

Norma 38/23-nov-2016 NORM no. 38 of 23 November 2016 on the rights, obligations, powers and designation of the special administrator (traducere)

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Norma 38/23-nov-2016 (traducere) NORM no. 38 of 23 November 2016 on the rights, obligations, powers and designation of the special administrator (traducere)

Data act: 23-nov-2016

Emitent: Autoritatea de Supraveghere Financiara

In accordance with the provisions of Article 2(1)(b), Article 3(1)(b) and Article 6(2) 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,

pursuant to the provisions of Article 17(2) of Law no. 503/2004 on financial recovery, bankruptcy, dissolution and voluntary liquidation in the insurance business, republished, with subsequent amendments,

following the deliberations of the Board of the Financial Supervisory Authority at the meeting of 22 November 2016,

The Financial Supervisory Authority issues the following rule:

Article 1

(1) In accordance with the provisions of Article 16 of Law no. 503/2004 on financial recovery, bankruptcy, dissolution and voluntary liquidation in the insurance business, republished, with subsequent amendments, hereinafter referred to as Law no. 503/2004, in the case of the application of the method of

recovery of the insurance/reinsurance company through special administration, provided for in Article 8(1)(b) of the same law, the Financial Supervisory Authority, hereinafter referred to as A.S.F., shall appoint, by decision, a special administrator.

(2)The special administrator is appointed by the FSA from among the persons registered in the Register of Special Administrators for Insurance/Reinsurance Companies, hereinafter referred to as the Register of Special Administrators - SAR, according to the procedure approved by the Council of the Financial Supervisory Authority.

(3)According to the provisions of Article 2 paragraph (4) of Law no. 213/2015 on the Insured Guarantee Fund, the FSA may designate, by decision, the Insured Guarantee Fund as special administrator; in this case, the provisions of paragraphs (4) to (7) shall not apply to the Insured Guarantee Fund.

(4)In order to obtain the registration notice in the Register of Special Administrators - SAR, a natural or legal person must have the quality of insolvency practitioner, registered in the Register of the National Union of Insolvency Practitioners in Romania, published on the website of the National Union of Insolvency Practitioners in Romania, hereinafter referred to as UNPIR, and submit the following documents to the A.S.F.:

- a)supporting document issued by UNPIR showing the quality of insolvency practitioner of the respective natural or legal person, the fact that it is not suspended or incompatible and that it has not been subject to any disciplinary sanction in the last 3 years;
- b)copy of the professional civil liability insurance contract;
- c)a copy of the identity document of the natural person or, as the case may be, a copy of the certificate of registration of the legal person at the Trade Register Office, accompanied by a certificate attesting at least the name, date of registration, the persons legally empowered to represent the legal person and its object of activity;
- d)the application for registration in the Register of Special Administrators - SAR, according to the annex that is an integral part of this norm;
- e)a list of the main services provided in the last 3 years, showing experience in the financial-banking sector and in financial recovery or insolvency procedures or in procedures for restructuring the activity or reorganization of companies and crisis management.

(5)The deletion of the registration of a special administrator from the Register of Special Administrators - SAR can be carried out by the A.S.F. in the following situations:

- a)if the special administrator does not comply with the obligations arising from the special administration activity, including those related to the complete transmission of the reports, reports or documents provided by the regulations in force or requested by the FSA;

- b) if the A.S.F. finds, during the special administration, that the special administrator no longer meets the conditions provided in paragraph (6);
- c) upon the death of the special administrator who is a natural person or, as the case may be, as a result of the dissolution, liquidation or the finding of the state of insolvency of the special administrator who is a legal person;
- d) if there are other grounds for termination provided for by the regulations in force.

(6) In order to be appointed special administrator of an insurance/reinsurance company authorized by the A.S.F., a natural or legal person must cumulatively meet the following conditions:

- a) to be registered in the Register of Special Administrators - SAR;
- b) not be in a state of incompatibility or conflict of interest with the insurance/reinsurance company subject to special administration or with the persons involved with it, in particular:**
 - (i) not have been the statutory auditor/in the statutory audit team in the last 5 years;
 - (ii) not to be one of the management consultants of the insurance/reinsurance company at the time of selection;
 - (iii) not to be a spouse or relatives up to the fourth degree inclusive with the persons in the management of the insurance/reinsurance company, in the case of natural persons, or not to have been in contractual relations in the last 2 years with the insurance/reinsurance company subject to administration or with its management.

(7) In order to be appointed as special administrator of an entity in the insurance-reinsurance sector authorized by the A.S.F., the insolvency practitioner submits the following documents to the A.S.F.:

- a) declaration on own responsibility of the natural person or, as the case may be, of the legal representative of the legal person regarding the knowledge and fulfillment of the conditions for appointment as special administrator provided for in paragraph (6) and the assumption of compliance with them throughout the period of the exercise of the mandate;
- b) documents updating, where appropriate, the documents referred to in paragraph 4;
- c) other documents requested by the FSA according to the procedure provided in paragraph (2), attesting the fulfillment of the conditions provided in paragraph (6).

Article 2

(1) The register provided for in Article 1 paragraph (2) shall be maintained and updated by the A.S.F., in a computerized system, the data entered therein being permanently accessible to the public on the A.S.F. website.

(2)The register referred to in paragraph 1 shall contain the following entries:

a)the number and date of registration in the Register of Special Administrators - SAR for both the natural person and the legal person special administrator;

b)for the special administrator for natural persons:

(i) name and surname;

(ii) home address, telephone/fax/e-mail;

(iii) the date of registration in the UNIPIR board;

(iv) observations;

c)for the special administrator of a legal entity:

(i) the name and legal form;

(ii) the address of the registered office, telephone/fax/e-mail;

(iii) the legal representative;

(iv) the serial number in the trade register;

(v) the unique registration code, assigned by the Ministry of Public Finance;

(vi)the date of registration in the UNIPIR board;

(vii)observations.

(3)The registration of the special administrators in the register provided for in paragraph (1) shall be made in the chronological order of their approval by the A.S.F.

(4)The editing of the Register of Special Administrators - SAR is carried out in two sections:

a)section A;

b)Section B.

(5)Section A includes the special administrators who have obtained the approval of the A.S.F. and are eligible to be selected; Section B includes, in chronological order, the special administrators whose registration has been deregistered on the basis of the provisions stipulated in Article 1(5).

(6)The Special Administrators Registration Number has the following alphanumeric structure: RAS-000.

Article 3

(1)From the date of appointment, the special administrator fully takes over the duties of the management of the insurance/reinsurance company subject to the financial recovery procedure, as they result according to the provisions of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, as subsequently amended, of the Companies Law no. 31/1990, republished, with

subsequent amendments and completions, to the regulations of the A.S.F., to the articles of incorporation of the company; insurance/reinsurance and other incidental normative acts.

(2)The special administrator adopts the measures provided by law for the fulfillment of the tasks incumbent on him, including the necessary measures for the preservation of assets and the collection of receivables in the interest of the contractors.

(3)In the sense of the legal obligation of the special administrator to adopt the necessary measures for the preservation of the assets, he maintains the assets of the insurance/reinsurance company, not being able to resort to their sale as a measure of current administration; The special administrator shall adopt appropriate management measures leading to the payment of the insurance/reinsurance company arising from the debts payable.

(4)The special administrator adopts the necessary measures to take over and preserve in good conditions the archive of the insurance/reinsurance company subject to special administration.

(5)The special administrator prepares and transmits to the FSA the periodic reports and reports provided by the legislation in force for the insurance/reinsurance company that is subject to the special administration.

Article 4

(1)The special administrator is responsible for identifying and proposing the necessary measures for the financial recovery and carrying them out, after the approval, by decision, by the Board of Directors of A.S.F.

(2)In the exercise of his/her powers conferred by law and by the decisions of the FSA, the special administrator shall carry out at least the following activities:

- a)analyzing the entire activity of the insurance/reinsurance company subject to special administration;
- b)the correct keeping of the records and documents of the respective insurance/reinsurance company and other activities that are the responsibility of the administrators when taking over the management duties of an insurance/reinsurance company, in order to determine any existing deficiencies at the level of its management;
- c)drawing up a detailed report on the financial situation of the respective insurance/reinsurance company;
- d)the necessary steps to carry out a capital increase, in order to financially recover the insurance/reinsurance company;
- e)directing the activity of the insurance/reinsurance company, with its supervision and control, including the conditions for making payments from or into the accounts of the insurance/reinsurance company;
- f)informing the FSA about the finding of situations of violation of the legislation or of the internal

procedures of the managed insurance/reinsurance company, within 24 hours from the date of their finding;

g) preparation and transmission to the FSA of monthly reports on the status of the financial recovery procedure;

h) fulfillment of other provisions of the A.S.F. necessary to ensure the defense of the rights and legitimate interests of the contractors.

(3) The report referred to in paragraph (2) letter c) shall be drawn up and submitted to the FSA within 30 working days from the date of appointment as special administrator and shall contain:

a) the identified causes that led to the conditions for triggering the financial recovery procedure;

b) persons whose activity is imputable within the meaning of point (a);

c) the measures envisaged by the special administrator, as well as the real and operative possibilities of financial recovery of the insurance/reinsurance company or, as the case may be, the reasons that prevent the achievement of the purpose of this procedure.

(4) The reports referred to in paragraph 2(g) shall be submitted within the first 5 working days of the current month for the activity of the previous month; Attached to these are the documents related to the valuation of assets and liabilities, the situation of debt recovery, the cost of maintaining assets and the situation of debt settlement.

(5) The execution of the mandate and/or the exercise of the duties of the special administrator shall be carried out by the person expressly designated by the decision of the A.S.F., without the special administrator being able to confer his/her duties, in whole or in part, to a third person.

(6) In the performance of his duties, the special administrator engages the insurance/reinsurance company subject to the financial recovery procedure in its relations with third parties and is responsible, according to the law, for the execution of the financial recovery decision and other measures ordered by decision by the A.S.F.

Article 5

For the activity performed, the special administrator is entitled to remuneration, which will be established, on a case-by-case basis, by the FSA, having as reference points the remuneration of the members of the management of the insurance/reinsurance company subject to special administration, the volume of activity and the size of the insurance/reinsurance company, and is borne by the insurance/reinsurance company that is subject to special administration.

Article 6

(1)The special administrator carries out and adopts the necessary measures to restore the financial situation of the insurance/reinsurance company, in compliance with the provisions, terms and conditions contained in the financial recovery decision issued by the FSA; the special administrator is responsible for the manner of fulfilling the duties and responsibilities provided by the regulations in force and/or established by the A.S.F.

(2)For good reasons, the FSA may order, at any time during the financial recovery procedure, by reasoned decision, the replacement of the special administrator and, as the case may be, in one of the situations provided for in Article 1(5), the removal from the Register of Special Administrators - SAR.

Article 7

(1)The termination of the quality of special administrator takes place in the following cases:

- a)by revoking the financial recovery decision under special administration;
- b)by replacing or, as the case may be, by renouncing the special administrator from the mandate received;
- c)by the death of the special administrator who is a natural person or, as the case may be, as a result of the dissolution/liquidation or the finding of the state of insolvency of the special administrator who is a legal person;
- d)by any other causes of termination provided by the regulations in force.

(2)In the event that the special administrator intends to renounce the mandate received, he/she shall send to the A.S.F., together with the notification of the intention to renounce, the report provided for in Article 4(2)(g); The FSA decides, if necessary, to appoint a new special administrator.

(3)The termination of the quality of special administrator is ordered by decision of the FSA and takes effect from the date of entry into force of the FSA's decision to replace or revoke the special administrator.

Article 8

(1)If it is found that the conditions for the recovery of the insurance/reinsurance company are not met, that the measures taken by the special administrator could not lead to the achievement of the intended purpose and/or to the removal of the causes that led to the initiation of the financial recovery procedure, the FSA shall ascertain the state of insolvency of the insurance/reinsurance company according to Article 3(1)(j)(3) of Law no. 503/2004 and orders, by reasoned decision, the closure of the financial recovery procedure, the withdrawal of the operating authorization of the insurance/reinsurance company and the registration of the bankruptcy application, under the law.

(2)By the decision to close the financial recovery procedure, the FSA orders the revocation of the special administrator and the termination of his quality and attributions.

Article 9

On the date of entry into force of this rule, the Financial Supervisory Authority's Rule no. 30/2015 on the rights, obligations and competences of the special administrator, published in the Official Gazette of Romania, Part I, no. 974 of 29 December 2015.

Article 10

This norm shall be published in the Official Gazette of Romania, Part I, and shall enter into force on the date of publication.

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| The President of the Financial Supervisory Authority, Mișu Negrițoiu |
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ANNEX:Application for registration in the Register of Special Administrators - SAR

The undersigned, domiciled in, postal address (if different), telephone number, e-mail address, personal identification number/tax code, I request registration in the Register of Special Administrators for Entities in the Insurance-Reinsurance Sector.

(1)I declare on my own responsibility the following:

1. they meet all the legal provisions in force in order to be registered in the Register of Special Administrators;
2. I am not prohibited from working in financial institutions;
3. have the necessary professional experience, according to the Financial Supervisory Authority's Norm no. 38/2016 on the rights, obligations, competences and designation of the special administrator.

(2)Also, in the case of appointment as a special administrator for an insurance/reinsurance company, I undertake to do the following:

1. to inform the Financial Supervisory Authority about any situation of conflict of interest, incompatibility, any employment/family relations with the staff of the company subject to

administration;

2. to inform the Financial Supervisory Authority, within 7 calendar days, of any change in the data that was the subject of registration in the Register of Special Administrators - SAR.

(3) In this regard, I attach the following documents:

a) a supporting document issued by the National Union of Insolvency Practitioners in Romania stating the quality of insolvency practitioner of the respective natural or legal person, the fact that it is not suspended or incompatible and that it has not been subject to any professional or disciplinary sanction in the last 3 years;

b) copy of the professional civil liability insurance contract;

c) copy of the identity document of the natural person or, as the case may be, a copy of the certificate of registration of the legal entity at the Trade Register Office;

d) a list of the main services provided in the last 3 years, from which the experience in:

(i) financial recovery or insolvency proceedings;

(ii) procedures for the restructuring of the activity/reorganization of some companies and for the management of crises;

(iii) experience for the financial and banking sector.

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| Signature | Date |
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