

**Norma 5/26-ian-2016 NORM no. 5 of 26 January 2016 on the identification of situations in which an insurer is considered to be in the process of entering into difficulty or is likely to enter into difficulty (traducere)**

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**Norma 5/26-ian-2016 (traducere) NORM no. 5 of 26 January 2016 on the identification of situations in which an insurer is considered to be in the process of entering into difficulty or is likely to enter into difficulty (traducere)**

Data act: 26-ian-2016

**Emitent: Autoritatea de Supraveghere Financiara**

In accordance with the provisions of Article 1(2), Article 2(1)(b) and (d), Article 3(1)(b), Article 6(2) and Article 14 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 160 letter c) of Law no. 246/2015 on the recovery and resolution of insurers,

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

The Financial Supervisory Authority issues the following rule:

**CHAPTER I: Subject-matter, scope and definitions**

**Article 1**

(1) This rule establishes a series of objective elements to substantiate the determination that an insurer is in the process of entering into difficulty or is likely to enter into difficulty, as provided for in Article

43(1) or Article 129 of Law no. 246/2015 on the recovery and resolution of insurers, hereinafter referred to as Law no. 246/2015.

(2)The determination that an insurer is in the process of failing or is likely to fail shall be made by the Directorate of the Financial Supervisory Authority exercising the supervisory function, hereinafter referred to as the Supervisory Directorate, in which case it shall immediately inform the Directorate of the Financial Supervisory Authority exercising the resolution function, hereinafter referred to as the resolution directorate, according to the provisions of Article 130 of Law no. 246/2015. Subject to the conditions provided for in Article 42(2) of Law no. 246/2015, the determination that an insurer is in the process of entering into difficulty or is likely to enter into difficulty can be made by the resolution directorate, following consultation with the supervisory directorate.

(3)If the Directorate of the Financial Supervisory Authority exercising the supervisory function determines that an insurer is in the process of entering into difficulty or is likely to enter into difficulty, it will be based on the results of the supervision process carried out according to the provisions of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, hereinafter referred to as Law no. 237/2015.

## **Article 2**

Identifying the fact that an objective element contained in the head. II of this rule has materialized with regard to a particular insurer must not determine the Financial Supervisory Authority, hereinafter referred to as the FSA, as the competent authority or as the resolution authority, as the case may be, to automatically determine that the insurer is in the process of failing or is likely to fail, nor to lead to the automatic application of resolution tools. Similarly, the list of objective elements provided for in this rule is not exhaustive and, depending on the specific situation, other situations may arise and be identified that lead to the establishment that an insurer is in the process of entering into difficulty or is likely to enter into difficulty.

## **Article 3**

This rule must be interpreted in conjunction with the conditions provided for in Article 42(1)(b) of Law no. 246/2015. Consequently, the determination that an insurer is in the process of entering into difficulty or is likely to enter into difficulty in accordance with these regulations does not imply that all the conditions for resolution measures to be taken have been complied with.

## **Article 4**

The provisions of this rule must also be applied when the A.S.F. determines that an insurer is in the

process of entering into difficulty or is likely to enter into difficulty in the context of determining that an insurer is no longer viable for the purpose of exercising the power to write down or convert debts into capital pursuant to Article 126 of Law no. 246/2015.

## **Article 5**

For the purposes of this rule, the terms and expressions have the meaning provided in Law no. 246/2015 and in Law no. 237/2015, if they are not provided for in Law no. 246/2015.

## **CHAPTER II: Objective elements for establishing that an insurer is in the process of failing or is likely to fail**

### **SECTION 1: General considerations**

## **Article 6**

For the purpose of establishing that an insurer is in the process of failing or is likely to fail, as provided for in Article 43(1) of Law no. 246/2015, A.S.F., both as competent authority and as resolution authority, as the case may be, assesses the objective elements in relation to:

- a) the level of an insurer's eligible own funds;
- b) the situation regarding the adequacy of an insurer's liquidity.

## **Article 7**

The FSA, as the competent authority or resolution authority, shall determine that an insurer is in the process of failing or is likely to fail on the basis of the assessment of the objective elements specified in Sections 2 and 3 and taking into account, where applicable, the following:

- a) if the insurer in question has been imposed by the FSA specific financial recovery and/or early intervention and/or short-term financing measures, and the application of these measures has failed;
- b) the notifications received by the A.S.F. from the insurer in question, in accordance with Article 99 or Article 100 of Law no. 237/2015.

### **SECTION 2: Level of eligible own funds**

## **Article 8**

Pursuant to Article 43(1)(a) and (b) of Law no. 246/2015, an insurer may be considered to be in distress or is likely to distress if:

- a) violates or if, according to objective elements, it can be concluded that, in the near future, it will violate the minimum capital requirements (MCR), as provided for in Law no. 237/2015, as a result of

the fact that the insurer has recorded or is likely to record losses that will lead to the deterioration of the financial situation or to the exhaustion of a significant part of its own funds, but not limited to it;  
or

b) holds assets lower than bonds or if, according to objective elements, it can be concluded that, in the near future, it will hold assets smaller than bonds.

### **Article 9**

The prospective valuation of the insurer's assets and liabilities, as well as the prospective valuation of the fulfillment of the solvency capital and minimum capital requirements, shall be based on, but not limited to, the following objective elements:

- a) the level and structure of the own funds held by an insurer and whether it complies with the minimum capital requirements;
- b) the results of the valuation of assets and/or obligations, which indicate a significant decrease in the value of assets or a significant increase in obligations resulting in a breach of minimum capital requirements, if applicable;
- c) the results of the assessment carried out in order to substantiate whether the conditions for initiating the resolution procedure under Article 58 letter a) of Law no. 246/2015, if applicable; or
- d) the results of any valuation carried out at the level of the insurer regarding the value of its assets and obligations, whether it was undertaken by an independent appraiser, or by the FSA or by any other person, to the extent that the valuation methodology applied complies with Title II chap. III of Law no. 246/2015, which would substantiate the establishment of the fact that the value of the insurer's assets is lower than the value of its obligations or that this is likely to happen in the near future. Elements of the valuation results may be used to determine whether the insurer is in breach or likely to breach, in the near future, the minimum capital requirements, to a sufficient extent to justify the withdrawal of its authorisation, if any.

## **SECTION 3: Asset adequacy statement**

### **Article 10**

Pursuant to Article 43(1)(c) of Law no. 246/2015, an insurer is considered to be in the process of entering into difficulty or is likely to enter into difficulty if it is unable to pay its insurance obligations or if, according to objective elements, it can be concluded that this will happen in the near future.

### **Article 11**

The determination of whether the insurer is likely to be unable to meet its insurance obligations shall be based on objective elements which may include, but are not limited to, the following:

a) significant negative developments in the level of liquidity held by the insurer, such as to lead to a shortfall of liquid assets compared to short-term obligations;

**b) the significant negative evolution of the present and future assets held by the insurer; when valuing assets held by an insurer, take into account, where appropriate:**

1. (i) outflows of assets, foreseen and future, including through the payment of indemnities or return of premiums, payment of premiums ceded in reinsurance, payment of redemptions, etc.;

2. (ii) any contingent assets;

c) any information that shows that the insurer faces difficulties in paying the obligations in the insurance activity.

### **CHAPTER III: The process of determining whether an insurer is failing or likely to fail**

#### **SECTION 1: Determination by the FSA, in its capacity as competent authority or resolution authority, that an insurer is in the process of failing or is likely to fail**

##### **Article 12**

The evaluation of the elements provided for in chap. II is usually carried out by the supervisory directorate during the supervisory process carried out according to the provisions of Law no. 237/2015.

##### **Article 13**

Where the resolution direction determines whether an insurer is failing or likely to fail, it shall take into account the elements set out in chap. II in relation to the capital situation and the liquidity situation.

##### **Article 14**

When determining that an insurer is failing or likely to fail, the resolution directorate should also take into account, as an objective element, the information received from the supervisory directorate on the results of the supervisory process and, where applicable, the fact that the insurer has not complied with the specific financial recovery and/or early intervention and/or financing measures on the short term.

## **SECTION 2: Consultation and exchange of information between the Supervisory Directorate and the Resolution Directorate**

### **SUBSECTION 0:**

#### **Article 15**

Without prejudice to Article 43(2) or Article 130 of Law no. 246/2015, in order to facilitate the promptness of the flow of information for the purpose of assessing whether an insurer is in distress or is likely to fail, the supervisory directorate and the resolution directorate must exchange information in accordance with the requirements set out in this rule.

#### **Article 16**

Before concluding that an insurer is failing or likely to fail, the Supervisory Directorate and the Resolution Directorate shall inform each other and consult each other accordingly on the results of their assessments.

#### **Article 17**

If it identifies the presence of the objective elements provided for in chap. II, the resolution directorate must ask the supervisory directorate to substantiate how these circumstances were reflected in the supervisory process.

### **SUBSECTION 1:2.1 Information provided by the supervisory directorate**

#### **Article 18**

According to Article 27 of Law no. 246/2015 on the recovery and resolution of insurers, the Supervisory Directorate informs the Resolution Directorate about the fulfillment of the conditions for the application of early intervention measures in relation to an insurer. The Supervisory Directorate shall also inform the resolution Directorate of any crisis prevention and/or financial recovery and/or early intervention and/or short-term financing measures it imposes on the insurer.

#### **Article 19**

In order to facilitate the exchange of information, the Supervisory Directorate shall also transmit the results of the supervisory process to the Resolution Directorate. Thus, the supervisory directorate must provide the resolution directorate with at least the following information regarding the insurer concerned:

a) a summary of the insurer's overall assessment;

- b) the full set of indicators used in the regular monitoring of the core indicators underpinning the supervisory process, including their relevance thresholds;
- c) all details of the supervisory measures applied, as well as a description of the insurer's compliance with them; and
- d) details of the recovery and/or short-term financing options applied by the insurer, if applicable.

### **SUBSECTION 2:2.2 Information provided by the resolution directorate**

#### **Article 20**

When identifying the elements referred to in chap. II, the resolution directorate shall transmit to the supervisory directorate its findings and substantiations.

#### **Article 21**

The Supervisory Directorate shall be informed in each case in which the FSA, as the resolution authority:

- a) decides to exercise its power to require an insurer to contact potential buyers for the preparation of the insurer's resolution, according to Article 27 of Law no. 246/2015 on the recovery and resolution of insurers;
- b) requests an evaluation carried out by a financial auditor, a legal entity, according to Article 55 or Article 131 of Law no. 246/2015, or decides the provisional evaluation by the A.S.F., according to Article 56 of Law no. 246/2015;
- c) analyzes the result of the evaluation carried out by the financial auditor or establishes the result of the provisional evaluation undertaken by it, carried out under the conditions provided for in Article 56 of Law no. 246/2015.

### **CHAPTER IV: Final provisions**

#### **Article 22**

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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