIES
VALERIU-ȘTEFAN ZGONEA
PRESIDENT OF THE SENATE
CĂLIN-CONSTANTIN-ANTON POPESCU-TĂRICEANU

### **ANNEX:Information to be included by the insurer in the recovery plan**

1. A summary of the most important elements of the plan and an overview of the insurer's overall recovery capacity
2. A summary of the significant changes in the insurer's situation since the last recovery plan submitted
3. A communication and information plan outlining how the insurer intends to manage any negative market reactions

4. The range of capital and liquidity actions necessary to maintain or restore the viability and financial position of the insurer
5. An estimate of the timing of the implementation of each important aspect of the plan
6. A detailed description of any significant obstacles to the effective and timely implementation of the plan
7. Identification of critical functions
8. A detailed description of the processes used to determine the value and marketability of the insurer's core business lines, operations and assets
9. A detailed description of how recovery planning is integrated into the insurer's management framework, as well as the policies and procedures for approving the recovery plan, and identifying who is responsible for preparing and implementing the plan
10. Mechanisms and measures for preserving or replenishing the insurer's own funds
11. Mechanisms and measures to ensure that the insurer has access to emergency sources of financing
12. Mechanisms and measures to reduce risk and leverage
13. Debt restructuring mechanisms and measures
14. Mechanisms and measures for restructuring the lines of activity
15. Mechanisms and measures necessary to maintain continued access to financial market infrastructures
16. The arrangements and measures necessary to maintain the continuous operation of the insurer's operational processes, including IT infrastructure and services
17. Preparatory mechanisms to facilitate the sale of assets or lines of business within an appropriate timeframe to restore financial soundness
18. Other management actions or strategies aimed at restoring the financial soundness and anticipated financial effect of those actions or strategies
19. Preparatory measures that the insurer has taken or intends to take to facilitate the implementation of the recovery plan, including the measures necessary to allow for its timely recapitalisation
20. A framework of indicators identifying situations in which appropriate measures can be taken as set out in the plan

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