PARLIAMENT OF ROMANIA

CHAMBER OF DEPUTIES **SENATE**

Law no. 237/2015

on the authorisation and supervision of the business of insurance and reinsurance

The Parliament of Romania hereby adopts this law.

PART I

Solvency II Supervisory Regime

TITLE I

Insurers and Reinsurers

CHAPTER I

Subject-matter and scope

General provisions

Art. 1. – (1) This law governs:

a) the authorisation and operation of insurance and reinsurance undertakings with their office within the territory of Romania, hereinafter referred to as *undertakings*;

b) the supervision of the pursuit of the activity of the undertakings referred to in Letter a) in Romania, within the territory of the other Member States and of third countries;

c) the authorisation, operation and supervision of the branches of the undertakings of third countries;

d) the supervision of insurance and reinsurance groups;

e) the duties of the Financial Supervisory Authority, hereinafter referred to as *ASF*, as competent authority

for the purposes of the regulation, authorisation and supervision of undertakings, its relationship with the supervisors of Member States or third countries, with the European Insurance and Occupational Pensions Authority, hereinafter referred to as *EIOPA*, in accordance with Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, with the European Commission and other authorities, institutions or bodies.

(2) For the purposes of this law, the terms and expressions below shall have the following meanings:

1. *significant shareholder* – means any person holding, directly and individually or by or in connection with other natural or legal persons, a qualifying holding;

2. *insurance* – means the pursuit of the activity in or from Romania, which mainly represents the offer, intermediation, negotiation, conclusion of insurance and reinsurance contracts, receipt of premiums, loss adjustment, recourse and recovery, and the investment or use of own funds or funds raised by the business pursued;

3. *insurer* – means the direct life or non-life insurance undertakings, authorised to operate in accordance with the provisions of this part or Part II , as appropriate;

4. *composite insurer* – means the insurer which, on 1 January 2007, and also on the date of entry into force of this law, held an authorisation to simultaneously pursue direct life and non-life insurance;

5. *captive insurer* – means an insurer owned either by a financial undertaking other than an insurer or reinsurer or a group of undertakings within the meaning of Point 20 or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or to which it belongs or of an undertaking or undertakings of the group of which it is a member;

6. *mixed-activity insurer* – means an insurer simultaneously pursuing insurance and reinsurance, authorised to pursue business in accordance with the provisions of this part or of Part II , as appropriate;

7. *beneficiary* – means any natural or legal person insured or appointed by the contracting party, entitled to receive the indemnity or benefits under the insurance contract;

8. *national bureau of motor insurers* – means the independent and autonomous professional association, which, under the International Green Card Covenant, has a regulatory role of the business of insurers issuing international insurance documents, in Romanian being known as the Romanian Motor Insurers' Bureau, hereinafter referred to as *BAAR*;

9. *college of supervisors* – means a permanent but flexible structure for cooperation and coordination and facilitation of the decision-making process related to the group supervision, consisting of the coordinating supervisor, supervisors of all subsidiaries with their head office in Member States, EIOPA representative and, where appropriate, the supervisors of other Member States where significant branches and related undertakings pursue business;

10. *management* – means the management, administrative or control body of undertakings, having the particulars of a monistic or dualistic administration system, in accordance with Company Law No. 31/1990, republished, as subsequently amended and supplemented;

11. *contracting party* – means any natural or legal person, which concluded an insurance contract with an insurer;

12. *qualifying central counterparty* – means a central counterparty that has been either authorised or recognised in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

13. *diversification effects* – means the reduction in the risk exposure of the undertaking or group, related to the

diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

14. *outsourcing* – means a written arrangement, regardless of the form in which it is concluded, between an undertaking and a service provider by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, for the benefit of the undertaking, which would otherwise be performed by the undertaking itself in accordance with its object of activity;

15. *subsidiary* – means any undertaking under the control of its parent undertaking, including the undertakings under the control of the ultimate parent undertaking;

16. *national protection fund* – means the legal person non-profit making association governed by private law, in accordance with the legal provisions concerning associations and foundations, which consists of all undertakings authorised to undertake compulsory insurance on third party motor vehicle liability for damages produced by motor vehicle accidents, in Romania being called the Street Victim Protection Fund, hereinafter referred to as *FPVS*;

17. *function* –within a system of governance, means an internal capacity to undertake practical tasks;

18. *critical functions* – means the functions identified by the undertaking on the basis of the policies and procedures adopted, taking into account the nature, scale and complexity of the activity and the organisational structure;

19. *granularity* – means the amount of detail which characterises a set of data;

20. *group* – means a group of undertakings that:

a) consists of a participating undertaking, its subsidiaries and the entities in which they hold a participation, as well as undertakings linked to each other by a control relationship given by a management contract, provisions of the instruments of incorporation

or for the major part of the same persons in office;

b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships, and may include mutual or mutual-type associations, provided that one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group, and, the establishment and dissolution of such relationships are subject to approval by the group supervisor, where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

21. *insurance holding company* – means a parent undertaking which is not a mixed financial holding company and the business of which is to acquire and hold, exclusively or mainly, participations in subsidiary undertakings, where those subsidiary undertakings are Member State insurers or reinsurers, or third country insurers or reinsurers, at least one of such subsidiary undertakings being a Member State insurer or reinsurer;

22. *mixed financial holding company* – means the mixed financial holding company within the meaning of Point 16 of Art. 2(1) of Government Emergency Ordinance No. 98/2006 on the supplementary supervision of credit institutions, insurance and/or reinsurance undertakings, investment firms and investment management companies of a financial conglomerate, approved as amended and supplemented by Law No. 152/2007, as subsequently amended and supplemented;

23. *mixed-activity insurance holding company* – means a parent undertaking, other than a Member State insurer or reinsurer, a third country insurer or reinsurer which is not an insurance holding company or mixed financial holding company, which includes at least one insurer or reinsurer among its subsidiary undertakings;

24. *external credit assessment institution* – means the credit rating agency registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16

September 2009 on credit rating agencies, or a central bank issuing credit ratings exempt from such regulation;

25. *close links* – means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

26. *agent* – means the person in the Member State where the undertakings establish a branch, who possesses sufficient powers to represent and bind them in relation to third parties, competent authorities and other institutions of that Member State;

27. *risk measure* – means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

28. *Method 1* – means the accounting consolidation-based method whereby the group solvency is calculated, known as the default method;

29. *Method 2* – means the deduction and aggregation method whereby the group solvency is calculated, known as the alternative method;

30. *participation* – means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

31. *qualifying holding* – means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

32. *persons acting in concert* – means any proposed acquirers submitting to ASF a proposed acquisition under a joint agreement, implicit or explicit, irrespective of whether it is written, verbal or only resulting from the *de facto* situation, or whether those persons are linked to each other in any other form whatsoever;

33. *persons who effectively direct the business* –

means the members of the management and the persons having a significant impact on the decision-making process and being responsible for implementing the strategies and policies adopted;

34. *regulated market of a Member State* – means a multilateral system operated by a market operator, and governed by non-discretionary rules, which brings together third-parties with an interest in buying and selling financial instruments admitted to trading; the system is authorised and functions regularly by the competent authority of a Member State, in accordance with the regulations issued by it;

35. *regulated market of a third country* – means a financial market recognised by the home Member State of the insurer, which fulfils the requirements of Point 31, and where the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market of the home Member State;

36. *proposed acquirer* – means any natural or legal person acting by itself or in concert and seeks:

a) to acquire, directly or indirectly, a qualifying holding in an undertaking;

b) increase, directly or indirectly, the voting rights or the capital held in an undertaking, so that:

(i) the participation would reach or exceed 20%, 33% or 50% of the voting rights or the share capital;

(ii) the undertaking would become its subsidiary;

37. *legal provisions*:

a) this law and the regulations issued by ASF for its application;

b) delegated acts, regulatory technical standards and application standards issued by the European Commission;

38. *documentation principle* – means the principle according to which the processes carried out by undertakings, including the decision-making one, and the supervisory review process of ASF are based on supporting documents;

39. *proportionality principle* – means the principle having regard to the nature, scale and complexity of the risks inherent to the business of undertakings;

40. *qualified reasoning principle* – means the principle according to which opinions are formed and decisions are made on the basis of sets of criteria and own experience in connection with the business of undertakings, such as the policies applied, risk culture, prudential concern;

41. *proposed acquisition* – means the documentation sent to ASF by a proposed acquirer concerning the direct or indirect acquisition or increase of the voting rights in an undertaking or the increase in share capital contribution;

42. *probability distribution forecast* – means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;

43. *supervisory review process* – means the continuous, flexible and iterative process, where prospective supervision of undertakings is based on:

a) risks;

b) at least the following principles:

(i) proportionality;

(ii) qualified reasoning;

(iii) documentation;

44. *reinsurance* – means the activity consisting in accepting risks ceded by Member State or third country insurer or reinsurer;

45. *reinsurer* – means the reinsurance undertaking which is authorised to pursue business in accordance with Title I , Chapter III;

46. *captive reinsurer* – means a reinsurer owned either by a financial undertaking other than an insurer, reinsurer or group of undertakings within the meaning of Point 20, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking to which it belongs or of the undertakings of the group of which it

is a member;

47. *claims representative* – means the unit appointed in each Member State by insurers authorised to underwrite risks of Class 10 shown in Annexe No. 1 Section A, not including carrier's liability, in charge of handling and settling claims caused by motor vehicle accidents;

48. *concentration risk* –means all risk exposures with a loss potential threatening the solvency or the financial position of the undertaking;

49. *decisional risk* – means the risk of loss or of adverse change in the financial situation resulting from the strategic decisions made by the management;

50. *credit risk* – means the risk of loss or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which undertakings are exposed; it includes the counterparty risk, credit margin risk and the market risk concentration risk;

51. *liquidity risk* – means the risk that undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;

52. *market risk* – means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

53. *underwriting risk* – means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions;

54. *operational risk* – means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;

55. *large risks* means:

a) risks classified under Classes 4, 5, 6, 7, 11 and 12 of Annexe No.1 of Section A;

b) risks classified under Classes 14 and 15 of Annexe No. 1 of Section A, where the policy holder is engaged professionally in an industrial or commercial activity or

in one of the liberal professions and the risks relate to such activity;

c) risks classified under Classes 3, 8, 9, 10, 13 and 16 of Annexe No. 1 of Section A in so far as the contracting party exceeds the limits of at least two of the following criteria: a balance-sheet total of RON equivalent of EUR 6.2 million, a net turnover of RON equivalent of EUR 12,800,000, as defined in the national laws, or an average number of 250 employees during the financial year; if the insured person belongs to a group of undertakings for which consolidated accounts are drawn up in accordance with the applicable legislation, the limits shall be considered based on the consolidated accounts;

d) risks classified under Classes 3, 8, 9, 10, 13 and 16 of Annexe No. 1 of Section A insured by professional associations, joint ventures or temporary groupings;

56. *undertaking* – means the insurer, reinsurer or mixed-activity insurer, unless otherwise provided, authorised and supervised in accordance with this law, in any of the legal forms below:

a) *'societăţi pe acţiuni'* [joint stock company] – SA, in accordance with Company Law No. 31/1990, republished, as subsequently amended and supplemented;

b) *'societăţi mutuale'*[mutual undertakings];

c) European companies, defined in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE);

d) European Cooperative Societies, defined in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE);

57. *related undertaking* – means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Point 61;

58. *third country undertaking* – means an insurer or reinsurer which would require an operation authorisation issued in accordance with the provisions

of Chapter III, if its head office were situated in Romania;

59. *financial undertaking* – means any of the following entities:

a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of the national legislation in force;

b) an insurer, reinsurer or insurance holding company defined at Point 21;

c) an investment firm or a financial institution within the meaning of the national legislation in force;

d) a mixed financial holding company within the meaning of the national legislation in force;

60. *parent undertaking* – means an entity controlling one or more subsidiaries;

61. *participating undertaking* – means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship:

a) management of that undertaking and other undertakings on a unified basis pursuant to a contract concluded with those undertakings or provisions in the instruments of incorporation or statutes of those undertakings;

b) the management of that undertaking and of the undertakings referred to in Letter a) consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up;

62. *Member State of the commitment* – means the Member State in which the habitual residence of the natural person contracting party or, if the contracting party is a legal person, its establishment, to which the contract relates, is situated;

63. *home Member State* – means any of the following:

a) for non-life insurance, the Member State in which the head office of the insurer covering the risk is situated;

b) for life insurance, the Member State in which the head office of the insurer, covering the commitment is situated;

c) the Member State in which the head office of the reinsurer is situated;

64. *host Member State* – means the Member State, other than the home Member State, in which an undertaking has a branch or provides services; for non-life insurance, the Member State in which the risk is situated, and for life insurance, the Member State of the commitment, where that commitment or risk is covered by an undertaking or a branch situated in another Member State;

65. *Member State in which the risk is situated* – means any of the following:

a) the Member State in which the property is situated, either the buildings or the buildings and their contents, in so far they are covered by the same insurance contract, or only the buildings;

b) the Member State of registration, where the insurance relates to vehicles of any type;

c) the Member State where the insurance contract is concluded for maximum four months covering travel or holiday risks, whatever the class concerned;

d) the Member State in which the habitual residence of the natural person contracting party or, if the contracting party is a legal person, its establishment, to which the contract relates, is situated, in situations other than those referred to in Letters a) through c);

66. *branch* – means an agency or a representative office of an undertaking devoid of legal personality which is located in the territory of a Member State other than the home Member State;

67. *coordinating supervisor* – means the supervisory authority responsible for the group supervision, designated as provided by Art. 16(1);

68. *supervisors* – means the Member State authorities authorised by law, regulation or administrative action to supervise the undertakings of those States;

69. *risk minimization techniques* – means the

techniques whereby risks are fully or partially transferred to a third party;

70. *assessment period* – means the period of 60 working days during which ASF assesses the proposed acquisition, as from the date ASF sends the proposed acquirer the acknowledgement of receipt of the complete documentation;

71. *intra-group transaction* – means any transaction by which an undertaking relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of its obligations, irrespective of their nature;

72. *business unit* – means the head office of an undertaking or its branches;

73. *special purpose vehicle* – means any undertaking, whether incorporated or not, other than an undertaking within the meaning of this law, which:

a) assumes risks from an insurer or reinsurer, under a reinsurance contract;

b) fully funds its exposure to such risks through the issue of financial instruments or any other financing mechanism where the repayment rights of the investors in such instruments or mechanisms are paid only after the fulfilment of the obligations arising from the reinsurance contracts.

Scope

Art. 2. – (1) The provisions if this part shall apply in consideration of the principle of proportionality to the:

a) insurers seeking authorisation in accordance with Chapter III and supervised under this part;

b) insurers seeking authorisation in accordance with Part II and their scheme of operations shows that at least one of the amounts set out to in Para (2) shall be exceeded within the following 5 years, or they are in any of the situations referred to in Letters f) through h) of Para (2);

c) insurers established within the territory of Romania which meet the requirements referred to in Paras (2)

and (4);

d) insurers authorised in Romania and seeking supervision in accordance with this part, although they do not meet any of the requirements referred to in Paras (2) and (4) or are in any of the situations referred to in Para (3) and Art. 3;

e) reinsurers.

(2) Without prejudice to Arts. 4 and 5, the provisions of this part shall apply to the insurers meeting at least one of the following requirements:

a) the annual gross written premiums, hereinafter referred to as *GWP,* exceeds the RON equivalent of EUR 5,000,000;

b) the total gross technical provisions exceeds the RON equivalent of EUR 25,000,000;

c) where the insurer belongs to a group, the total gross technical provisions of the group before deduction of the amounts from reinsurance contracts and special purpose vehicles exceeds the RON equivalent of EUR 25,000,000;

d) GWP from reinsurance acceptances exceeds the RON equivalent of at least one of the following:

(i) EUR 500,000;

(ii) 10% of total GWP;

e) gross technical provisions from reinsurance acceptances exceeds the RON equivalent of at least one of the following:

(i) EUR 2,500,000;

(ii) 10% of total gross technical provisions;

f) pursues assistance activity provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence;

g) pursues business under the right of establishment or freedom to provide services;

h) cover civil liability, credit and guarantee risk.

(3) The provisions of this part shall not apply to the insurers which do not meet the requirements referred to in Letters a) through g) of Para (2) and cover the civil

liability risk only as ancillary risk subject to Art. 20(11).

(4) Where, upon the entry into force of this law, an insurer does not meet the provisions of Para (2), but it exceeds any of the amounts set out in Para (2), for 3 consecutive years, the provisions of this part shall apply to it starting with the fourth year.

(5) The activity referred to in Letter f) of Para (2) means the immediate assistance provided to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract; the assistance means either the payment of an indemnity, or benefits in kind which may be effected by means of the staff and equipment of the person providing them, without covering any verification and repair, maintenance, after-sales services, or the mere indication or provision of aid as an intermediary.

(6) In regard to life insurance, the provisions of this part shall apply:

a) to the following activities where they are on a contractual basis:

(i) assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;

(ii) annuities;

(iii) supplementary insurance, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;

b) to the following operations, where they are on a contractual basis, in so far as they are subject to supervision by ASF:

(i) associations of persons set up with a view to capitalising their contributions and subsequently distributing the assets thus accumulated among the

survivors or among the beneficiaries of the deceased; such associations are known as *tontines*;

(ii) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

(iii) management of group pension funds, comprising the management of investments, and assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

(iv) the operations referred to in Point (iii) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

c) operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or managed by insurers at their own risk.

(7) For the undertakings authorised prior to 1 January 2016, the quantitative data referred to in Para (2) shall be those reported and audited for the financial year ending as at 31 December 2014.

(8) In regard to non-life insurance, the provisions of this part shall apply to the classes set out in Sections A and B of Annexe No. 1.

Exclusions from scope

Art. 3. – The provisions of this part shall cease to apply to those insurers cumulatively meeting the following conditions:

a) none of the thresholds set out in Art. 2(2) has been exceeded for 3 consecutive years;

b) none of the thresholds set out in Art. 2(2) is expected to be exceeded during the following 5 years.

Exclusions from scope – non-life insurance

Art. 4. – (1) The provisions of this part shall not apply to:

a) capital redemption operations;

b) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

c) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

d) export credit insurance operations for the account of or guaranteed by the State, or taken by the State.

(2) The provisions of this part shall not apply to an assistance activity which cumulatively fulfils the following conditions:

a) the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the Member State of the undertaking providing cover;

b) the liability for the assistance is limited to the following operations:

(i) an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;

(ii) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means;

(iii) the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same Member State;

c) the assistance is not carried out by an undertaking subject to the provisions of this part.

(3) In the cases referred to in Points (i) and (ii) of Letter b) of Para (2), the conditions referred to in Letter a) of Para (2) shall not apply where:

a) the beneficiary is a member of the service provider;

b) the service provided has concluded a reciprocal agreement with a similar entity of another Member State;

c) the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid.

(4) The provisions of this part shall not apply to mutual undertakings which pursue direct non-life insurance activities and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies or meeting the liabilities arising under such policies. In such a case the mutual undertakings reinsuring the policies and assuming obligations shall be subject to the rules of this part.

Exclusions from scope – life insurance

Art. 5. – (1) The provisions of this part shall not apply to:

a) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

b) operations carried out by organisations, other than undertakings referred to in Art. 2, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions.

(2) The provisions of this part shall not apply to organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

CHAPTER II

General provisions on the supervisory review process, ASF's powers and duties

SECTION 1

General principles on the supervisory review process

General provisions

Art. 6. – (1) ASF shall supervise undertakings so as to ensure protection of insured persons and safeguard the financial stability of the insurance market.

(2) ASF's supervision shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis of the undertakings' business and of the compliance with the legal provisions by those undertakings.

(3) Without prejudice to Para (1), ASF shall duly consider the potential impact of its decisions on the stability of the financial systems of Member States, in particular in emergency situations, taking into account the available information.

(4) ASF shall take into account the potential pro-cyclical effects of the decisions adopted, in particular in times of exceptional movements in the financial markets.

(5) As part of the supervisory review process, ASF shall verify the regular reports and additional information sent by undertakings and carry out inspections at their premises.

(6) ASF's mandate takes into account, in an appropriate way, a European Union dimension. In the exercise of its duties, it shall have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations adopted in the insurance field at the national level and at the level of Member States.

(7) The information requested by ASF to undertakings or branches operating in the territory of Romania shall be sent in the Romanian language.

(8) At ASF's request, insurers seeking to pursue

business in the territory of Romania under the right of establishment or freedom to provide services shall send the terms of the insurance policies and other documents with the purpose of verifying compliance with the provisions of the national legislation on the insurance contract.

Scope of supervision

Art. 7. – (1) ASF shall supervise the business pursued by undertakings in the territory of Romania and in the territory of the other Member States under the right of establishment and freedom to provide services, through verification of their state of solvency, establishment of technical provisions, of its assets and of the eligible own funds.

(2) Where the insurers concerned are authorised to cover the risks classified in Class 18 in Section A of Annex No. 1, ASF shall verify the technical resources which the insurer has at its disposal for the purpose of meeting its obligations.

(3) ASF shall determine whether the undertakings making a commitment or underwriting risks in another Member State are complying with the prudential principles.

(4) ASF shall inform the supervisor of the home Member State of an undertaking of the fact that the business pursued by such undertaking in the territory of Romania is likely to affect its financial stability, where Romania is the:

a) Member State of the commitment;

b) Member State in which the risk is situated;

c) host Member State of the reinsurer.

SECTION 2

ASF's powers and duties

General provisions

Art. 8. – (1) ASF shall exercise its powers in a transparent and accountable manner, in compliance with the provisions of Art. 19.

(2) ASF shall publish and update on its own website at least the following information:

a) the text of the legislation applicable to the insurance field and links to the legal provisions defined in accordance with Letter b), Point 37 of Art. 1(2);

b) the criteria, methods and tools referred to in Para (5), used in the supervisory review process as set out in Chapter IV of Section 3;

c) aggregate statistical data on main aspects of the general prudential framework;

d) the manner of exercise of the options provided for in this part;

e) the objectives of the supervision and its main functions and activities.

(3) ASF shall take preventive and corrective measures of an administrative or financial nature, or other measures provided by the legal provisions applicable to undertakings and their management, to ensure that they comply with the legal provisions, both of Romania and of the Member States where they operate.

(4) In addition to the information provided for in Art. 37, ASF has the power to request undertakings under the proportionality principle all of the documents and information necessary to the supervisory review process, including minutes of the meetings of the management and committees, and carry out inspections at their premises.

(5) ASF has the power to develop necessary quantitative tools under the supervisory review process to assess the ability of undertakings to cope with possible events or future changes in economic conditions that could have adverse effects on their overall financial standing; also, ASF has the power to

require that corresponding tests are performed by the undertakings.

(6) ASF's powers set out in Paras (3) through (5) shall also be available with regard to outsourced activities of undertakings.

(7) ASF shall consult the representatives of the professional associations which are representative for the insurance market in connection with the draft legislation applicable to insurance.

(8) ASF shall approve the persons of the undertakings' management and their significant shareholders and withdraw the approvals granted.

(9) ASF shall approve the transfer of portfolio, division or merger of undertakings and publish its approval decision in accordance with the publication policy established by its own regulations.

(10) ASF shall approve, at the request of undertakings, the limitation, suspension or termination of the activity, after verification of their financial situation, and publish the decisions concerned in accordance with the publication policy established by its own regulations.

(11) ASF shall apply the measures provided for in the national legislation relating to financial recovery, reorganization and bankruptcy of undertakings as defined in this law, as well as the subsidiaries or branches of third country undertakings, with their office in Romania.

(12) ASF shall respond to the petitions concerning the undertakings' business received from contracting parties, aggrieved parties or their representatives.

(13) ASF shall keep and update the Register of Insurers and Reinsurers, the form and contents of which are established by its own regulations.

(14) ASF shall establish and update by own regulations the payment terms and conditions and level of the fees for authorisation, operation, approval of modification of authorisation conditions, transfer of portfolio, merger, division, extension of authorisation to cover other insurance classes or risks, issuance of a duplicate of the authorisation, cover of Class 10 in

Section A of Annexe No. 1 , approval of the internal model in whole or part, approval of the use of specific parameters, provision of information and opinions to third parties except contracting parties, aggrieved parties and public institutions or authorities, and other legal fees.

(15) The following shall constitute revenue for ASF budget:

a) the fees referred to in Para (14), interest and penalties related thereto;

b) amounts from non-criminal fines;

c) income from donations, publications and other legal sources.

(16) In exercising its duties, ASF shall issue individual acts or, where appropriate, refer the matter to courts of law.

(17) ASF shall publish an annual information report on the insurance field.

(18) ASF shall also exercise other tasks provided by law.

Supervision of branches

Art. 9. – (1) Where an undertaking authorised in Romania carries on business in another Member State through a branch, ASF:

a) shall notify the supervisor of the host Member State of its intention to carry out an inspection at the premises of that branch, directly, through intermediaries or together with that supervisor;

b) shall request assistance to EIOPA where the supervisor of the host Member State prohibits ASF to exercise the right to carry out the inspection referred to in Letter a) or it cannot participate in that inspection.

(2) Where an undertaking authorised in another Member State carries on business in Romania through a branch, ASF may participate in the inspection at the premises of that branch initiated by the supervisor of the home Member State or may request the assistance of EIOPA.

SECTION 3

Cooperation with EIOPA, European Commission and other authorities

General provisions

Art. 10. – (1) For the purpose of facilitating the supervision of insurance and reinsurance, ASF shall inform the European Commission of any major difficulties to which the European legislation gives rise and shall cooperate with it and with the supervisors of the other Member States and with the European Commission, and shall find together with the latter appropriate solutions.

(2) ASF shall inform the supervisors of the Member States and the European Commission of:

a) the authorities and entities entitled to issue the documents provided for in Art. 27(5);

b) the fact that it is the only authority receiving the documents provided for in Art. 27(6), attached to a request for authorisation or approval.

(3) ASF shall inform the European Commission, EIOPA and the supervisors of the Member States of:

a) the authorisations granted to the direct and indirect subsidiaries belonging to third country undertakings and the structure of the group to which they belong;

b) acquisitions of third country undertakings by which the undertakings of Romania become subsidiaries of those undertakings.

(4) ASF shall inform the European Commission and EIOPA of the difficulties faced by the undertakings of Romania in obtaining the operation authorisation or in carrying on business in a third country.

(5) ASF shall send the list of the entities which may receive information in accordance with Art. 12(5) and (8) through (10) to the supervisors of the other Member States and to the European Commission, and in the case set out in Art. 12(7) Letter c), also the information on their precise responsibilities.

(6) ASF may transmit information, including in

emergency situations, to the monetary authorities of the European System of Central Banks, the European Central Bank and other bodies with a similar function empowered to develop the monetary policy, establish liquidity reserves, oversee payment systems, clearing and settlement systems of securities and to the National Bank of Romania, in accordance with the legal provisions, where such information is relevant for the exercise of their duties.

(7) Where ASF receives information from the bodies and authorities referred to in Para (6), they shall be subject to the provisions of Art. 19.

(8) ASF shall cooperate closely for the purposes of examining any difficulties which might arise in implementing Art. 125.

(9) ASF shall send the European Commission and EIOPA the number and type of situations where it refused to transmit the information set out in Art. 112 and Art. 113(2) through (4) and Para (6) and took the measures set out in Art. 14(7) Letters a) and b), in the case of insurers.

(10) For assessing a proposed acquisition, ASF shall consult with other supervisors, where the proposed acquirer is:

a) an undertaking, credit institution, investment firm or management company of undertakings for collective investment in transferable securities authorised in another Member State or by another authority;

b) the parent undertaking of any of the entities referred to in Letter a);

c) a natural or legal person controlling any of the entities referred to in Letter a).

(11) ASF shall request other supervisory authorities to provide information relevant for the assessment of a proposed acquisition.

(12) ASF shall provide other supervisory authorities, at their request or on its own initiative, relevant information, including opinions or reserves on the assessment of a proposed acquisition.

Cooperation with EIOPA

Art. 11. – (1) ASF shall annually send the following information to EIOPA:

a) the average value of the solvency capital add-on for each undertaking;

b) the proportion of the solvency capital add-on to the solvency capital requirement, broken down as follows:

(i) all undertakings;

(ii) non-life insurance insurers;

(iii) life insurance insurers;

(iv) composite insurers;

(v) reinsurers;

c) the proportion of the solvency capital add-on imposed under Letters a) through d) of Art. 35(1), broken down by the categories referred to in Letter b);

d) the number of undertakings and groups covered by Art. 37(9) through (13) and the proportion of the Solvency Capital Requirement calculated in accordance with Arts. 72 through 94, hereinafter referred to as *SCR*, of the Minimum Capital Requirement, calculated in accordance with Arts. 95 and 96, hereinafter referred to as *MCR*, of their premiums, technical provisions and assets in the total of these items at the market level.

(2) ASF shall participate in the activities organised by EIOPA, shall fulfil its duties as a member thereof and shall inform EIOPA of the procedure for the application of the provisions of the guidelines issued by it.

(3) Where ASF does not agree with the decision made by a coordinating supervisor on equivalence of the authorisation and supervisory regime of a third country, then ASF may request the assistance of EIOPA within 3 months after receiving notification from the coordinating supervisor.

(4) ASF shall cooperate with EIOPA and provide the latter the requested information without delay.

(5) ASF may, within the college of supervisors, request the assistance of EIOPA, except in emergency situations, in the event of diverging views concerning:

a) the approval of the recovery plan and extension of the recovery period in accordance with the provisions of Art. 17(8) and (9);

(b) the approval of the measures proposed in accordance with Art. 17(10).

(6) ASF may also request the assistance of EIOPA in the cases referred to in Art. 13(2) and Art. 14(6) and (7).

(7) ASF may request EIOPA to declare the existence of adverse situations as provided for in Art. 99(4) where the undertakings are seriously affected by the following:

a) unforeseen, sudden and steep decline of financial markets;

b) low interest rate maintained over a certain period of time;

c) catastrophe with a major impact.

Cooperation with other authorities, bodies and persons

Art. 12. – (1) ASF may exchange information with the supervisors of the other Member States, in compliance with Art. 19.

(2) ASF shall conclude cooperation agreements providing for the exchange of information with the supervisors or with competent authorities and bodies of third countries, similar to those defined in Para (5), providing that the information is subject to guarantees of professional secrecy at least equivalent to the conditions referred to in Art. 19, and that it shall be intended only for the performance of the supervisory task.

(3) Where the exchange of information referred to in Para (2) refers to information received from a supervisor or authority of a Member State, ASF shall send such information to other entities only with the issuer's consent and, where appropriate, solely for the purposes for which that issuer gave its agreement.

(4) The information received by ASF under Para (1) shall be used only for the following purposes:

a) to verify that the conditions governing the taking-up

of the business are met and to facilitate the monitoring of the conduct of such business, especially with regard to the monitoring of the technical provisions, SCR, MCR, and the system of governance;

b) to impose sanctions;

c) in administrative actions against decisions of ASF, and also in court proceedings under this part.

(5) ASF may cooperate with other authorities, persons or bodies of Romania, so that it would carry out its duties:

a) exchanging information with:

(i) the National Bank of Romania;

(ii) bodies and entities involved in the bankruptcy and liquidation proceedings of undertakings, or in similar procedures, and with the authorities overseeing the same;

(iii) persons carrying out statutory audits of undertakings and financial institutions and with the authorities overseeing the same;

(iv) independent actuaries, members of the Romanian Actuarial Association, and with the association concerned;

b) disclosing information to bodies which administer winding-up proceedings or to FPVS.

(6) ASF may exchange information with authorities, bodies or persons of the other Member States, with duties similar to those set out in Para (5).

(7) Where ASF exchanges information as provided for in Paras (5) and (6), then the following conditions must be met:

a) the information must be intended for the purpose of discharging the duties referred to in Paras (5) and (6);

b) the information must be subject to Art.19;

c) where the information originates in another Member State, including the situations set out in Art. 9, it shall be disclosed only with the agreement of the authority from which it originates and solely for the purposes for which that authority gave its agreement.

(8) With the aim of strengthening the stability, and integrity, of the financial system, ASF shall exchange information with the National Bank of Romania, and with other authorities or bodies responsible for the detection and investigation of infringements of the legislation applicable to legal persons subject to registration with the trade register; the information must be intended for the purpose of detection and in compliance with the conditions referred to in Para (7).

(9) Where the authorities and bodies referred to in Para (8) perform their tasks with the aid of specialists who are not employed in the public sector, information shall be exchanged subject to Para (7).

(10) The authorities and bodies referred to in Para (8) shall communicate to the authority of another Member State from which the information originates the names and precise responsibilities of the persons to whom it is to be sent.

(11) ASF shall draw up a list of the undertakings covered by Art. 167(1) and (2) and communicate it to the supervisors of the other Member States.

(12) ASF shall cooperate with the supervisors of other Member States and send them the information necessary for the enforcement of Art. 125.

(13) ASF shall send the supervisors of the other Member States relevant morbidity tables and statistical data provided for in Art. 128.

ASF's powers as supervisor of the Home Member State

Art. 13. – (1) Where the undertakings fail to comply with the requirements on technical provisions, set out in Art. 53 and those on SCR and MCR provided for in Art. 72 and Art. 95, ASF shall notify the supervisors of the host Member States and may prohibit, by decision, those undertakings from freely disposing of the assets until compliance with the requirements on technical provisions, SCR and MCR is restored; ASF shall designate the assets to be covered by such measures; undertakings may file a complaint with the Bucharest Court of Appeal, Administrative-Dispute and Fiscal Section.

(2) ASF shall decide on whether compliance with the requirements on technical provisions, SCR and MCR has been restored and shall communicate its decision to the undertakings concerned, and the prohibition of free disposal of the assets shall end on the date of communication of such decision.

(3) Where an undertaking authorised by ASF carries on business in the territory of another Member State, through a branch or under the freedom to provide services, and ASF is informed by the supervisor of that Member State that such undertaking does not comply with the legal provisions of the state concerned and that it has failed to take the required remedial measures, ASF shall require the undertaking to adopt the appropriate measures; ASF shall also inform the supervisor of the host Member State of the measures imposed.

(4) ASF shall send EIOPA the name of the undertakings for which the operation authorisation has been awarded or withdrawn.

(5) ASF shall inform the supervisors of the other Member States of the withdrawal of the authorisation of the undertakings pursuing business within their territory, and shall take, together with them, the measures necessary to protect the interests of contracting parties, in particular by limiting the rights of the undertakings to freely dispose of the assets, in the cases and under the conditions set out in Para (1).

(6) Following requests from the supervisors of the host Member States, ASF shall send them, in an aggregate form, the information received from insurers in accordance with Art. 112(7) and (8), Art. 113(7) and Art. 114(5).

(7) Where the undertakings outsource a function or activity to providers seated in another Member State:

a) ASF shall inform the supervisory authority of the service provider or, where the service provider is not supervised, the supervisor of the Member State concerned, of its intention to carry out an inspection at the premises of the service provider, or request the supervisor concerned to carry out the inspection on its

behalf ;

b) ASF shall request the assistance of EIOPA where the supervisor of the host Member State prohibits ASF from exercising its right to carry out the inspection referred to in Letter a), or it may not participate in such inspection.

ASF's powers as supervisor of the Host Member State

Art. 14. – (1) The supervisors of the Member States shall be consulted by ASF prior to the granting of the operation authorisation to an undertaking which is:

a) a subsidiary of an undertaking authorised in that Member State;

b) a subsidiary of the parent undertaking of an undertaking of that Member State;

c) an undertaking controlled by the same person, whether natural or legal, which controls an undertaking authorised in that Member State.

(2) ASF shall consult the competent authorities of other Member States prior to granting the operation authorisation to an undertaking which is:

a) a subsidiary of a credit institution or investment firm authorised in that Member State;

b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in that Member State;

c) an undertaking controlled by the same person, whether natural or legal, which controls a credit institution or investment firm authorised in that Member State.

(3) The authorities referred to in Paras (1) and (2) shall be consulted by ASF when assessing:

a) the suitability of the shareholders of the undertakings seeking authorisation or already authorised in Romania;

b) professional competence and the probity (fit and proper) requirements of:

(i) all persons who effectively run the undertakings seeking authorisation or already authorised in Romania;

(ii) all persons with key functions of other entities of the same group.

(4) ASF shall provide the supervisors or competent authorities of other Member States with the information requested by them with a view of granting an operation authorisation or monitoring the authorisation conditions on an ongoing basis.

(5) ASF shall prohibit undertakings, by decision, from freely disposing of the assets located within the territory of Romania, after being notified by the supervisors of the home Member States that the undertakings concerned infringed the provisions on technical provisions, SCR and MCR or that their authorisation was withdrawn. The assets subject to such measures shall be indicated by the supervisor of the home Member State. Undertakings may file a complaint with the Bucharest Court of Appeal, Administrative-Dispute and Fiscal Section. Upon receipt by ASF of the notification from the supervisor of the home Member State on restoration of compliance with the requirements on compliance with technical provisions, SCR and MCR, the decision prohibiting the free disposal of the assets shall cease as of right and ASF shall forthwith so notify the undertakings concerned.

(6) Where ASF observes that an undertaking of another Member State carrying on business in the territory of Romania through a branch or under the freedom to provide services does not comply with the legal provisions, then ASF shall request it to remedy those deficiencies, otherwise it shall inform the supervisor of the home Member State.

(7) If the measures adopted by the supervisor of the home Member State prove ineffective or if the supervisor does not adopt any measure, and the undertaking referred to in Para (6) persists in violating the legal provisions, ASF, after informing the supervisor of the home Member State, may impose:

a) preventive, corrective or sanctioning measures;

b) prohibition on pursuing new insurance and reinsurance contracts in the territory of Romania as of

the date shown in the individual act issued by ASF;

c) administrative measures on the properties or business units held in the territory of Romania, in accordance with the national legislation.

(8) The measures adopted in accordance with Para (7) shall be duly motivated and communicated to the undertaking concerned.

(9) ASF shall request, in the exercise of its powers set out in Paras (6) through (8), the undertaking referred to in Para (6) to send the documents and information on its activity.

(10) The insurers carrying on business in the territory of Romania may promote their products and services via every communication channel, in compliance with the national legislation on the form and content of advertising means.

(11) Where ASF is notified of the withdrawal of the operation authorisation of undertakings of other Member States carrying on business in the territory of Romania, then it shall take all appropriate measures to ensure that these undertakings will not pursue new contracts.

(12) ASF may request from the supervisors of the home Member State the information set out in Art. 112(7) and (8), Art. 113(7) and Art. 114(5), in aggregate form, concerning the business the insurers authorised in those Member State carry on in the territory of Romania under the right of establishment and freedom to provide services.

(13) Any permanent presence of the undertakings of other Member States, which consists of a representative office managed by its own staff or agent, shall be treated by ASF as a branch.

SECTION 4

ASF's participation in the colleges of supervisors

General provisions

Art. 15. – (1) The College of supervisors shall be established and operate under a coordination arrangement drawn up in accordance with Letter i) of Art. 16(2) which includes, on a mandatory basis, procedures at least for the elements referred to in Letter a) through d) and, on an optional basis, for those referred to in Letters e) and (f):

a) the decision-making process on the appointment of the coordinating supervisor in situations similar to those set out in Art. 16(1);

b) the decision-making process on the group's internal model, in accordance with the applicable provisions provided for in Art. 16;

c) the decision-making process on the solvency capital add-on imposed on the group in accordance with Art. 152;

d) reciprocal consultation on the supervision of group solvency, in accordance with Art. 137(2);

e) reciprocal consultation in the applicable situations set out in Arts. 16 through 18;

f) cooperation with other supervisors.

(2) The coordination arrangement referred to in Para (1) may impose additional duties on the members of the college of supervisors, if necessary for the effective supervision of the group while not affecting the exercise by the college members of their individual supervisory duties.

(3) By way of exception from situations similar to those referred to in Art. 16(1), at the request of ASF or of other member, a joint decision appointing another coordinating supervisor may be taken within the college of supervisors, within maximum one year, where the application of the criteria would be inappropriate, taking into account:

a) the structure of the group;

b) the degree of significance of the activity of the

undertakings belonging to the group.

(4) ASF and the other supervisors shall appoint the coordinating supervisor no later than 3 months after the request referred to in Para (3), considered conciliation period, after consultation of the group concerned; where ASF or another supervisor requests the assistance of EIOPA, the appointment decision shall be adopted in line with the opinion given by EIOPA and it shall be deemed final.

(5) The decisions adopted by ASF in the college of supervisors shall be duly motivated and in line with the decisions issued by EIOPA; they shall be communicated to the college of supervisors and undertakings concerned.

(6) ASF shall convene the college as a matter of urgency whenever:

a) it finds a significant infringement of SCR or MCR by an undertaking;

b) it finds a significant infringement of SCR at group level, irrespective of the calculation method chosen, in accordance with Arts. 149 through 152;

c) an exceptional situation occurs.

(7) ASF may exercise specific activities within the college of supervisors together with a limited number of members.

Duties and powers of ASF as coordinating supervisor

Art. 16. – (1) ASF may be appointed coordinating supervisor, responsible for the coordination and exercise of the group supervision, in the following situations:

a) all member undertakings in the group are supervised by ASF;

b) the coordinating undertaking of the group is authorised by ASF;

c) the group is not coordinated by an insurer or reinsurer and:

(i) the undertaking the parent undertaking of which is an insurance holding company or mixed financial

holding is authorised by ASF;

(ii) at least two undertakings having their head office in Member States have as their parent undertaking the same insurance holding company or a mixed financial holding having its head office in Romania, and any of them is authorised by ASF;

(iii) is managed by at least two insurance holding companies or mixed financial holdings, one having its head office and owning an undertaking in Romania and the other one having its head office and owning an undertaking in another Member State, while the undertaking with the greatest value of total balance sheet is supervised by ASF;

(iv) at least two undertakings having their head offices in Member States have as their parent undertaking the same insurance holding company or mixed financial holding having their head offices in other Member States, while the undertaking with the greatest value of total balance sheet is authorised by ASF;

(v) it does not have a parent undertaking or the situations referred to in Points (i) through (iv) are not applicable, while the undertaking with the greatest value of total balance sheet is authorised by ASF.

(2) As the coordinating supervisor, ASF has the following duties and powers:

a) coordinates the collection and transmission of information relevant for both permanent supervision and emergency situations;

b) conducts the group supervision and assesses its financial situation;

c) assesses how the group complies with the provisions laid down in Title II, Chapter II and in Arts. 157 and 158;

d) assesses the group's system of governance in accordance with Art. 159 and how the members of the management of the participating undertaking or persons effectively directing the insurance holding company or mixed financial holding company comply with the professional competence and probity requirements set

out in Art. 27;

e) organises, at least annually, meetings of the college of supervisors to plan and coordinate both the permanent supervisory activity and, in emergency situations, taking into account the principle of proportionality in relation to the risks inherent in the business of all group entities;

f) adopts measures and decisions in accordance with the legal provisions;

g) coordinates the internal model validation process at group level as referred to in Art. 151;

h) coordinates the approval process of the application of the regime provided for in Art. 155;

i) develops, together with the members of the college of supervisors, coordination arrangements of its business;

j) requests the assistance of EIOPA where there are diverging views concerning the coordination arrangement of business and adopts the final decision in line with EIOPA's decision, while sending it to the other members of the college of supervisors;

k) transmits the significant information concerning the functioning of the college of supervisors to EIOPA;

l) other duties prescribed by law.

(3) If a decision is adopted within the college of supervisors in accordance with Art. 15(3), ASF shall send the duly motivated joint decision to the group.

(4) ASF shall send the decision adopted in accordance with Art.15(3) to the group and to the college of supervisors, taking into account the opinion issued by EIOPA, where its assistance is sought.

(5) ASF shall continue to exercise its duties as coordinating supervisor until the adoption of the joint decision provided for in Art. 15(3).

(6) ASF shall coordinate the college of supervisors, ensuring the cooperation, exchange of information and consultation among the members of the college, in line with Title II, to ensure convergence in decision and activities.

(7) Where a parent undertaking of the group has its head office situated in another Member State, ASF may request the supervisor of that undertaking the information necessary for the coordination of supervision; where the information provided for in Art. 18(8) and (9) has already been sent to another supervisor, then the request shall be addressed to such supervisor.

(8) ASF may, in accordance with the principle of proportionality, limit the group reporting with a frequency less than one year, or may exempt the undertakings within the group from reporting all indicators if they benefit from the limitations referred to in Art. 37(9) and (12).

(9) Where ASF receives from an undertaking and its related undertakings, or from the related undertakings of an insurance holding company or a mixed financial holding company, a request to approve the calculation of SCR aggregated at group level and SCR of the undertakings in the group based on the group internal model, ASF shall communicate that to the college of supervisors which shall decide on the approval or rejection of such request, and shall establish, where appropriate, the terms and conditions for approval.

(10) ASF shall, without delay, send the complete documentation related to the request referred to in Para (9), to the members of the college of supervisors.

(11) ASF shall examine, together with the other members of the college of supervisors, the documentation transmitted in accordance with Para (10), with a view to adopting a joint decision on the approval or rejection of the internal model, within 6 months from the date of submission of the complete documentation, which is considered a conciliation period.

(12) ASF shall adopt its own decision on the approval or rejection of the group internal model, and shall send such duly motivated decision to the applicant and to the other members of the supervisory college, taking into account:

a) the views and reservations of the other members of the college of supervisors, if no joint decision is

adopted in the college of supervisors within 6 months after receipt of the complete documentation;

b) the decision sent by EIOPA, when requested to render its assistance.

(13) Where the members of the college of supervisors request the assistance of EIOPA within the period referred to in Para (11), ASF shall adopt a decision on the approval or rejection of the internal model in line with EIOPA's decision or, in the absence of such decision, ASF shall adopt its own decision which shall be final.

(14) ASF shall send the reasoning of the proposed measures set out in Art. 151(3) and (4) to both the undertaking and college of supervisors.

(15) EIOPA may not be requested to render assistance as provided in Para (12) after the expiry of the six-month period or after the adoption of a joint decision in the college of supervisors.

(16) ASF shall postpone the adoption of a decision until it receives EIOPA's view requested in accordance with Letter b) of Para (12) which shall be taken into account when adopting its own decision; ASF shall duly motivate its decision and send it to the applicant and to the supervisory authority concerned. ASF's decision shall be deemed final.

(17) Before deciding on the situations set out in Art. 133(3), Letters b) and c) and Para (6), ASF shall consult the other members of the college of supervisors.

(18) Without prejudice to Art. 154(2), ASF shall verify, at least annually, on its own initiative or at the request of the direct supervisor of the subsidiary, how the parent undertaking fulfils, on an ongoing basis, the conditions set out in Letters b) through d) of Art. 154(1).

(19) After consulting the college of supervisors, ASF shall inform the direct supervisor of the subsidiary of the inefficacy of or failure to apply, within the period agreed, the plans set out in Art. 154(2) and (3) and that the requirements set out in Letters b) through d) of Art. 154(1) are no longer met.

(20) Where, after consulting the college of supervisors, ASF decides to exclude a subsidiary from the group supervision, then ASF shall forthwith communicate it to the direct supervisor of such subsidiary and to the parent undertaking of that subsidiary.

(21) ASF shall consult the group and college of supervisors:

a) to identify the types of risks included by the coordinating undertakings in the report provided for in Art. 157(2) and impose appropriate tolerance thresholds, based on SCR, technical provisions, or both;

b) to issue opinions in respect of the types of risks, taking into account the structure of the group and risk management system;

c) to identify the types of intra-group transactions which the undertakings must include in the report provided for in Art. 158(2).

(22) When reviewing the risk concentrations and intra-group transactions, ASF shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

(23) Before granting an agreement in accordance with Art. 159(5), ASF shall consult the members of the college of supervisors and duly take into account their views or reservations.

(24) ASF shall consult the college of supervisors and duly take into account their views or reservations given when reviewing the request of the participating undertaking, insurance holding company or mixed financial holding company on the approval of publication of a single report, in accordance with Art. 160.

(25) Where a group consists of insurance holding companies or mixed financial holding companies having their head office situated in the territory of Romania, ASF shall impose recovery measures where they:

a) do not fulfil the requirements set out in Title II,

Chapters II and III;

b) fulfil the requirements referred to in Letter a), but their solvency is jeopardised;

c) their financial situation is affected by intra-group transactions or risk concentrations.

(26) ASF shall inform the supervisors of the undertakings, insurance holding companies or mixed financial holding companies of the Member States where their head offices are situated that the requirements referred to in Para (25) are not fulfilled.

(27) Where the heads offices of the insurance holding company or mixed financial holding company are not situated in Romania, ASF shall send the information on the failure to fulfil the requirements referred to in Para (25) to the other supervisors of the college, so that they may take the necessary measures.

(28) Without prejudice to Para (29), ASF shall decide on the remedial measures imposed on insurance holding companies or mixed financial holding companies and, as appropriate, shall coordinate adoption of these measures within the college of supervisors.

(29) ASF shall impose sanctions on the insurance holding companies or mixed financial holding companies and on the persons effectively running the holdings concerned where they violate the legal provisions.

(30) In consultation with the college of supervisors and EIOPA, in line with the legal provisions and without prejudice to other decisions previously adopted at the European level in respect of third countries, except where the regime of the third countries or that shown in Chapter V is significantly changed, ASF shall verify:

a) the equivalence of the solvency regime of the third countries where the related undertakings of a participating undertaking are seated, on its own initiative or at the request of the participating undertaking, when Method 2, set out in Art. 150, is used to calculate the aggregated group SCR;

b) the equivalence of the solvency regime applied by the third country where the parent undertaking is seated, on its own initiative or at the request of the participating undertaking, or of the group undertakings seated in the Member States.

(31) Where there are no delegated acts issued by the European Commission on the equivalence of the supervisory regime of third countries, the provisions of Art. 162 shall apply.

(32) Where the supervisory regime of a third country is declared temporary equivalent by a delegated act issued by the European Commission, ASF shall rely on the supervision performed by the supervisor of that third country, except when the total value of the balance sheet of the group undertaking having its head office in Romania, is greater than that of the parent undertaking of the third country, in which case ASF shall assume the duties of coordinating supervisor.

(33) Where the parent undertaking referred to in Letter b) of Para (30) is the subsidiary of an undertaking, of an insurance holding company or mixed financial holding company of a third country, ASF shall verify, within the college of supervisors, the equivalence of the supervisory regime at the level of the ultimate parent undertaking, and in the absence of a decision on such equivalence, it shall verify the equivalence of the supervisory regime of the third country where a lower level parent undertaking is seated and shall apply the provisions of Para (34).

(34) If the supervisory regime of a third country is not declared equivalent, not even temporarily, or if ASF decides not to rely on the supervision performed by the supervisor of the third country in the situation referred to in Para (32), ASF shall determine the appropriate methods to achieve the objectives of supervision after consulting the members of the college of supervisors; ASF may request the formation of an insurance holding company or mixed financial holding company having its head office in a Member State and may apply to the group undertakings, coordinated by that holding company, the principles and methods of supervision applied to the groups the parent undertaking of which is

seated in the Member States, informing the other authorities and the European Commission of the methods concerned.

(35) Where the supervisory regime of the third country is declared equivalent by a delegated act issued by the European Commission, ASF shall rely on the group supervision performed by the third country authority, and cooperation shall be achieved in a way similar to that indicated in this section and Art. 19.

(36) ASF shall consult the supervisory authorities concerned and decide not to carry out the supervision of risk concentration referred to in Art. 157 or of intra-group transactions referred to in Art. 158 at the level of the participating undertaking, insurance holding company or mixed financial holding company seated in Member States, in the cases set out in Art. 133(3) Letters a) and b), where it is:

a) a related undertaking of a regulated entity or mixed financial holding company;

b) a regulated entity or mixed financial holding company additionally supervised in accordance with Government Emergency Ordinance No. 98/2006, approved as amended and supplemented by Law No. 152/2007, as subsequently amended and supplemented.

(37) Where a mixed financial holding company is subject to provisions equivalent to the provisions of this law and of Government Emergency Ordinance No. 98/2006, approved as amended and supplemented by Law No. 152/2007, as subsequently amended and supplemented, in particular in terms of risk based supervision, ASF, after consulting the National Bank of Romania, may apply to that mixed financial holding company only the provisions laid down in the same emergency ordinance.

(38) Where a mixed financial holding company is subject to provisions equivalent to the provisions of this law and of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, in particular in terms of risk based supervision, ASF, by mutual agreement with the National Bank of Romania,

may apply only the equivalent provisions of the legislation of the most important sector determined in accordance with Art. 3(2) Government Emergency Ordinance No. 98/2006, approved as amended and supplemented by Law No. 152/2007, as subsequently amended and supplemented.

(39) ASF shall inform EIOPA and the European Banking Authority of the decisions adopted under Paras (37) and (38).

(40) ASF shall send EIOPA and the supervisory authorities concerned information on groups in accordance with Art. 18(8) and (9), Art. 25(3) and Art. 39(1) through (3), in particular information on their legal structure, organisational structure and system of governance.

(41) In the period referred to in Art. 17(21), where there are diverging views, ASF or another member of the college of supervisors may consult, in which case the college of supervisors shall seek the opinion of EIOPA for one month; ASF and the other supervisors shall take into account the opinion given by EIOPA when adopting the joint decision accompanied by the entire reasoning and, possibly by additional explanations where such decision significantly deviates from EIOPA's opinion.

(42) The joint decision referred to in Para (41) shall be final and shall be applied by all authorities involved; where no joint decision was adopted during the time-limit referred to in Art. 17(21), ASF shall make its own decision.

(43) When making its own decision, ASF shall take adequate account of the opinions or reservations of the other supervisors and, where appropriate, of EIOPA's opinion; it shall be the final decision which shall be applied by all authorities involved, to whom ASF shall also communicate the entire reasoning of the decision and, if possible, additional explanations where such decision significantly deviates from EIOPA's opinion.

(44) EIOPA's opinion shall not be requested after the expiry of the time-limit referred to in Art. 17(21) or after a joint decision was adopted.

(45) ASF may request, whenever it considers it necessary, information on:

a) the transactions between the undertakings and the parent undertaking which is a mixed-activity insurance holding company;

b) the transactions between the undertakings and the related undertakings of that holding.

(46) ASF shall supervise and review the reporting procedures and systems set out in Art. 159(1) and (2).

(47) ASF shall inform the members of the college of supervisors of the situation referred to in Art. 137(2) with a view to taking adequate measures.

Duties and powers of ASF as member of the College of Supervisors

Art. 17. – (1) Where the coordinating supervisor fails to fulfil its duties or the other members of the college of supervisors do not adequate cooperate, ASF may request the assistance of EIOPA.

(2) ASF shall cooperate with the coordinating supervisor and with the other members of the college of supervisors to draw up the coordination arrangement of the college's activity.

(3) ASF may request the assistance of EIOPA where there are diverging views concerning the activity coordination arrangement within the college of supervisors.

(4) ASF shall cooperate on a systemic base with the coordinating supervisor, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

(5) Without prejudice to the provisions of Art. 154(2), ASF may request the coordinating supervisor to verify whether the parent undertaking meets the requirements set out in Letter b) through d) of Art. 154(1), where it considers that those requirements are no longer met.

(6) For achieving the supervisory objectives, ASF may request the coordinating undertaking of the group of which the undertaking exempt from group supervision is a part to provide information, in cases similar to those referred to in Letters b) and c) of Art. 133(3).

(7) At the request of the coordinating supervisor, ASF shall request the parent undertakings to provide information and shall send such information to the coordinating supervisor.

(8) If SCR is not met by a subsidiary applying a centralised risk management system, without prejudice to Art. 99, ASF shall without delay send the college of supervisors the recovery plan prepared and submitted by the subsidiary so that, within 6 months after the deficiency is found, it re-establishes the level of eligible own funds or modifies the risk profile, to remedy the situation. The College of supervisors shall approve the recovery plan within maximum 4 months from the date when the failure to meet SCR has been established.

(9) If the college of supervisors does not reach an agreement, ASF shall make its own decision concerning the recovery plan referred to in Para (8), taking into account the views and reservations of the other supervisors.

(10) Where ASF is notified, in accordance with Art. 98, of the deterioration of the financial situation of a subsidiary applying a centralised risk management system, it shall without delay inform the college of supervisors of the measures proposed for debate in the college, except for any emergency situations in which ASF deems that the financial situation cannot be restored and makes its own decision which shall not be debated in the college of supervisors. If no agreement is reached within the college within one month from its notification, ASF shall make its own decision concerning those measures, duly taking into account the views and reservations of the other members of the college of supervisors.

(11) Without prejudice to Art. 100, if MCR is not met by a subsidiary applying a centralised risk management system, ASF shall without delay send the college of supervisors the finance scheme submitted by the subsidiary, according to which, within 3 months of the date of the deficiency, it shall re-establish the level of eligible own funds or modify the risk profile, to remedy the situation; ASF shall also inform the college of supervisors of the measures adopted to impose MCR at

the level of the subsidiary.

(12) Where ASF considers that the report provided for in Art. 160 does not include significant information on the subsidiaries it authorised and whose financial situation requires comparison, then it shall request them to publish their own report.

(13) Where the undertakings belong to a group with no insurance holding company or mixed financial holding company, ASF shall require them to take all recovery measures in the situations laid down in Art. 16(25).

(14) ASF shall inform the undertakings' supervisors, insurance holding companies or mixed financial holding companies of the Member States in the territory of which they have their head office of the failure to comply with the situations provided for in Art. 16(25).

(15) Where ASF is informed by the coordinating supervisor that an undertaking is in any of the situations provided for in Art. 16(25), ASF shall take the measures necessary to remedy such situation.

(16) ASF shall decide on the remedial measures imposed on the insurance holding companies or mixed financial holding companies and shall participate in the adoption of those measures in the college of supervisors.

(17) Where ASF decides to apply other supervisory methods which allow for the proper supervision of the undertakings belonging to a group, other than those referred to in Art. 162(1), then it shall consult the other authorities involved and, after receiving the approval of the coordinating supervisor, inform the other authorities and the European Commission of those measures.

(18) Where the parent undertaking files a request concerning the application of the centralised risk management system, ASF shall:

a) analyse the request of the parent undertaking to be subject to Art. 155(1) through (3) and contribute to the works of the college of supervisors in accordance with the applicable provisions laid down in this section;

b) verify the extent to which the risk management system and the internal control mechanisms of the parent undertaking are adequate to enable a prudent management of the undertaking;

c) verify whether the parent undertaking complies with the provisions of Art. 154(1) Letters b) and c) on an ongoing basis.

(19) Where a supervisor of the college of supervisors, including ASF, concludes that the risk profile of the undertaking under supervision deviates significantly from the assumptions underlying the internal model, the college supervisors shall propose the imposition of the measures set out in Art. 155(1) through (3) in order to adopt a joint decision and establish the terms and conditions necessary for the application of such decision, considered final.

(20) Within one month from the proposal referred to in Para (19), ASF and the other members of the college of supervisors may request the assistance of EIOPA.

(21) If the college of supervisors receives a request for application of a centralised risk management system together with the complete documentation, ASF and the other members of the college shall cooperate for the adoption of a joint decision within 3 months, considered final.

(22) If the decision referred to in Para (21) is adopted, ASF shall send the fully reasoned decision to the applicant.

(23) Where the assistance of EIOPA referred to in Para (20) and Art. 11(5) is requested, ASF shall make its own decision in accordance with the decision issued by EIOPA, considered final and applied by the authorities involved.

Cooperation and exchange of information

Art. 18. – (1) In order to ensure a uniform volume information for all members of the college of supervisors and facilitate the supervisory tasks, ASF shall provide relevant information, as soon as it is available, or at the request of the members of the college, such as information about the actions of the

group, of other supervisors or data supplied by the group.

(2) Where ASF is the one requesting the information referred to in Para (1) and does not receive any reply within two weeks, ASF may request the assistance of EIOPA.

(3) Before making any significant decision, ASF shall consult the members of the college of supervisors, including where it receives information from other supervisors, if:

a) there are any changes in the organisational structure, shareholder structure or management structure, which require the approval of ASF;

b) it proposes the extension of the recovery period in accordance with Art. 99(3);

c) it proposes the application of significant sanctions or other exceptional measures, such as the imposition of a solvency capital add-on in accordance with the provisions of Art. 35, or limitation of the use of the internal model in accordance with Chapter V Section 4 Subsections 4.3 and 4.4.

(4) ASF may decide not to consult the members of the college of supervisors if by doing so it jeopardises the application of the decision adopted, or in emergency situations, and shall without delay inform them of that situation; in the situations set out in Letters b) and c) of Para (3), ASF shall always consult the group supervisor.

(5) ASF shall cooperate with the National Bank of Romania where the undertakings are directly or indirectly linked to credit institutions, investment firms or joint participating undertaking.

(6) The information exchanged under this article and, whenever necessary, in accordance with the national legislation on financial recovery, bankruptcy, dissolution and voluntary winding-up, shall be subject to Art. 19.

(7) Natural and legal persons and their related undertakings or participating undertakings shall exchange with ASF the information relevant for the

achievement of the objectives of supervision at group level.

(8) ASF shall have access to all information deemed necessary for the supervision, irrespective of the nature of the entity to which such information is requested, and the provisions of Art. 37 shall apply accordingly.

(9) ASF may address directly to the entities belonging to a group in order to obtain information if such information has already been requested from the undertakings subject to group supervision and was not sent within the timeframe required.

(10) ASF may verify in the territory of Romania, either through its own staff or delegated persons, the information referred to in Paras (7) through (9) at the premises of the following entities:

a) undertakings subject to group supervision;

b) related undertakings of the undertakings referred to in Letter a);

c) parent undertakings of the undertakings referred to in Letter a);

d) related undertakings of a parent undertaking referred to in Letter c).

(11) Where ASF considers necessary to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another Member State, then it shall ask the supervisor of that Member State:

a) to have the verification carried out by itself; or

b) to allow ASF to carry out the verification directly;

c) to allow ASF to participate in the verification carried out by that supervisor.

(12) ASF shall request the assistance of EIOPA, if:

a) it cannot participate in the verification referred to in Para (11);

b) the supervisor of that Member State does not act further to any of the requests referred to in Para (11) within two weeks.

(13) Where it receives a request from a supervisor of a

Member State to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in the territory of Romania, ASF, within the framework of its competences, and by informing the coordinating supervisor, may:

a) carry out the verification by itself, auditors or other experts;

b) allow that supervisory to carry out the verification;

c) allow that supervisor to participate in the verification carried out by ASF.

(14) In order to ensure the implementation of the measures adopted and sanctions imposed in situations similar to those set out in Art. 16(25), ASF shall cooperate with the supervisors involved in the supervision of an insurance holding company or mixed financial holding company, especially when the central administration or main establishment is not located at its head office.

SECTION 5

Professional secrecy

Professional secrecy

Art. 19. – (1) Persons who have been or are employed with ASF, auditors and experts mandated by ASF must observe the professional secrecy and may not disclose information received whilst performing their duties to any natural or legal person, except in summary or aggregate form, such that undertakings cannot be identified.

(2) Without prejudice to Para (1) the confidential information may be disclosed under the law to judicial bodies during court proceedings, insolvency proceedings, where these undertakings are declared insolvent or in liquidation process.

CHAPTER III

Authorisation process

General provisions

Art. 20. – (1) ASF shall authorise undertakings to pursue insurance and/or reinsurance business or extend their business to other insurance classes, not covered by the initial operation authorisation.

(2) Undertakings shall establish their registered office and head office in the territory of Romania and their name shall include, as appropriate, the words *societate de asigurare* [insurance], *asigurare-reasigurare* [insurance-reinsurance] or *reasigurare* [reinsurance undertaking], which may also be reproduced in other language customary in the insurance business.

(3) The authorisation for the insurance business shall be granted for any of the following:

a) life insurance;

b) non-life insurance.

(4) The authorisation for the reinsurance business shall be granted for any of the following activities:

a) non-life reinsurance;

b) life reinsurance;

c) composite reinsurance including both non-life reinsurance and life reinsurance.

(5) By way of exception from Para (3), insurers authorised to carry on life insurance may request that their authorisation be extended to cover the risks included in Classes 1 and 2 of Annexe No. 1 of Section A, and the insurers authorised only for these classes may request that their authorisation be extended to carry on life insurance.

(6) The authorisation obtained by undertakings in accordance with Para (1), subject to Art. 21, shall be valid in all Member States, including pursuing business under the right of establishment and the freedom to provide services, and shall be published by ASF in accordance with the publication policy established by its own regulations.

(7) In line with the provisions of Para (1), the authorisation shall be granted for the classes set out in

Annexe No. 1 Sections A and C or for certain risks of those classes. The risks in one class may be included in other classes only as ancillary risks, subject to the conditions of Paras (11) and (12).

(8) As far as non-life insurance is concerned, the authorisation may be granted also by the groups of classes listed in Section B of Annexe No. 1, and if the undertaking seeks authorisation for an insurance class also in the scheme of operations referred to in Art. 22 it shall include only certain risks of that class, and ASF may grant authorisation only for those risks.

(9) Where undertakings are granted authorisations for Class 18 listed in Section A of Annexe No. 1, they may pursue the assistance business provided for in Art. 4(2) and (3), without prejudice to Para (11) of this article.

(10) ASF shall analyse the request for authorisation taking into account:

a) the scheme of operations provided for in Art. 22;

b) the fulfilment of the authorisation conditions listed in Art. 21.

(11) Insurers which have obtained an authorisation for a principal risk belonging to one class or a group of classes as set out in Sections A and B of Annexe No. 1, may also insure risks included in another class as ancillary risks, except for risks of Classes 14, 15 and 17, without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:

a) they are connected with the principal risk;

b) they concern the object which is covered against the principal risk;

c) they are covered by the contract insuring the principal risk.

(12) The legal expenses insurance as set out in Class 17 in Section A of Annexe No. 1 may be regarded as a risk ancillary to class 18 of the same annexe, where the conditions laid down in Para (11) are fulfilled and the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

(13) ASF shall not grant an operation authorisation

where:

a) there exist close links between the undertaking and other natural or legal persons preventing the effective exercise of ASF's supervisory function;

b) there exist laws, regulations or administrative provisions of a third country governing the persons referred to in Letter a) with which the undertaking has close links, or difficulties involved in the enforcement of those measures, which are likely to prevent the effective exercise of its supervisory function.

(14) Where seeking authorisation for Class 18 set out in Section A of Annexe No. 1, ASF may verify, on the basis of documents, the following:

a) the necessary qualified staff;

b) the provision of adequate equipment.

(15) Undertakings shall issue only registered shares and the acts and operations whereby the identity of the owners of the shares is hidden from ASF shall be affected by nullity.

(16) The use of *societate de asigurare* [insurance], *asigurare-reasigurare* [insurance-reinsurance] or *reasigurare* [reinsurance undertaking] by legal persons which are not authorised by ASF shall be prohibited, except where such use is provided by law or international agreements.

Requirements to obtain the operation authorisation

Art. 21. – (1) To obtain the operation authorisation, the undertakings shall comply with the following conditions:

a) the insurers shall pursue only the insurance business or operations directly linked to it, to the exclusion of all other commercial business except as permitted by the national laws;

b) the reinsurers shall pursue exclusively the reinsurance business or related operations; that requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Art.2(1) Point 9 of Government Emergency Ordinance No. 98/2006, approved as

amended and supplemented by Law No. 152/2007, as subsequently amended;

c) to submit a scheme of operations drawn up in accordance with Art. 22;

d) to hold the eligible basic own funds to cover the absolute floor of MCR, provided for in Art. 95(1) Letter d);

e) to show evidence that it will be in a position to hold eligible own funds to cover SCR and MCR;

f) to show evidence that it will be in a position to comply with the system of governance referred to in Section 2 of Chapter IV,;

g) to communicate the name and address of all claims representatives appointed in the territory of the other Member States and other states towards which Romania has such obligation if the risks to be covered are classified in Class 10 of Section A of Annexe No. 1, other than carrier's liability;

h) to transmit the information necessary to prove on an ongoing basis that none of the situations set out in Art. 20(13) exist;

i) other conditions regulated by legal provisions.

(2) Undertakings shall transmit ASF, for approval, the identity of natural or legal person shareholders or members with qualifying holdings and the amount thereof.

(3) Insurers requesting ASF to extend their authorisation to other insurance class or other risks pertaining to a class already authorised shall submit:

a) a scheme of operations, in accordance with Art. 22;

b) proof that they possess the eligible own funds to cover the SCR and MCR.

(4) Where an insurer pursuing the classes set out in Section C of Annexe No.1 requests ASF, in accordance with Art. 20(5), to extend its authorisation to the risks listed in Classes 1 and 2 in Section A of Annexe No. 1, then it shall submit:

a) the proof that it possesses the eligible basic own funds to cover the absolute floor of the MCR for life

insurance and non-life insurance, provided for in Art. 95(1), Letter d);

b) the proof that the minimum financial obligations referred to in Art. 49(3) shall be fulfilled.

(5) The provisions of Para (4) shall also apply where an insurer covering also the risks listed in Classes 1 and 2 set out in Section A of Annexe No. 1 requests, in accordance with Art. 20 (5), the extension of its authorisation to the life insurance classes listed in Section C of Annexe No. 1.

(6) By way of exception from the provisions of Para (1) Letter a), insurers may also request, in accordance with the specific legislation, an authorisation to carry on the voluntary pension fund management activity.

Scheme of operations

Art. 22. – (1) The scheme of operations shall include particulars and evidence of the following:

a) the nature of the risks or commitments which undertakings propose to cover and assume;

b) the guiding principles as to reinsurance and to retrocession;

c) the kind of reinsurance contracts related to the portfolio of risks;

d) for reinsurers, the kind of reinsurance contracts they intend to make with ceding undertakings;

e) the basic own-fund items covering the absolute floor of MCR;

f) estimates of the costs of setting up the administrative services and the organisation for securing business and the financial resources intended to meet those costs;

g) if the risks to be covered are classified in Class 18 in Section A of Annexe No. 1, the resources necessary for the provision of the assistance.

(2) For the first 3 financial years the scheme shall include the following:

a) a forecast balance sheet and estimates of SCR and MCR;

b) calculation method used to derive those estimates under Letter a);

c) estimates of the financial resources intended to cover technical provisions, SCR and MCR;

d) in regard to non-life insurance and reinsurance:

(i) estimates of costs other than those under Para (1) Letter f), in particular current general expenses and commissions;

(ii) estimates of premiums or contributions, as appropriate, and claims;

e) in regard to life insurance, detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

Shareholders and associates with qualifying holdings

Art. 23. – (1) Within the meaning of Art. 21(2), in the case of the undertakings listed on the capital market, in the assessment process of the proposed acquisition, the voting rights of the significant shareholders shall be assessed in accordance with the provisions of the specific legislation of Romania.

(2) The voting rights or shares held by investment firms or credit institutions as a result of providing the underwriting of financial instruments and placing of financial instruments on a firm commitment basis shall not be taken into account, provided that:

a) they are not exercised or otherwise used to intervene in the management of the undertaking;

b) they are disposed of within one year of the acquisition.

Rejection of the request for operation authorisation

Art. 24. – (1) ASF shall refuse an operation authorisation if:

a) the conditions listed in Art. 21 are not fulfilled;

b) the information sent in accordance with Art. 21(2) indicates that the need to ensure a sound and prudent management is not satisfied as to the qualifications of the shareholders or associates.

(2) The decision to refuse the operation authorisation shall state full reasons and shall be notified to the undertakings by ASF.

(3) Where ASF refuses to grant the operation authorisation or, within 6 months from the date of request, it does not communicate any decision further to the request received, the undertakings may file a complaint with the Bucharest Court of Appeal, the Dispute Administrative and Fiscal Section.

CHAPTER IV

Pursuit of business

SECTION 1

General provisions

General provisions

Art. 25. – (1) The management of the undertakings shall be liable for compliance with all legal provisions in force.

(2) The management of the undertakings shall have the responsibilities set out in Letters a) through c) and, where they choose to use an internal model, also the responsibilities set out in Letters d) through f), as follows:

a) to coordinate the process to draw up written policies, approve and implement the same;

b) to approve the report on solvency and financial condition, published in accordance with Section 4;

c) to establish the actions and measures to be taken to streamline the activity, based on the findings and recommendations of the internal audit function;

d) to approve the submission to ASF's premises of the application to use an internal model, in accordance with the provisions of Art. 82 and of the application for approval of any subsequent major changes made to that model;

e) to order the putting in place of systems which ensure that the internal model operates properly on a continuous basis;

f) to ensure the ongoing appropriateness of the design and operations of the internal model so as to appropriately reflect the risk profile.

(3) Undertakings shall submit the changes to the documents based on which the operation authorisation was granted to ASF, including in the situations referred to in Art. 20(13) Letter a).

(4) Insurers shall establish and keep up a register of petitions received.

(5) Undertakings shall use the emblem, logo, acronym or other identification elements only in the official acts and contracts issued or in the advertising materials used by its own business units.

(6) Undertakings shall use the personal data of contracting parties, including their fiscal identification code, only for the management of contracts or handling of claims, in line with the national legislation on the processing of personal data and free movement of such data.

(7) Undertakings shall request the approval of ASF where they intend to cover risks or make commitments in third countries.

(8) ASF may issue recommendations on the pursuit of business by undertakings.

(9) The refusal to implement the recommendations referred to in Para (8) shall be documented and sent to ASF by the date indicated in those recommendations.

SECTION 2

System of governance

System of governance

Art. 26. – (1) Undertakings shall have in place a functional and effective system of governance which provides for sound and prudent management of the business, so that:

a) it is established in accordance with the principle of proportionality;

b) it includes an adequate transparent organisational structure with a clear allocation of responsibilities;

c) it is based on internal procedures for ensuring the effective transmission of information;

d) it is subject to regular internal review;

e) it is established in accordance with this section;

f) it is based on critical functions, at least in the actuarial, risk management, compliance and internal audit functions, deemed key functions.

(2) Undertakings shall draw up and apply written policies in relation to:

a) the risk management, including for the implementation criteria of the volatility adjustment where they seek ASF's approval in accordance with the provisions of Art. 166(1) Letter i);

b) internal control;

c) internal audit;

d) outsourcing, where relevant;

e) other written policies for the effective pursuit of business.

(3) The written policies referred to in Para (2) shall be reviewed at least annually, adjusted by reference to the significant changes in the system of governance and subject to the management's approval.

(4) Undertakings shall take all reasonable steps to ensure business continuity, as follows:

a) to draw up emergency plans;

b) to use adequate and proportional systems, resources and procedures;

c) to identify emerging risks which may affect their financial soundness;

d) to optimise and consolidate the system of governance, to ensure compliance with the requirements of this section on an ongoing basis.

(5) Undertakings shall provide ASF with the

information referred to in Paras (1) through (4), so that it could assess the system of governance and verify to what extent the requirements laid down in this section are met.

(6) ASF may issue recommendations on the manner of fulfilment of the requirements laid down in this section and on the manner of implementation of the written policies adopted.

(7) The refusal to implement the recommendations referred to in Para (6) shall be documented and sent to ASF by the date indicated in those recommendations.

Professional competence and Fit and proper requirements

Art. 27. – (1) Undertakings shall ensure that all persons who effectively run the undertaking or have other key or critical functions at all times fulfil the following requirements:

a) professional competence: their professional qualifications, knowledge and experience are adequate to enable sound and prudent management;

b) probity: they are of good repute and integrity.

(2) Undertakings shall request ASF to approve the persons appointed to manage the undertaking.

(3) Undertakings shall notify ASF if any of the persons referred to in Para (1) has been replaced and shall send the information needed to assess whether any new persons appointed to manage the undertaking meet the professional competence and probity requirements (fit and proper).

(4) Undertakings shall notify ASF if any of the persons referred to in Para (1) has been replaced because that person no longer meets the professional competence and probity requirements (fit and proper).

(5) ASF shall require the persons referred to in Para (1), Romanian citizens, proof of probity, proof of no previous bankruptcy evidenced by the production of their criminal and tax record certificate.

(6) In the case of citizens residing in the other Member States, the proof referred to in Para (5) may be replaced by any of the following documents:

a) extract from the criminal record certificate;

b) an equivalent document issued by a competent judicial or administrative authority in the Member State or the home Member State from which that person comes;

c) declaration on oath or solemn declaration made before an authority or a notary, attested by a certificate;

d) declaration on oath or solemn declaration made before an association, professional or trade body in the Member State concerned.

(7) The documents referred to in Para (6) shall be submitted to ASF within 3 months after their date of issue.

Risk management

Art. 28. – (1) Undertakings shall have in place an effective risk-management system, as an important tool in the decision-making process, so as:

a) to comprise strategies, processes and reporting procedures;

b) to facilitate the identification, assessment, monitoring, management and reporting, on a continuous basis, of the risks to which they are or could be exposed, and their interdependencies;

c) to be well integrated into the organisational structure;

d) to have in place well defined standards for the persons who effectively run the undertaking or have other key or critical functions.

(2) The risk-management system shall cover the risks to be included in the calculation of SCR, as well as the risks which are partially included in or excluded from that calculation and shall cover the following areas:

a) underwriting and reserving;

b) asset–liability management;

c) investment, in particular derivatives and similar commitments;

d) liquidity and concentration risk management;

e) operational risk management;

f) reinsurance and other risk-mitigation techniques.

(3) Undertakings shall draw up written policies comprising procedures on the risk management of all activities referred to in Para (2), and for the investment risk shall demonstrate that they comply with the *prudent person* principle provided for in Art. 97.

(4) Undertakings shall provide for a risk-management function which shall be structured in such a way as to facilitate the implementation of the risk-management system.

(5) Where the undertakings apply the matching adjustment referred to in Art. 55(2) through (6) or the volatility adjustment referred to in Art. 55(8) through (16), they shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

(6) As regards asset-liability management, undertakings shall regularly assess:

a) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in Art. 55(1);

b) where the matching adjustment referred to in Art. 55(2) through (6) is applied:

(i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in Art. 55(6) Letter b), and the possible effect of a forced sale of assets on their eligible own funds;

(ii) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;

(iii) the impact of a reduction of the matching adjustment to zero;

c) where the volatility adjustment referred to in Art. 55(8) through (16) is applied:

(i) the sensitivity of their technical provisions and

eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds;

(ii) the impact of a reduction of the volatility adjustment to zero.

(7) Where external credit assessments are considered for the calculation of technical provisions and SCR, the undertakings shall assess their adequacy by undertaking additional assessments whenever possible.

(8) For undertakings using an internal model, approved in accordance with Arts. 82 and 83, the risk-management function shall cover the following tasks:

a) to design and implement the internal model;

b) to test and validate the internal model;

c) to document the internal model and any changes made to it subsequent to the approval;

d) to analyse the performance of the internal model and to produce summary reports thereof;

e) to inform the management about the performance of the internal model, suggesting areas needing improvement and on the manner to remedy the previously identified weaknesses.

Own risk and solvency assessment

Art. 29. – (1) As part of its risk-management system, the undertakings shall conduct their own risk and solvency assessment, hereinafter referred to as *ORSA*. That assessment shall include at least the following:

a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

b) the compliance, on a continuous basis, with SCR, MCR and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2;

c) the significance with which the risk profile deviates from the assumptions underlying SCR.

(2) For the purposes of Para (1) Letter a), the undertakings shall have in place processes to identify and assess, through documented methods, the known or potential risks, in compliance with the principle of

proportionality.

(3) Undertakings shall assess whether SCR and MCR are met, both when the chosen method is, and when it is not, considered, if any of the following methods is applied:

a) the matching adjustment referred to in Art. 55(2) through (6);

b) the volatility adjustment referred to in Art. 55(8) through (16);

c) the transitional measures referred to in Arts. 167 and 168.

(4) When an internal model is used, the assessment in accordance with Para (1) Letter c) shall be performed together with the recalibration that transforms the numbers calculated by the internal model into the SCR risk measure and calibration.

(5) ORSA shall be performed regularly, at least annually, and whenever the risk profile is significantly changed, and its results shall be part of the business strategy and represent an important tool in the decision-making process.

(6) ORSA shall not serve to calculate a capital requirement.

Internal control

Art. 30. – (1) Undertakings shall have in place an internal control system which shall include:

a) the internal control framework;

b) the compliance function;

c) the administrative and accounting procedures;

d) reporting arrangements at all levels.

(2) The compliance function referred to in Para (1) Letter b) shall include:

a) advising the management on compliance with the legal provisions;

b) identifying and assessing the non-compliance risk;

c) assessing the possible impact of any changes in the legal environment on the operations of the undertaking

concerned.

Internal audit

Art. 31. – Undertakings shall provide an internal audit function, objective and independent from the operational functions, to:

a) evaluate the adequacy and effectiveness of the internal control system and other elements of the system of governance;

b) to report any findings and recommendations to the management;

c) to monitor the performance of the actions established by the management further to the findings and recommendations reported.

Actuarial function

Art. 32. – (1) Undertakings shall provide an actuarial function to:

a) coordinate the calculation of technical provisions by:

(i) using appropriate methodologies, models and assumptions;

(ii) assessing the appropriateness of the data used in terms of quantity and quality;

(iii) overseeing the calculation of the technical provisions in accordance with Art. 59(2);

b) compare best estimates against previous results;

c) informing the management of the reliability and adequacy of the calculation of technical provisions;

d) expressing an opinion on the overall underwriting policy and adequacy of reinsurance contracts;

e) efficiently implementing the risk management system referred to in Art. 28, in particular with respect to the risk modelling underlying the calculation of SCR, MCR and ORSA.

(2) The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics and relevant experience with applicable professional and other standards.

Outsourcing

Art. 33. – (1) Undertakings remain fully responsible for compliance with the legal provisions when they outsource activities or functions.

(2) Outsourcing of critical or important operational functions or activities shall not be undertaken in such a way as to lead to any of the following:

a) materially impairing the quality of the system of governance;

b) unduly increasing the operational risk;

c) impairing the ability of ASF to monitor the compliance of the undertaking with its obligations;

d) undermining continuous and satisfactory service to contracting parties.

(3) Undertakings shall notify ASF of their intention to outsource critical or important functions and of any significant developments with respect to those functions or activities.

SECTION 3

Supervisory review process

Principles

Art. 34. – (1) ASF shall review and assess on an ongoing basis the written policies, processes and reporting procedures provided by undertakings in accordance with the legal provisions.

(2) ASF shall review and assess whether undertakings meet the requirements concerning:

a) the system of governance;

b) the manner in which ORSA is conducted and its results used;

c) the undertakings' ability to assess risks taking into account the environment in which they are operating;

d) the known or potential risks;

e) the technical provisions laid down in Section 2 of Chapter V;

f) SCR and MCR;

g) investments, in accordance with Art. 97;

h) the quality and quantity of own funds as set out in Section 3 of Chapter V;

i) the internal model as set out in Subsection 4.3 of Section 4, Chapter V;

j) the manner in which non-life and life insurance are managed separately, in accordance with Art. 49;

k) other elements established by law.

(3) As part of the supervisory review process, ASF shall request undertakings to remedy deteriorating financial conditions and take all measures necessary to remedy any other deficiencies.

(4) ASF shall assess the adequacy of the methods and practices of undertakings designed to identify possible events or changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned; ASF shall also assess the ability of the undertakings to withstand those possible events or changes.

(5) ASF shall establish the frequency and granularity of the analyses and assessment referred to in Paras (1), (2) and (4), taking into account the principle of proportionality.

Solvency capital add-on

Art. 35. – (1) Following the supervisory review process, ASF may impose and set a solvency capital add-on by a decision stating the reasons, only in the following situations:

a) the risk profile deviates significantly from the assumptions underlying SCR, as calculated using the standard formula in accordance with Chapter V, Section 4, Subsection 4.2, and the use of a partial or full internal model, imposed by ASF in accordance with Art. 87, is inappropriate or has been ineffective;

b) when the undertaking develops an internal model, imposed by ASF, in accordance with Art. 87;

c) the risk profile deviates significantly from the assumptions underlying SCR, as calculated using an

internal model, in accordance with Chapter V, Section 4, Subsection 4.3, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

d) the system of governance deviates significantly from the requirements laid down in Chapter IV, Section 2, and those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe;

e) the undertakings apply the matching adjustment referred to in Art. 55(2) through (6), the volatility adjustment referred to in Art. 55(8) through (16) or the transitional measures referred to in Arts. 167 and 168 and the risk profile deviates significantly from the assumptions underlying them.

(2) The solvency capital add-on shall be calculated in such a way as:

a) to ensure that the undertakings comply with the provisions of Art. 72(2) through (4), in the cases referred to in Para (1) Letters a) through c);

b) to be proportionate to the material risks arising from the deficiencies identified, in the case referred to in Para (1), Letter d);

c) to be proportionate to the material risks arising from deviations, in the case referred to in Para (1) Letter e).

(3) In the cases set out in Para (1), Letters c) and d), ASF shall supervise the manner in which the undertakings remedy the deficiencies which led to the imposition of the solvency capital add-on.

(4) Where ASF imposes a solvency capital add-on as set out in Para. (1), it shall verify at least once a year whether the undertakings have remedied the deficiencies and shall take the measures necessary to remove the same, where appropriate.

(5) SCR including the capital add-on imposed in accordance with Paras (1) and (2) shall replace the

inadequate SCR.

(6) Without prejudice to Para (5), the solvency capital add-on imposed in the case referred to in Para (1) Letter d) shall not be included in SCR, for the purposes of the calculation of the risk margin referred to in Art. 54(6).

Outsourced functions and activities

Art. 36. – Undertakings which outsource functions or activities in accordance with the provisions of Art. 33 shall impose upon the service provider the following conditions:

a) to cooperate with ASF;

b) to provide the undertakings, their auditors and ASF effective access to data related to the outsourced function or activity;

c) to provide ASF access to the business premises;

d) to create the conditions necessary for the exercise of ASF's duties.

Transmission of information by ASF within the supervisory review process

Art. 37. – (1) Undertakings shall provide ASF with the information required to conduct the supervisory review process described in this section, based on which the following activities shall be carried on:

a) assessment of the:

(i) system of governance in place;

(ii) activities carried on;

(iii) assessment principles applied in connection with the solvency;

(iv) risks and risk management system;

(v) capital structure, needs and management;

b) adoption of proper decisions, as a result of the supervisory review process.

(2) Undertakings shall send ASF, on an annual basis, the assessments referred to in Art. 28(6), including an ORSA report.

(3) Where the change to zero of the matching or

volatility adjustment leads to non-compliance with SCR, undertakings shall send ASF the review of the measures adopted to re-establish the level of eligible own funds covering SCR or to reduce the risk profile so as to ensure again compliance with SCR.

(4) ASF shall establish the nature, granularity and format of the information referred to in Para (1) which undertakings shall submit:

a) at predefined periods;

b) if predefined events occur;

c) during performance by ASF of assessments of the undertakings' financial stability.

(5) ASF shall require information regarding contracts concluded with intermediaries or third parties; also, ASF shall require external experts, such as auditors or actuaries, to provide information necessary for the supervisory review process; transmission of information shall not constitute a breach of the professional secrecy imposed by contractual clauses or provisions of the national legislation and shall not incur the liability of the audit firms or members of the audit team.

(6) The information referred to in Paras (1) through (5) shall comprise:

a) quantitative and qualitative elements;

b) historic, current or prospective elements;

c) data from internal or external sources;

d) any appropriate combination of the elements and data referred to in Letters a) through c).

(7) The information referred to in Paras (1) through (5):

a) reflects the principle of proportionality applied to the business carried on, in particular the risks inherent in that business;

b) is complete in all material aspects, comparable and consistent over time;

c) is provided in an accessible format;

d) is comprehensible and relevant.

(8) To fulfil the requirements laid down in Paras (1) and (4) through (7), the undertakings shall have in place written policies, systems and structures ensuring the ongoing appropriateness of the information submitted to ASF.

(9) Without prejudice to Art. 96, where the interval for transmission of information is less than one year, ASF may limit their granularity, provided that:

a) the transmission process of the information is onerous, subject to the conditions referred to in Para (13);

b) that information is included in the annual reporting.

(10) ASF may limit transmission of information or exempt undertakings from sending all reporting indicators, where:

a) the transmission process of the information is onerous, subject to the conditions referred to in Para (13);

b) the transmission of the information shall not reduce the efficacy of the supervisory review process;

c) the exemption shall not harm the stability of the financial systems at the level of the Member States;

d) the information concerned may be sent ad-hoc.

(11) The provisions of Paras (9) and (10) shall not apply to the undertakings belonging to a group unless they demonstrate that the transmission of information at intervals shorter than one year is ineffective by reference to the principle of proportionality applied to the risks of the group business.

(12) The limitations and exemptions referred to in Paras (9) and (10) shall be granted, in ascending order, to the undertakings accounting for up to 20% of the non-life insurance market share, as calculated on the basis of GWP, and up to 20% of the life insurance market share, as calculated on the basis of gross technical provisions.

(13) ASF shall assess whether the transmission process of information is onerous by reference to the principle of proportionality, taking into account:

a) the volume of premiums, technical provisions and assets;

b) the volatility of damages and benefits covered by the undertaking;

c) the market risk arising from investments;

d) the level of risk concentration;

e) the total number of authorised life and non-life insurance classes;

f) any possible effects of the asset management on the financial stability;

g) the elements referred to in Para (8);

h) the appropriateness of the system of governance;

i) the level of own funds covering SCR and MCR;

j) the fact that they are captive undertakings;

k) other aspects provided by law.

Transfer of portfolio

Art. 38. – (1) ASF shall approve the full or partial transfer of the undertakings' portfolio of contracts, concluded either under the right of establishment or the freedom to provide services, to accepting undertakings with head offices within the territory of Romania only if, after taking the transfer into account, those undertakings possess the necessary eligible own funds to cover SCR.

(2) ASF shall approve the full or partial transfer of the undertakings' portfolio of contracts, concluded either under the right of establishment or the freedom to provide services, to accepting undertakings with head offices within the territory of other Member States.

(3) The transfer of portfolio referred to in Para (2) shall be approved by ASF only if:

a) the supervisor of the Member State certifies that, after taking the transfer into account, the accepting undertakings possess the necessary eligible own funds to cover SCR;

b) the supervisors of the Member States of the branches of the transferring undertakings or of the

Member States where the undertakings pursue business under the freedom to provide services giver their consent for that transfer.

(4) At the request of any supervisor of a Member State, in the case of a full or partial transfer of portfolio of contracts, concluded either under the right of establishment or the freedom to provide services, of a transferring undertaking with its head office within the Member State, or an accepting undertaking established in the territory of Romania, ASF shall, within 3 months:

a) certify that, after taking the transfer into account, the accepting undertaking possesses or not the necessary eligible own funds to cover SCR, unless it is in any of the situations referred to in Art. 99(2) and (3) and Art. 100(2);

b) gives its consent or not that the transfer includes the portfolio of the branches established in the territory of Romania or the contracts concluded by the transferring undertakings in Romania under the freedom to provide services.

(5) The transfer of portfolio approved by this article shall be notified by the accepting undertaking to the contracting parties and other persons with rights and obligations arising from the contracts transferred within the timeframe set by the decision approving the transfer of portfolio. The contracting parties shall have the right to unilaterally terminate the contracts, and request the return of premiums paid in advance and corresponding to the period of validity not expired.

SECTION 4

Report on solvency and financial condition

Contents

Art. 39. – (1) Taking into account the provisions of Art. 37(6) and (7), undertakings shall disclose publicly, on an annual basis, a report on their solvency and financial condition, which shall include information either in full or by way of reference to equivalent information disclosed publicly under other legal

requirements.

(2) The report referred to in Para (1) shall contain the following information:

a) the business and the performance of the undertaking;

b) the system of governance and an assessment of its adequacy for the risk profile of the undertaking;

c) the sensitivity and risk exposure, mitigation and concentration, separately for each category of risk;

d) the bases and methods used for the valuation of assets, technical provisions, and other liabilities, separately for each of them, together with an explanation of any material differences between these bases, methods and main assumptions and those used for their valuation in financial statements;

e) the capital management, including at least the following:

(i) the structure and amount of own funds, and their quality;

(ii) the amounts of SCR and MCR;

(iii) the main differences between the underlying assumptions of the standard formula and those of any internal model used for the calculation of SCR;

(iv) the amount of any non-compliance with SCR and the amount of any non-compliance with MCR during the reporting period, even if subsequently resolved.

(3) The data referred to in Para (2), Letter e), Point (iv) shall include explanations of any causes and consequences of the non-compliance with SCR and MCR, and any remedial measures taken.

(4) Where the matching adjustment is applied in accordance with Art. 55(2) through (6), the information referred to in Para (2), Letter d) shall include:

a) a description of the matching adjustment;

b) the portfolio of obligations and assigned assets to which the matching adjustment is applied;

c) a quantification of the impact of a change to zero of the matching adjustment on that undertaking's financial

position.

(5) Where the volatility adjustment is applied in accordance with Art. 55(8) through (16), the information referred to in Para (2), Letter d) shall include:

a) a statement on its use;

b) a quantification of the impact of a change to zero of the volatility adjustment on that undertaking's financial position.

(6) The information referred to in Para (2), Letter e), Point (i) shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

(7) The information on SCR and MCR referred to in Para (2), Letter e), Point (ii) shall show separately:

a) the amount calculated in accordance with the standard formula or internal model;

b) any solvency capital add-on, where appropriate;

c) the impact of the specific parameters the undertaking is required to use by ASF's decision issued in accordance with Art. 81, together with concise information on its justification by ASF.

(8) The information on SCR shall be accompanied, where applicable, by an indication that its final amount is still subject to assessment by ASF.

Applicable principles

Art. 40. – (1) ASF shall permit undertakings not to publicly disclose certain information, except as provided for in Art. 39(2), Letter e), where:

a) the disclosure of such information would breach the principle of competition;

b) there are obligations to contracting parties or other counterparty relationships binding an undertaking to confidentiality.

(2) ASF shall permit undertakings to refer to public disclosures made under other legal requirements, to the

extent that those disclosures are equivalent to the information required under Art. 39, in both their nature and granularity.

(3) Where non-disclosure of information is permitted by ASF in accordance with Para (1), undertakings shall make a statement to this effect in their report and shall state the reasons.

Updates to the report and additional information

Art. 41. – (1) Undertakings shall disclose additional information concerning the nature and effects of the major changes affecting the relevance of the information disclosed in accordance with Arts. 39 and 40.

(2) For the purposes of Para (1), any of the following shall be regarded as *major changes*:

a) non-compliance with MCR, and ASF either considers that the undertaking will not be able to submit a realistic short-term finance scheme or the undertaking does not submit such a scheme within one month of the date when non-compliance with MCR was observed;

b) significant non-compliance with SCR is observed and the undertaking fails to submit a realistic recovery plan to ASF within two months of the date when non-compliance with SCR was observed.

(3) In the situations referred to in Para (2), the undertaking shall immediately disclose:

a) the amount of non-compliance with SCR, together with an explanation of its origin and consequences;

b) the amount of non-compliance with MCR, together with an explanation of its origin and consequences;

c) any remedial measures taken.

(4) If the deficiency referred to in Para (2), Letter a), is not remedied within 3 months, and that referred to in Para (2), Letter b) within 6 months, and the plans are ineffective at the end of those periods, the undertakings shall disclose it, including any remedial measures planned.

(5) In addition to the requirements laid down in Arts.

39 and 40, undertakings may also disclose any information related to their solvency and financial condition.

Policy and approval

Art. 42. – (1) Undertakings shall have appropriate systems and structures in place to fulfil the requirements laid down in Arts. 39 through 41 and shall adopt strategies ensuring the ongoing appropriateness of such information.

(2) The solvency and financial condition report shall be published only after the approval of the undertakings' management.

SECTION 5

Qualifying holdings

Acquisitions

Art. 43. – (1) Any proposed acquirer shall send ASF the proposed acquisition drawn up in accordance with the legal provisions, indicating the size of the intended holding.

(2) Any shareholder who has taken a decision to dispose, directly or indirectly, of a qualifying holding, shall notify ASF of its decision, indicating the size of the holding after the indented disposal.

(3) The notification referred to in Para (2) shall also apply whether the shareholders reduce their qualifying holding so that:

a) the voting rights or the capital held falls below 20%, 33% or 50%;

b) the undertaking would cease to be a subsidiary thereof.

Assessment period

Art. 44. – (1) ASF shall, within two working days, acknowledge receipt of the proposed acquisition or of the information referred to in Paras (2) and (3) to the proposed acquirer, indicating the date of expiry of the assessment period of the proposed acquisition.

(2) ASF may, during the assessment period, and no later than on the fiftieth working day of the assessment period, request the proposed acquirer to provide, within maximum 20 working days, any documents and information that are necessary to complete the assessment of the proposed acquisition.

(3) For the period between the date of request for further information referred to in Para (2) and the receipt thereof, the assessment period shall be interrupted; any further requests shall not result in an interruption of the assessment period.

(4) The interruption may be extended up to 30 working days if the proposed acquirer is situated or regulated in a third country or is not supervised by a competent authority in the financial field of a Member State.

(5) The decision approving the proposed acquisition issued by ASF may fix a period for concluding it which may be extended by ASF where appropriate.

(6) If ASF, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days of its adoption, inform the proposed acquirer in writing stating the reasons; ASF shall publish its decision where it considers this necessary.

(7) The proposed acquisition shall be deemed to be approved if ASF does not send the decision referred to in Para (6) to the proposed acquirer within the assessment period.

Assessment

Art. 45. – (1) ASF shall appraise the impact of the proposed acquirer on the sound and prudent management of the undertaking in which an acquisition is proposed, against all of the following criteria:

a) the probity of the proposed acquirer;

b) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the undertaking in which the acquisition is proposed;

c) the probity and professional experience of any

person who will direct the business of the undertaking as a result of the proposed acquisition;

d) whether the undertaking will be able to comply with the legal provisions and national legislation on the supplementary supervision of insurance groups and financial conglomerates in accordance with Government Emergency Ordinance No. 98/2006, approved as amended and supplemented by Law No. 152/2007, as subsequently amended and supplemented;

e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof, within the meaning of Law No. 656/2002 on the prevention and sanctioning of money laundering, and taking measures to prevent and combat terrorist financing, republished, as subsequently amended.

(2) ASF may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in Para (1), or if the information provided by the proposed acquirer is incomplete.

(3) The proposed acquisition shall be drawn up in accordance with the list specifying the information that is necessary to carry out the assessment, disclosed by ASF on its website in accordance with Art. 8(2), Letter a); such information is relevant and proportionate to the nature of the proposed acquirer and the proposed acquisition, and shall be sent to ASF together with the notification in accordance with Art. 43.

(4) Notwithstanding Art. 44(1) through (4), ASF shall assess the proposed acquisitions of several proposed acquirers for the same undertaking in a non-discriminatory manner.

(5) During the assessment period of the proposed acquisition, in the case of the undertakings listed on the capital market, the voting rights of the shareholders shall be assessed in accordance with the provisions of the specific legislation of Romania.

Acquisitions by regulated financial entities

Art. 46. – The decision issued by ASF on a proposed acquisition in the cases provided for in Art. 10(10) shall indicate any views or reservations expressed by the supervisory authority responsible for the proposed acquirer.

Transmission of information by undertakings

Art. 47. – (1) Undertakings shall inform ASF of any acquisitions or disposals of holdings in its capital that cause a change in the holdings thresholds of 20%, 33% or 50% of shareholders or associates.

(2) Undertakings shall at least once a year inform ASF of:

a) the identity of the shareholders or members possessing qualifying holdings;

b) the sizes of such holdings as shown by:

(i) the shareholder register;

(ii) the specific legislation applicable to the undertakings listed on the capital market.

Measures adopted by ASF

Art. 48. – ASF shall take the measures laid down in Art. 163(6), (7), (9) and (10), second sentence, where it considers that the influence exercised by the persons referred to in Art.43 is likely to operate against the sound and prudent management of an undertaking, or if they do not send the proposed acquisition to ASF or fail to inform ASF of their decision to acquire or dispose.

SECTION 6

Pursuit of life and non-life insurance activity

Separation of business management

Art. 49. – (1) The insurers authorised further to the request referred to in Art. 20(5) shall:

a) manage separately the non-life and life insurance business, so that the rights of the contracting parties are respected;

b) organise and keep separate accounting records for

the two insurance categories;

c) capture directly the assets and liabilities, income and expenses, by the two insurance categories;

d) use substantiated allocation keys, in compliance with the applicable specific legislation, for the assets and liabilities, income and expenses, which may not be directly captured;

e) have in place procedures, approved by the management, on the apportionment of assets and liabilities, income and expenses, and the principles serving as the basis for determining the allocation keys for those items which may not be directly apportioned;

f) have the allocation keys approved by the management sent and approved by ASF, and shall maintain the same at least for a financial year.

(2) Without prejudice to Art. 72(1) and Art. 95(1), the insurers referred to in Para (1) shall calculate, based on separate accounts:

a) a notional life MCR in respect of the life activity;

b) a notional non-life MCR in respect of the non-life activity.

(3) The insurers referred to in Para (1) shall cover the notional MCR referred to in Para (2) by basic own-fund items and may not use basic own-fund items in respect of an activity to cover MCR of another activity.

(4) The insurers referred to in Para (1) may use items of the excess of eligible funds in respect of an activity to cover SCR of the other activity, subject to the following conditions:

a) notional MCR are complied with;

b) requests ASF’s approval for that purpose.

(5) On the basis of the accounting records, the insurers referred to in Para (1) shall determine the items which shall be classified, for each notional MCR, into tier 1 and tier 2 basic own funds, in accordance with Art. 71(4).

(6) If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover such notional MCR, ASF shall apply measures to

remedy the deficient activity, in accordance with the legal provisions, whatever the results in the other activity, as if that activity had been carried on by a separate entity.

Specific provisions

Art. 50. – (1) The insurers authorised further to the request provided for in Art. 20(5) shall comply with the accounting regulations governing life insurance, for all of their activities.

(2) Where non-life insurers have financial, commercial or administrative links with life insurance insurers, then no contracts or other arrangements having an adverse impact on their financial condition shall be concluded between those insurers.

SECTION 7

External auditors

Duties of external auditors

Art. 51. – (1) Undertakings shall submit their financial statements or consolidated financial statements to a statutory audit conducted by financial audit firms, members of the Chamber of Financial Auditors of Romania, subject to FS's consent.

(2) ASF may require undertakings that an audit be conducted for purposes other than that referred to in Para (1) and may establish the standards applicable in such situation.

(3) Financial audit firms shall have adequate experience and independence, and their employees shall meet the requirements laid down in Art. 27.

(4) The auditing team referred to in Para (1) shall consist of at least one actuary who must meet the requirements laid down in Art. 32(2) and shall not have an agreement concluded with another undertaking or entity belonging to the same group as the audited undertaking.

(5) During the statutory audit engagement of the undertakings, the auditing team must report to ASF any

material fact which is liable to bring about any of the following:

a) breach by the undertakings of the legal provisions concerning the authorisation and operation conditions of the activity;

b) any discontinuity risks in the pursuit of the activity;

c) impairment of their financial situation;

d) issuance of a qualified opinion in the financial statements or refusal to issue an opinion;

e) non-compliance with SCR;

f) non-compliance with MCR.

(6) The financial auditors shall report to ASF any facts concerning the audited undertaking of which they have become aware in the course of carrying out a task in an entity which has close links with an undertaking where the statutory audit is conducted, at the request of ASF or at the time such aspects are found.

(7) The information referred to in Paras (5) and (6) shall be sent to the financial auditors and to the management of the audited undertakings, unless there are grounded reasons compelling them not to do so.

(8) The disclosure of the information referred to in Paras (5) and (6) shall not constitute a breach of the professional secrecy imposed by contract or by any provisions of the national legislation and shall not involve the audit firms or the members of the auditing team in liability of any kind.

(9) ASF may request from the auditing team any details, clarification or explanations concerning the financial statements of the audited undertakings or the audit activity, and the documents drawn up by it where the clarification is insufficient

(10) ASF shall inform the Chamber of Financial Auditors of Romania of the financial auditors' failure to comply with the provisions of Paras (5) and (6) in order to take any measures required to remedy the situation.

CHAPTER V

Solvency

SECTION 1

Valuation of assets and liabilities

Valuation of assets and liabilities

Art. 52. – Undertakings shall value assets and liabilities as follows:

a) assets shall be valued at the amount for which they could be exchanged between counterparties in an arm's length transaction;

b) liabilities shall be valued at the amount for which they could be transferred, or settled, between counterparties in an arm's length transaction; when valuing liabilities, no adjustment to take account of the credit deterioration shall be made.

SECTION 2

Technical provisions

General provisions

Art. 53. – (1) Undertakings shall establish technical provisions to cover all of their obligations towards contracting parties and beneficiaries of contracts.

(2) The value of technical provisions shall correspond to the current amount undertakings would have to pay to other undertakings if they were to transfer their obligations to those undertakings.

(3) Technical provisions shall be calculated in a prudent, reliable and objective manner and shall make use of the information provided by the financial markets and generally available data on underwriting risks, in line with a realistic approach.

(4) Undertakings shall calculate the technical provisions in accordance with Art. 54, in compliance with the conditions laid down in Paras (2) and (3) and Art. 52.

Calculation of technical provisions

Art. 54. – (1) The value of technical provisions shall be equal to the sum of a best estimate and a risk margin as set out in Paras (2) through (5), and Para (6).

(2) The best estimate shall correspond to the probability-weighted average of future cash-flows, taking account of the time value of money and using the relevant risk-free interest rate term structure; the time value of money is understood as being the expected present value of future cash-flows.

(3) The calculation of the best estimate shall be performed using adequate and relevant actuarial and statistical methods, and shall be based upon credible and up-to-date information and realistic assumptions.

(4) The cash-flow projection used in the calculation of the best estimate shall take account of all the cash in- and out-flows required to settle the obligations over the lifetime thereof.

(5) The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance or special purpose vehicles. Those amounts shall be calculated separately, in accordance with the provisions of Art. 58.

(6) The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount that undertakings would be expected to require in order to take over and meet their obligations.

(7) The best estimate and the risk margin shall be calculated separately, except where cash flows associated with obligations can be replicated reliably using financial instruments for which a reliable market value is observable, so that the value of technical provisions is determined on the basis of the market value of those financial instruments.

(8) Where the risk margin is calculated separately, then it shall be based on the cost-of-capital equal to SCR required to settle the obligations over the lifetime thereof.

(9) The rate used by undertakings in the determination of the cost-of-capital rate referred to in Para (8) shall be

the additional rate, updated from time to time, by reference to the relevant risk-free interest rate, necessary to maintain the eligible own funds covering SCR.

Long term securities

Art. 55. – (1) The relevant risk-free interest rate term structure shall derive from financial instruments and bonds whose maturities are materialised in a deep, liquid and transparent market; otherwise, such structure shall be extrapolated based on:

a) forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate;

b) adjusted risk-free interest rates.

(2) Undertakings may apply, subject to the conditions laid down in Art. 166(1), Letter h), a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance, where the following conditions are met:

a) the undertakings have assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintain that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;

b) the portfolios of insurance or reinsurance assets and obligations referred to in Letter a) are identified, organised and managed separately from other activities of the undertakings, and the portfolio of assets cannot be used to cover losses arising from other activities;

c) the assets are maintained in the same currency in which insurance and reinsurance obligations covered by them are recorded and any mismatch does not give

rise to risks which are material in relation to the risks inherent in the business to which the matching adjustment is applied;

d) the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;

e) the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are the mortality risk, expense risk, revision risk and longevity risk;

f) where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with Art. 72(2) through (4);

g) the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the contracting parties or only a surrender option where the surrender value does not exceed the value of the assets related to that obligation at the time the surrender option is exercised;

h) the cash flows of the assets are fixed and cannot be changed by the issuers or any third parties;

i) the portfolio of insurance or reinsurance obligations includes all obligations of the contracts covered, and they cannot be split into different parts.

(3) Notwithstanding Para (2), Letter h), the undertakings which apply a matching adjustment may use assets with variable cash flows if:

a) they are dependent on inflation similarly to obligations;

b) the issuer or counterparty changes the cash flows in such a manner that the undertakings receive sufficient compensation to allow them to re-invest in assets admitted to cover the portfolio of obligations and with an equivalent or better credit quality.

(4) The undertakings that apply a matching adjustment may not use another method, and if the conditions laid down in Para (2) are no longer complied with, they

shall immediately inform ASF of the necessary measures taken to remedy such situation within maximum two months of the date the non-compliance is found. If not possible, they shall cease to apply the matching adjustment for a period of 24 months.

(5) Undertakings shall not apply a matching adjustment if they apply the volatility adjustment referred to in Paras (8) through (16) or the transitional measure referred to in Art. 167.

(6) For each currency the matching adjustment shall be calculated in accordance with the following principles:

a) the matching adjustment must be equal to the difference of the following:

(i) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of obligations, results in a value that is equal to the value of the portfolio of assigned assets;

(ii) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of obligations, results in a value that is equal to the value of the best estimate where the time value of money is taken into account using the basic risk-free interest rate term structure;

b) the matching adjustment must not include the fundamental spread reflecting the risks retained by undertakings;

c) notwithstanding Letter a) the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and class;

d) the use of external credit assessments in the calculation of the matching adjustment must be in accordance with the legal provisions.

(7) The fundamental spread referred to in Para (6), Letter c) shall:

a) be equal to the sum of the following:

(i) the credit spread corresponding to the probability

of default of the assets corresponding to the assets determined based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class;

(ii) the credit spread corresponding to the expected loss resulting from downgrading of the assets;

b) be, for exposures to Member States' central governments and central banks, no lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

c) be, for assets other than exposures referred to in Letter b), no lower than 35% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

d) correspond to the percentages referred to in Letters b) and c), where no reliable credit spread can be derived from the default statistics referred to in Letter a), Point (i).

(8) The volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate, in accordance with Art. 165(1), Letter i) shall be determined based on the spread between the interest rate that could be earned from assets included in a reference portfolio and the rates of the relevant basic risk-free interest rate term structure for that currency.

(9) The portfolio of assets referred to in Para (8) shall be representative for each currency and for the assets which are denominated in that currency and in which undertakings invest to cover the best estimate for obligations denominated in that currency.

(10) The amount of the volatility adjustment referred to in Para (8) shall be 65% of the risk-corrected currency spread and calculated as the difference between the spread referred to in the same paragraph and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

(11) The volatility adjustment referred to in Para (8)

shall apply only to interest rate points for which the extrapolation referred to in Para (1) is not applied; the extrapolation shall be performed based on the adjusted interest points.

(12) The increase referred to in Para (13) shall be made before the application of the 65% factor referred to in Para (10).

(13) For each relevant country, where the volatility adjustment is positive and the risk-corrected country spread is higher than 100 basis points, then it will be increased by the difference between:

a) the risk-corrected country spread; and

b) twice the risk-corrected currency spread.

(14) The increased volatility adjustment in accordance with Para (13) shall be applied only to products marketed in that country.

(15) The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread, in accordance with Para (10), the reference portfolio being representative for the assets which are denominated in the currency of that country and cover the best estimate for the obligations of products marketed in that jurisdiction.

(16) By way of derogation from Art. 72, SCR shall not cover the losses of basic own funds resulting from changes of the volatility adjustment.

(17) Undertakings shall use the following technical information published by EIOPA on a quarterly basis and required by the European Commission for each relevant currency:

a) a relevant risk-free interest rate term structure;

b) a fundamental spread for each relevant duration, credit quality and asset class;

c) a volatility adjustment for each relevant national insurance market.

Other elements to be taken into account in the calculation of

Art. 56. – (1) In addition to Art. 54, when calculating technical provisions, account shall be taken of the

technical provisions

following:

a) all expenses that will be incurred in servicing insurance and reinsurance obligations;

b) inflation, including expenses and claims inflation;

c) all payments to contracting parties and beneficiaries, including future expected discretionary benefits, whether or not those payments are contractually guaranteed, unless those payments fall under Art. 66;

d) value of financial guarantees and any contractual options included in insurance and reinsurance contracts;

e) likelihood that contracting parties will exercise contractual options.

(2) The assumptions used to determine the likelihood referred to in Para (1), Letter e) shall be realistic and based on current and credible information and shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Segmentation

Art. 57. – Undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating their technical provisions.

Recoverables from reinsurance contracts or special purpose vehicles

Art. 58. – (1) The calculation by undertakings of amounts recoverable from reinsurance or special purpose vehicles shall comply with Arts. 53 through 57 and shall take account of the time difference between actual recoveries and direct payments.

(2) The result obtained in accordance with Para (1) shall be adjusted based on an assessment of the probability of not collecting the receivables and the average loss resulting therefrom.

Data quality and

Art. 59. – (1) Undertakings shall have processes and

application of approximations

procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

(2) Undertakings may use appropriate approximations in the calculation of the best estimate where they have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their insurance and reinsurance obligations, or amounts recoverable from reinsurance or special purpose vehicles.

Results and previous experience

Art. 60. – Undertakings shall have processes and procedures in place to ensure that best estimates and the assumptions underlying the calculation of best estimates are regularly compared against experience and where systematic deviations are identified, the undertakings shall make appropriate adjustments to the actuarial methods being used and/or the assumptions being made.

Appropriateness and increase of technical provisions

Art. 61. – (1) ASF shall request undertakings to document:

a) the appropriateness of the level of their technical provisions;

b) the adequacy and relevance of the methods applied and statistical data used.

(2) To the extent that the calculation of technical provisions is not in line with Arts. 53 through 60, ASF shall require undertakings to increase their amount so that they correspond to the minimum level accepted for the purposes of compliance with those provisions.

SECTION 3

Own funds

Subsection 3.1

Determination of own funds

General provisions

Art. 62. – Own funds shall comprise the sum of basic own funds, referred to in Art. 63 and ancillary own funds referred to in Art. 64.

Basic own funds

Art. 63. – Basic own funds shall consist of the following items:

a) the excess of assets over liabilities, valued in accordance with Art. 52, reduced by the amount of own shares held;

b) subordinated liabilities.

Ancillary own funds

Art. 64. – (1) Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses, such as:

a) unpaid share capital or initial fund that has not been called up;

b) letters of credit and guarantees;

c) any other contractually binding commitments, at the disposal of undertakings.

(2) In the case of mutual-type associations with variable contributions, ancillary own funds may also comprise any future calls for supplementary contribution which that association may have against its members, within the following 12 months.

(3) Where an ancillary own-fund item has been paid in or called up, it shall be treated as an asset and cease to form part of ancillary own-fund items.

Approval of ancillary

Art. 65. – (1) ASF shall approve, in line with Art.

own funds

166(1), Letter a), the amount of ancillary own-fund items included in the total amount of own funds.

(2) The amount of ancillary own-fund items shall be determined based upon prudent and realistic assumptions. Where an ancillary own-fund item has a fixed nominal value, such value shall be taken into account in so as far as it appropriately reflects its loss-absorbency.

(3) ASF shall approve either of the following:

a) a monetary amount for each ancillary own-fund item;

b) a method by which to determine the amount of each ancillary own-fund item, for a specified period of time.

(4) For each ancillary own-fund item, ASF shall base its approval referred to in Para (3) on an assessment of the following:

a) the counterparties' ability and willingness to fulfil their obligations;

b) the recoverability of the ancillary own funds, taking account of the legal form as well as any conditions which would prevent the items from being paid in or called up;

c) any information on past calls, if they facilitate the assessment of the outcome of future calls.

Surplus funds

Art. 66. – Surplus funds shall be deemed to be accumulated profits which have not been distributed to contracting parties and beneficiaries and shall not be considered as insurance and reinsurance liabilities to the extent that they fulfil the criteria set out in Art. 68.

Subsection 3.2

Classification of own funds

Characteristics

Art. 67. – (1) The classification of own-fund items, in accordance with the provisions of Art. 68, shall take into account the following characteristics:

a) the item is available, or can be called up, to fully absorb losses on a going-concern basis;

b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations, have been met.

(2) When assessing the extent to which own-fund items possess the characteristics set out in Para (1), due consideration shall be given to:

a) the duration of the item;

b) where an own-fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations;

c) whether the item is free from requirements or incentives to redeem the nominal sum;

d) whether the item is free from mandatory fixed servicing costs;

e) whether the item is clear of encumbrances.

Main criteria for the classification into tiers

Art. 68. – Own-fund items shall be classified into three tiers, as follows:

a) Tier 1: basic own-fund items, where they substantially possess the characteristics set out in Art. 67;

b) Tier 2:

(i) basic own-fund items, where they substantially possess the characteristics set out in Art. 67(1), Letter b) and Para (2);

(ii) ancillary own-fund items, where they substantially possess the characteristics set out in Art. 67;

c) Tier 3: any basic and ancillary own-fund items which do not fall under Letters a) and b).

Classification into tiers

Art. 69. – (1) Undertakings classify their own-fund items on the basis of the criteria laid down in Art. 68

and the list of own-fund items included in the legal provisions.

(2) Where an own-fund item is not covered by the list referred to in Para (1), undertakings shall request ASF, in accordance with Art. 166 (1), Letter b), to approve the assessment and classification thereof in accordance with Art. 68.

Classification of specific insurance own-fund items

Art. 70. – Without prejudice to Art. 68, specific insurance own-fund items shall be classified as follows:

a) Tier 1: surplus funds falling under Art. 66;

b) Tier 2:

(i) letters of credit and guarantees which are held in trust for the benefit of contracting parties by an independent trustee and provided by credit institutions authorised in accordance with Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented;

(ii) any calls for supplementary contributions, within the following 12 months, of mutual-type reinsurance associations insuring risks listed in Classes 6, 12 and 17 in Section A of Annexe No. 1;

(iii) any calls for supplementary contributions, within the following 12 months, of mutual-type reinsurance associations insuring risks other than those referred to in Point (ii).

Subsection 3.3

Eligibility of own funds

Eligibility and limits applicable to tiers

Art. 71. – (1) Undertakings shall possess eligible own funds compliant with SCR, as follows:

a) Tier 1 items: higher than one third of the total amount of eligible own funds;

b) Tier 2 items: subject to quantitative limits included in the legal provisions;

c) Tier 3 items: subject to quantitative limits included in the legal provisions and less than one third of the total amount of eligible own funds.

(2) The eligible amount of own funds to cover SCR shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3 set out in Para (1).

(3) Undertakings shall possess eligible own funds compliant with MCR, as follows:

a) Tier 1 items: higher than one half of the total amount of eligible basic own funds;

b) Tier 2 items: subject to quantitative limits included in the legal provisions.

(4) The eligible amount of basic own funds to cover MCR shall be equal to the sum of the amount of Tier 1 and the eligible amount of Tier 2, set out in Para (3).

SECTION 4

Solvency capital requirement

Subsection 4.1

General provisions

Calculation of SCR

Art. 72. – (1) Undertakings shall hold eligible own funds covering SCR, calculated, either in accordance with the standard formula in Subsection 4.2 or using an internal model, as set out in Subsection 4.3.

(2) SCR shall be calculated on the presumption that the undertaking will pursue its business as a going concern and shall be calibrated so as to ensure that all quantifiable risks to which such undertaking is exposed are taken into account.

(3) The calibration referred to in Para (2) shall take into account the unexpected losses of the existing business as well as the new business expected to be

written over the following 12 months.

(4) The calibration referred to in Para (2) shall be based on the value-at-risk of the basic own funds, subject to a confidence level of 99.5% over a one-year period.

(5) SCR shall cover at least the following risks:

a) non-life underwriting risk;

b) life underwriting risk;

c) health underwriting risk;

d) market risk;

e) credit risk;

f) operational risk, which shall include legal risks, and exclude risks arising from decisions, as well as reputation risks.

(6) When calculating SCR, undertakings shall take account of the effect of risk-mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in SCR.

(7) SCR may be adjusted only in accordance with Art. 35, Art. 79, Arts. 150 through 152 and Art. 155(1) and (2).

Frequency of calculation

Art. 73. – (1) Undertakings shall calculate SCR at least once a year and report the result of that calculation to ASF.

(2) Undertakings shall hold eligible own funds which cover the reported SCR and monitor the amount of eligible own funds and the level of SCR.

(3) If the risk profile of an undertaking deviates significantly from the assumptions underlying the calculation of the reported SCR, the undertaking concerned shall recalculate SCR and report the result obtained to ASF.

(4) ASF shall require the undertakings to recalculate SCR, where the risk profile has altered significantly since the date on which SCR was last reported.

Subsection 4.2

Calculation of SCR on the basis of standard formula

Structure of the standard formula

Art. 74. – SCR calculated on the basis of the standard formula shall be the sum of the following items:

a) the basic SCR, as laid down in Art. 75;

b) the capital requirement for operational risk, as laid down in Art. 78;

c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in Art. 79.

Design of the Basic SCR

Art. 75. – (1) The basic SCR shall comprise individual risk modules, which are aggregated in accordance with Annexe No. 2, and shall consist of at least the following:

a) non-life underwriting risk;

b) life underwriting risk;

c) health underwriting risk;

d) market risk;

e) counterparty default risk.

(2) In the case of the modules referred to in Para (1) Letters a) through c), insurance or reinsurance operations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

(3) The calibration of the capital requirements for each risk module and the aggregation of the risk modules through the correlation coefficients shall result in an overall SCR in accordance with Art. 72.

(4) Each of the risk modules referred to in Para (1) shall be calibrated in accordance with Art. 72(2) through (4) and, where appropriate, diversification effects shall be taken into account in the design of each risk module.

(5) The design and specifications for the risk modules shall be used both for the calculation of the basic SCR,

and for any simplified calculations as laid down in Art. 80.

(6) With regard to risks arising from catastrophes referred to in Para (1), Letters a) through c), geographical specifications shall, where appropriate, be used.

(7) For the modules referred to in Para (1) Letters a) through c), subject to the legal provisions and Art. 166 (1), Letter c), undertakings may, within the design of the standard formula, replace a subset of its parameters by specific parameters, calibrated on the basis of standardised methods and internal data or of data which is directly relevant for the operations of those undertakings.

(8) For the purposes of using the specific parameters, the undertakings shall request ASF's approval which shall verify the completeness, accuracy and appropriateness of the data used.

Calculation of the Basic SCR

Art. 76. – (1) The non-life underwriting risk module shall reflect the risk arising from non-life insurance obligations, in relation to:

a) perils covered;

b) the manner in which business is conducted;

c) the uncertainty in the results of the business related to the related obligations;

d) the new business expected to be written over the following 12 months.

(2) The non-life underwriting risk module shall be calculated in accordance with Annexe No. 2, as a combination of the capital requirements, at least for the risk of loss, or of adverse change in the value of insurance liabilities, resulting from:

a) for the premium risk and reserves sub-module, fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements;

b) for the catastrophe risk, significant uncertainty of pricing and provisioning assumptions related to

extreme or exceptional events.

(3) The life underwriting risk module shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the manner in which business is conducted.

(4) The life underwriting risk module shall be calculated in accordance with Annexe No. 2, as a combination of the capital requirements, at least for the risk of loss, or of adverse change in the value of insurance liabilities, resulting from:

a) for the mortality risk sub-module, changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities;

b) for the longevity risk sub-module, changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities;

c) for the disability – morbidity risk sub-module, changes in the level, trend or volatility of disability, sickness and morbidity rates;

d) for the life-expense risk sub-module, changes in the level, trend, or volatility of the expenses incurred in servicing contracts;

e) for the revision risk sub-module, fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the insured persons;

f) for the lapse risk sub-module, changes in the level or volatility of the rates of policy lapses, renewals and surrenders;

g) for the catastrophe risk sub-module, the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events.

(5) The health underwriting risk module shall reflect the risk arising from health insurance obligations, whether the underwriting is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business.

(6) The health underwriting risk module shall cover, at least, the risk of loss, or of adverse change in the value of insurance liabilities, resulting from:

a) for the health insurance expense risk sub-module, changes in the level, trend, or volatility of the expenses incurred in servicing contracts;

b) for the premium risk and reserves sub-module, from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning;

c) for the catastrophe risk sub-module, the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the accumulation of risks.

(7) The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. It shall also properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.

(8) The market risk module shall be calculated in accordance with Annexe No. 2, as a combination of the capital requirements for at least the risks resulting from the sensitivity of the values of assets, liabilities and financial instruments as follows:

a) for the interest rate risk sub-module, to changes in the risk-free interest rate term structure, or in the volatility of interest rates;

b) for the equity risk sub-module, to changes in the level or in the volatility of market prices of equities;

c) for the property risk sub-module, to changes in the level or in the volatility of market prices of real estate;

d) for the credit spread risk sub-module, to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure;

e) for the currency risk sub-module, to changes in the level or in the volatility of currency exchange rates.

(9) In addition to the sub-modules referred to in Para (8), the market risk module shall also include the

market risk concentration risk sub-module, covering the additional risks stemming either from the lack of diversification in the asset portfolio, or from large exposure to counterparty default risk by a single issuer of securities or a group of related issuers.

(10) The counterparty default risk module shall reflect possible losses due to:

a) the inability to pay of counterparties and debtors of undertakings;

b) the credit deterioration of counterparties and debtors, in the following year.

(11) The counterparty default risk module shall cover:

a) risk-mitigating contracts, such as reinsurance contracts, securitisations and derivatives;

b) receivables from intermediaries;

c) exposures which are not covered in the credit spread risk sub-module;

d) real guarantees or other security held by or for the account of undertakings and the risks associated therewith;

e) overall counterparty risk exposure, irrespective of the legal form of its contractual obligations.

Calculation of the equity risk sub-module: symmetric adjustment mechanism

Art. 77. – (1) The equity risk sub-module calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital charge, calibrated in accordance with Art. 72(4), applied to cover the risks arising from changes in the level of equity prices.

(2) The symmetric adjustment referred to in Para (1) made to the standard equity capital charge shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index, calculated over an appropriate period of time which shall be the same for all undertakings.

(3) The adjustment referred to in Para (1) shall not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage

points higher than the standard equity capital charge.

SCR for operational risk

Art. 78. – (1) The capital requirement for operational risk shall reflect the risks which were not reflected in the risk modules referred to in Art. 75, and shall be calibrated in accordance with Art. 72(2) through (4).

(2) With respect to life insurance contracts where the investment risk is borne by the contracting parties, the calculation of SCR for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.

(3) With respect to insurance and reinsurance operations other than those referred to in Para (2), the calculation of SCR for operational risk shall take account of the volume of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations and of the fact that the requirement shall not exceed 30% of the SCR relating to those operations.

Adjustment for the loss absorbing capacity of technical provisions and deferred taxes

Art. 79. – (1) The adjustment shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two, taking into account the risk mitigating effect associated with the future discretionary benefits included in the insurance contracts, provided that undertakings can demonstrate that a reduction in such benefits may be used to cover unexpected losses; the risk mitigating effect associated with future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

(2) For the purpose of Para (1), the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

Simplifications in the standard formula

Art. 80. – Undertakings may, in accordance with the legal provisions and the principle of proportionality,

use a simplified calculation for a specific risk sub-module or module, calibrated in accordance with Art. 72(2) through (4).

Use of specific parameters

Art. 81. – Where the risk profile of the undertakings deviates significantly from the assumptions underlying the SCR calculation using the standard formula, ASF may, by means of a decision stating the reasons, require them to replace a subset of the parameters by specific parameters calibrated in accordance with Art. 75(7) and (8) and use the same so as to comply with the provisions of Art. 72(2) through (4).

Subsection 4.3

Calculation of SCR on the basis of full and partial internal models

General provisions for the approval process

Art. 82. – (1) The undertakings intending to use a full or partial internal model may require ASF to start a prior analysis process.

(2) Undertakings may use full or partial internal models submitted to ASF for approval as provided in Art. 166(1), Letter d) for the calculation of the following:

a) one or more modules, or sub-modules, as set out in Arts. 75 and 76;

b) SCR for operational risk as set out in Art. 78;

c) the adjustment referred to in Art. 79.

(3) Undertakings may apply partial internal models to the whole business or only to one or more major business units.

(4) The application for approval of the internal model shall comprise the documentary evidence that the internal model fulfils the requirements set out in Arts. 88, 89 and Subsection 4.4; in the case of a partial internal model, the documentation shall be adapted to take account of the limited scope of the application of that model.

(5) ASF shall decide on the approval or rejection of the application to use an interval model within 6 months from the receipt of the complete documentation.

(6) ASF shall approve the use of internal models only if the documentation submitted by the undertakings shows that the systems for identifying, measuring, monitoring, managing and reporting risk are adequate and in particular, that the internal model fulfils the requirements referred to in Para (4).

(7) If ASF rejects the application for the use of an internal model, then it shall send its decision stating the reasons on which the rejection is based to the undertakings.

(8) After approving the use of internal models, ASF may require the undertakings, by means of a decision stating the reasons, to calculate SCR also by applying the standard formula set out in Subsection 4.2.

Specific provisions for the approval of the partial internal model

Art. 83. – (1) ASF shall approve the undertakings' application to use partial internal models where the requirements set out in Art. 82 and the following conditions are fulfilled:

a) the reason for the limited scope of application of the model is properly justified by the undertaking;

b) the SCR value resulting from the use of that model, in compliance with the principles set out in Subsection 4.1, reflects more appropriately the risk profile;

c) the resulting SCR design is consistent with the principles set out in Subsection 4.1, so as to allow the partial internal model to be fully integrated into the standard formula.

(2) ASF shall request the undertaking intending to use partial internal models to submit a realistic transitional plan setting out the manner in which the undertaking plans to extend the scope of the model to other risk sub-modules and/or major business units for a certain module, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.

Policy for changing the internal model

Art. 84. – (1) As part of the initial approval process of an internal model, the undertakings shall send ASF the adopted policy concerning the major or minor changes to the internal model, which shall be subsequently complied with.

(2) Major changes to the internal model, as well as changes to that policy referred to in Para (1) shall always be subject to ASF's approval, in accordance with Art. 82; minor changes to the internal model shall not be subject to ASF's approval, insofar as they are developed in accordance with that policy.

Reversion to the standard formula

Art. 85. – Undertakings shall revert to calculating the whole or a part of the SCR by using the standard formula, after having received approval in accordance with Art. 82, only in duly justified circumstances and subject to the approval of ASF.

Non-compliance of the internal model

Art. 86. – (1) If, after having received approval in accordance with Art. 82, the requirements set out in Arts. 88, 89 and Subsection 4.4 are no longer met, the undertakings shall, without delay, either present ASF a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.

(2) In the event that the undertakings fail to remedy the situation by applying the plan referred to in Para (1), ASF shall require them to revert to calculating SCR in accordance with the standard formula.

Significant deviations from the risk profile

Art. 87. – Where it is inappropriate to calculate SCR in accordance with the standard formula, because the risk profile of the undertakings deviates significantly from the assumptions underlying the standard formula calculation, ASF shall, by means of a decision stating the reasons, require the undertakings to use a full or partial internal model.

Use test

Art. 88. – (1) Undertakings shall demonstrate that the internal model is widely used in and plays an important role in their system of governance, in particular in:

a) their decision-making process;

b) their risk-management system;

c) their economic and solvency capital assessment and allocation processes;

d) ORSA.

(2) Undertakings shall demonstrate that the frequency of calculation of SCR using the internal model is consistent with the frequency of its use in accordance with the provisions of Para (1).

Profit and loss attribution

Art. 89. – Undertakings shall, in respect of the profit and loss attribution:

a) review, at least annually, the causes and sources of profits and losses for each major business unit;

b) demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources set out in Letter a);

c) categorise risks and attribute profits and losses so as to reflect the risk profile.

External models and data

Art. 90. – The provisions of Arts. 88, 89 and Subsection 4.4 shall also apply in the case of the use of a model or data obtained from a third party.

Subsection 4.4

Quality standards applicable to the internal model

Statistical data

Art. 91. – (1) The methods used to calculate the probability distribution forecast shall be consistent with the methods used to calculate the technical provisions and shall be based on:

a) adequate, applicable and relevant actuarial and statistical techniques;

b) realistic assumptions;

c) current and credible information.

(2) Undertakings shall justify in a documented manner to ASF how assumptions underlying the internal model were set.

(3) Data used for the internal model shall be accurate, complete and appropriate. The data sets used in the calculation of the probability distribution forecast shall be updated at least annually.

(4) Regardless of the method used to calculate the probability distribution forecast chosen, the ability of the internal model to rank risk shall be sufficient to comply with the provisions of Art. 88.

(5) The internal model shall cover all of the material risks to which undertakings are exposed, and at least the risks set out in Art. 72(5).

(6) Undertakings may take account in their internal model:

a) the diversification effects stemming from the dependencies within and across risk categories, provided that ASF considers that the system used to measure those effects is adequate;

b) the effects of risk-mitigation techniques, as long as credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected in the internal model;

c) future management actions carried out in specific circumstances and the time necessary to implement such actions;

d) payments to contracting parties and beneficiaries expected to be made, whether or not those payments are contractually guaranteed.

(7) Undertakings shall accurately assess the particular risks associated with financial guarantees, any options to contracting parties and own contractual options in their internal model, where material, taking account of the impact that future changes in financial and non-

financial conditions may have on the exercise of those options.

Calibration

Art. 92. – (1) Undertakings may use a different time period or risk measure than that set out in Art. 72(4), as long as the SCR amount resulting from the calculations of the internal model could offer contracting parties and beneficiaries a level of protection equivalent to that set out in Art. 72.

(2) Where practicable, undertakings shall derive SCR directly from the probability distribution forecast generated by the internal model, using the value-at-risk measure set out in Art. 72(4); where it is not possible to do so, ASF may allow approximations to be used in the process to calculate SCR, as long as those undertakings can demonstrate that the same level of protection as that set out in Art. 72 is offered.

(3) ASF may require undertakings to run their internal model on relevant benchmark portfolios, using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its technical specification is in line with generally accepted market practice.

Validation

Art. 93. – (1) Undertakings shall regularly validate the internal model:

a) monitoring its appropriate performance;

b) reviewing the ongoing appropriateness of its technical specification;

c) testing its results against historical data.

(2) As part of the model validation process, undertakings shall include:

a) effective statistical methods to:

(i) demonstrate that the resulting capital requirements are appropriate;

(ii) test the appropriateness of the probability distribution forecast compared not only to historical data, but also to all material new data and information

relating thereto;

b) analyse the stability of the model and in particular the testing of the sensitivity of the results to changes in key underlying assumptions;

c) assess completeness, accuracy and appropriateness of the data used.

Documentation

Art. 94. – Undertakings shall document the internal model which demonstrates compliance with the provisions of this subsection, of Arts. 88 and 89 and details:

a) the design and operation of the internal model;

b) the theories, assumptions and mathematical and empirical bases underlying the internal model;

c) any circumstances under which the internal model does not work properly and effectively;

d) all major changes to their internal model, in accordance with Art. 84.

SECTION 5

Minimum capital requirement (MCR)

Calculation of MCR

Art. 95. – (1) Undertakings shall hold eligible basic own funds, to cover MCR calculated as follows:

a) in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

b) so as to correspond to a minimum amount of eligible basic own funds, so that the contracting parties and beneficiaries would not be exposed to an unacceptable level of risk;

c) the linear function referred to in Para (2) shall be calibrated to the Value-at-Risk of the basic own funds subject to a confidence level of 85% over a one-year period;

d) they shall have an absolute floor of:

(i) the RON equivalent of EUR 2,500,000, for non-

life insurers, including captive insurers;

(ii) the RON equivalent of EUR 3,700,000, for non-life insurers, including captive, covering also, in full or in part, risks included in Classes 10 to 15 listed in Section A of Annexe No. 1;

(iii) the RON equivalent of EUR 3,700,000, for life insurers, including captive insurers;

(iv) the RON equivalent of EUR 6,200,000, for composite insurers;

(v) the RON equivalent of EUR 7,400,000, for composite insurers, covering also, in full or in part, risks included in Classes 10 to 15 listed in Section A of Annexe No. 1;

(vi) the RON equivalent of EUR 3,600,000, for reinsurers;

(vii) the RON equivalent of EUR 1,200,000, for captive reinsurers.

(2) Without prejudice to Para (3), MCR shall be calculated as a linear function of a set or sub-set of the following variables, net of reinsurance:

a) technical provisions;

b) written premiums;

c) capital-at-risk;

d) deferred tax;

e) administrative expenses.

(3) Without prejudice to Para (1) Letter d), MCR shall neither fall below 25% nor exceed 45% of SCR which could include any solvency capital add-on; prior to 31 December 2017, MCR shall observe the percentages applied to SCR calculated in accordance with the standard formula.

Information sent to ASF

Art. 96. – (1) Undertakings shall report the MCR amount to ASF at least quarterly.

(2) Where MCR reaches either of the limits referred to in Art. 95(3), the undertakings shall provide to ASF information on the reasons therefor.

SECTION 6

Investments

Prudent person principle

Art. 97. – (1) Undertakings shall only invest in assets and instruments whose risks can be properly identified, measured, monitored, managed, controlled and reported, and appropriately taken into account in the assessment of their overall solvency needs, identified in accordance with ORSA.

(2) All investments, in particular those establishing assets covering SCR and MCR, shall be made in such a manner as to ensure the security, quality, liquidity, profitability and accessibility of the portfolio as a whole.

(3) Investments representing assets held to cover the technical provisions shall be made by undertakings or entities managing their investment portfolio, appropriate to the nature and duration of liabilities and in the interest of contracting parties and beneficiaries, in accordance with the contractual provisions, including in the case of a conflict of interest.

(4) Without prejudice to Paras (1) through (3) with respect to assets held in life insurance contracts where the investment risk is borne by the contracting parties, account shall be taken of the following:

a) the technical provisions corresponding to benefits provided by a contract with benefits directly linked to the value of units in an UCITS, or to the value of an internal fund divided into units, must be represented as closely as possible by those units or, where units are not established, the technical provisions must be represented by the value of that fund;

b) the technical provisions corresponding to a contract with benefits directly linked to a share index or some other reference value other than those referred in Letter a) must be represented as closely as possible by the reference value or, where units are not established, the technical provisions must be represented by the value of assets whose marketability and security correspond

as closely as possible with those on which the particular reference value is based.

(5) Without prejudice to Paras (1) through (3), where the benefits referred to Para (4) Letter b) include a guarantee of investment performance or some other guaranteed benefit, account shall be taken of the following:

a) the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management;

b) investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels;

c) investments shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole;

d) investments in assets issued by the same entity, or by entities belonging to the same group, shall be made in such a manner so as to avoid excessive risk concentration.

(6) Assets corresponding to recoverables from reinsurance against undertakings authorised in a third country whose solvency regime is not deemed to be equivalent in accordance with the legal provisions shall require localisation in a Member State.

CHAPTER VI

Insurers in difficulty

Identification and notification of deteriorating financial conditions

Art. 98. – Undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify ASF when such deterioration occurs.

Non-Compliance with

Art. 99. – (1) Undertakings shall inform ASF as soon as they observe that SCR is no longer complied with, or

SCR

where there is a risk of non-compliance in the following 3 months.

(2) Within two months from the observation of non-compliance as referred to in Para (1), the undertakings shall submit a recovery plan for approval by ASF. The recovery plan shall comprise measures to be taken to achieve the re-establishment of the level of eligible own funds covering SCR or the modification of the risk profile, to ensure compliance with SCR within 6 months.

(3) ASF may extend the period necessary for the application of the measures included in the recovery plan referred to in Para (2) by maximum 3 months.

(4) Where EIOPA declares the existence of adverse situations affecting the undertakings which account for a significant market share, or a significant percentage in the affected lines of business, ASF may extend the period referred to in Para (3) by maximum 7 years, taking into account all relevant factors, including the average duration of the technical provisions; in this case, ASF may consult the European Systemic Risk Board.

(5) The undertakings in any of the situations referred to in Para (4) shall, every three months, submit a progress report to ASF, setting out the measures taken and the progress made in applying the measures in the recovery plan. ASF shall withdraw the seven-year extension where that progress report shows that the undertakings made no progress.

(6) In exceptional circumstances, where ASF is of the opinion that the financial situation of the undertakings referred to in Para (2) will deteriorate further, ASF shall apply the measures set out in Art. 13(1) and (3) and Art. 14(5).

Non-Compliance with MCR

Art. 100. – (1) Undertakings shall inform ASF as soon as they observe that MCR is no longer complied with, or where there is a risk of non-compliance in the following 3 months.

(2) Within one month from the observation of non-

compliance as referred to in Para (1), the undertakings shall submit, for approval by ASF, a short-term finance scheme to restore the level of eligible basic own funds covering MCR, or to modify the profile risk, so as to ensure compliance with MCR within 3 months; ASF may, at the same time, apply the measures set out in Art. 13(1) and (3) and Art. 14(5).

Measures adopted in deteriorating solvency position

Art. 101. – Notwithstanding Arts. 99 and 100, where the solvency position of the undertakings continues to deteriorate, ASF shall take all measures necessary to safeguard the contracting parties or to fulfil the obligations arising out of reinsurance contracts, proportionate to the level and duration of the deterioration, in accordance with the legal provisions; in this case, by way of derogation from Art. 67(2) of Company Law No. 31/1990, republished, as subsequently amended and supplemented, ASF may also adopt measures to suspend the payment of dividends owed to shareholders until the solvency of the undertaking concerned is restored.

Recovery plan and finance scheme

Art. 102. – The recovery plan referred to in Art. 99(2) and the finance scheme referred to in Art. 100(2) must at least include the following in a documented manner:

a) estimates of management expenses, in particular current general expenses and commissions;

b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

c) a forecast balance sheet;

d) estimates of the financial resources intended to cover the technical provisions, SCR and MCR;

e) the reinsurance policy.

CHAPTER VII

Applicable law and conditions of direct insurance contracts

General provisions

Art. 103. – Insurance contracts shall be concluded in compliance with the applicable national legislation.

Related obligations in the case of compulsory insurance

Art. 104. – (1) Insurers may offer and conclude compulsory insurance contracts under specific legal provisions.

(2) ASF shall communicate to the European Commission the following information for each type of compulsory insurance:

a) the specific legal provisions;

b) the particulars which must be given in the certificate proving that the obligation to take out insurance has been complied with.

Contractual terms and fees for non-life insurance

Art. 105. – ASF may require insurers to send the special conditions of the contracts or forms used in their dealings with contracting parties, as a control measure of the compliance with the national legal provisions on insurance contracts.

Contractual terms and fees for life insurance

Art. 106. – ASF may require insurers to send the conditions of the insurance contracts and systematic transmission of technical bases used for calculating premiums and technical provisions, as a control measure of compliance with actuarial principles.

Information to potential contracting parties – non-life insurance

Art. 107. – (1) Before a non-life insurance contract is concluded, insurers shall inform any potential natural person contracting parties of the following:

a) the law applicable to the contract, where the parties do not have a free choice; the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose;

b) any arrangements for handling complaints, the right to address ASF, without prejudice to the right to take legal proceedings.

(2) ASF shall issue its own regulations establishing the rules for the application of the provisions of Para (1).

(3) Where insurers offer non-life insurance under the right of establishment or the freedom to provide services, they shall inform the potential contracting parties of and include in the documents issued, including the insurance offer, the following information:

a) the address of the head office and contact data of the branch or other secondary premises issuing the insurance contract;

b) the name and address of the compensation representatives settling the claims in other Member States, appointed under Art. 21(1), Letter g).

(4) The communication of the information referred to in Para (3), Letter a) shall not be mandatory in case of underwriting major risks.

Information to potential insured persons – life insurance

Art. 108. – (1) Before a life insurance contract is concluded, insurers shall inform any potential contracting parties of the following:

a) its name, legal form, address of the head office and contact data of the branch of other secondary premises granting the insurance contract;

b) modality of accessing the report on the solvency and financial condition as laid down in Art. 39, allowing the policy holder easy access to this information.

(2) The following information relating to the insurance contract shall be communicated by the insurer to the potential contracting parties:

a) the description of each contractual option and benefit;

b) the term of the contract;

c) the means of terminating the contract;

d) the means and terms of payment of premiums;

e) the means of calculation and distribution of bonuses;

f) an indication of total surrender of reduced insured amounts and the extent to which they are guaranteed;

g) information on the premiums for each benefit, both main benefits and supplementary benefits;

h) for unit-linked policies, the definition of the units to which the benefits are linked and an indication of the nature of the underlying assets;

i) arrangements for application of the clause regarding the cooling-off period;

j) general information on the tax arrangements applicable to the type of contract;

k) the arrangements for handling complaints, including the right to address ASF, without prejudice to the right to take legal proceedings;

l) the law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law insurer proposes to choose;

m) specific information in order to provide a proper understanding of the risks underlying the insurance contract which are assumed by any potential contracting parties.

(3) The insurer shall keep the contracting parties informed throughout the term of the contract of any change concerning the following information:

a) the name, legal form, address of the head office and contact data of the branch or agency with which the insurance contract was concluded;

b) general and specific contractual information;

c) the information referred to in Para (2), Letters d) through i), in the event of a change in the policy conditions or amendment of the law applicable to the contract;

d) annually, information on the state of bonuses.

(4) Where, in connection with an offer for or

conclusion of a contract, accompanied by figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurers shall provide:

a) a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest;

b) clear and comprehensive information so that the potential contracting parties understand:

(i) that the calculation specimen referred to in Letter a) is only a model of computation based on notional assumptions;

(ii) no contractual claims shall be derived from the specimen calculation.

(5) Insurers shall be released from the obligations referred to in Para (4), in the case of presentation of an offer or conclusion of a life insurance contract without accumulation component.

(6) In the case of contracts with profit participation, the insurers shall inform the contracting parties annually in writing of:

a) the status of their claims, incorporating the profit participation;

b) differences between the actual development and the forecasts, where, upon conclusion of the contract, they were provided with figures about the potential future development.

(7) The information referred to in Paras (2) through (6) shall be provided in the Romanian language in a clear and accurate manner and sent to the contracting parties; such information may be sent in another language, if they so request.

(8) ASF shall issue own regulations establishing the rules for the application for Para (2) through (7) and communication of additional information, if it is necessary for a proper understanding of the essential elements of the contract.

Modalities to withdraw from a contract – life insurance

Art. 109. – (1) The clause regarding the cooling-off period stipulates a term of 20 days from the time when the contracting party was informed that the contract had been concluded within which such contacting party may give a notice of cancellation. The contracting party shall be released from any future obligation arising from the contract as from the time of giving such notice of cancellation.

(2) In the case referred to in Para (1), all conditions of cancellation provided by the law applicable to the contract shall apply.

(3) Where a contract has a duration of up to six months the provisions of Para (1) shall not apply.

CHAPTER VIII

Withdrawal of authorisation

Withdrawal of the authorisation

Art. 110. – ASF may withdraw the operation authorisation granted to undertakings, by means of a decision stating the reasons, in the following cases:

a) the undertaking concerned does not pursue any underwriting business within 12 consecutive months as from the date when the authorisation was obtained;

b) the undertaking concerned request the withdrawal of the authorisation;

c) the undertaking concerned ceases to pursue any underwriting business for more than 6 consecutive months;

d) the undertaking concerned no longer fulfils the conditions for authorisation;

e) the undertaking concerned fails in its obligations under the law;

f) the undertaking concerned does not comply with MCR, and the finance scheme submitted is inadequate, or the undertaking concerned fails to comply with the approved scheme within 3 months from the observation of non-compliance with MCR.

CHAPTER IX

Right of establishment and freedom to provide services

SECTION 1

Right of establishment

Branch establishment

Art. 111. – (1) Insurers which propose to establish a branch within the territory of another Member State shall first notify ASF of the following:

a) the name of the host Member State;

b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;

c) the address of the branch's office and the name of the agent;

d) the proof that it is a member of the national bureau or of the national guarantee fund of the host Member State, where it intends to cover risks in Class 10, not including carrier's liability, set out in Section A of Annexe No. 1.

(2) In the event of a change in any of the particulars communicated under Para (1), Letters b) through d), insurers shall notify ASF and the supervisor of the host Member State, at least one month before making the change.

(3) Insurers referred to in Para (1) shall comply with the provisions referred to in Art. 8(14), with the avoidance of double taxation.

Notification and communication of information

Art. 112. – (1) Unless ASF finds that the system of governance and the financial condition of the insurers or the probity requirements of the agent are not adequate, taking into account the scheme of operations, ASF shall, within 3 months of receiving the documentation referred to in Art. 111(1), communicate that information to the supervisor of the host Member State and shall inform the insurer concerned thereof.

(2) The information referred to in Para (1) shall be accompanied by the confirmation that the insurers comply with SCR and MCR.

(3) Where ASF does not communicate the information received in accordance with Art. 111(1) to the supervisors of the host Member State, ASF shall state the reasons for doing so to the insurers concerned, within 3 months of receiving the information in question; in such case, insurers may apply to the Bucharest Court of Appeal, Administrative-Dispute and Fiscal Section.

(4) Where ASF is notified by a supervisor of a home Member State of the intention of an insurer authorised in that Member State to establish a branch within the territory of Romania, ASF shall communicate to the supervisor concerned, within two months, the legislation on the protection of the general good under which the business must be pursued.

(5) Where ASF is informed by a supervisor of a host Member State of the legislation under which the business must be pursued by the branch the insurer proposed to establish in that Member State, ASF shall communicate this information to the insurer concerned.

(6) Insurers may establish a branch within the territory of another Member State and start business as from the date upon which ASF has received the information referred to in Para (5) or, if no such information is received, on expiry of a two month-period as from the date ASF informed the supervisor of the host Member State.

(7) Insurers pursuing business within the territory of other Member States under the right of establishment shall inform ASF, in accordance with the legal provisions, of the amount of the premiums, claims and commissions, without deduction of reinsurance, separately for non-life insurance and life insurance and broken down by lines of business and Member State.

(8) As regards Class 10 in Section A of Annexe No. 1, not including carrier's liability, the information under Para (7) shall also include the frequency and average cost of claims.

SECTION 2

Freedom to provide services

Notification and communication of information

Art. 113. – (1) Any insurer that intends to pursue business for the first time directly in another Member State shall notify ASF thereof, indicating the nature of the risks or commitments it proposes to cover.

(2) Within one month of the notification provided for in Para (1), ASF shall communicate the following information to the supervisor of the Member State within the territory of which the insurer intends to pursue business:

a) a proof of compliance by the insurer with SCR and MCR;

b) the classes of insurance which the insurer has been authorised to offer;

c) the nature of the risks or commitments which the insurer proposes to cover in that Member State.

(3) ASF shall inform the insurer of the communication referred to in Para (2) and, at the same time, notify the supervisor of the host Member State. The insurer may start business as from the date of receipt of such information.

(4) Where ASF does not communicate the information referred to Para (2), ASF shall state the reasons for doing so to the insurer concerned, within one month of receiving the communication referred to in Para (1); in such case, the insurer may apply to the Bucharest Court of Appeal, Administrative-Dispute and Fiscal Section.

(5) Any changes in the nature of the risks or commitments made by the insurer shall be subject to the procedure laid down in Paras (1) through (4).

(6) Where ASF is notified of the intention of an insurer of a Member State to directly cover risks in Class 10 in Section A of Annexe No. 1, other than carrier's liability, ASF shall require that insurer to submit the following:

a) the name and address of the representative referred

to in Art. 21(1), Letter g);

b) a declaration that it has become a member of BAAR and of FPVS.

(7) Insurers pursuing business within the territory of other Member States under the freedom to provide services shall inform ASF, in accordance with the legal provisions, of the amount of the premiums, claims and commissions, without deduction of reinsurance, separately for non-life insurance and life insurance and broken down by lines of business and Member State.

(8) Insurers pursuing business within the territory of other Member States under the freedom to provide services shall comply with the provisions of Art. 8(14).

Compulsory insurance on third party motor vehicle liability

Art. 114. – (1) The financial contribution to BAAR and FPVS made by the insurer referred to in Art. 113(6) shall be calculated based on the gross premiums earned or number of risks covered within the territory of Romania, by the same method used by insurers pursuing business under the right of establishment.

(2) The insurer referred to in Art. 113(6) shall treat claims in the same manner as the same were treated if pursuing business within the territory of Romania under the right of establishment.

(3) The insurer referred to in Art. 113(6) shall appoint a claims representative resident or established in the territory of Romania. The representative shall:

a) collect all necessary information in relation to claims;

b) possess sufficient powers to represent the insurer in relation to persons suffering damage who could pursue claims, including the payment of such claims;

c) represent or take necessary actions so as to have the insurer represented before the courts and authorities of Romania, in relation to those claims;

d) represent the insurer before ASF with regard to checking the existence and validity of insurance policies;

e) undertake only the activities referred to in Letters a)

through d), ASF or other authorities lacking the appropriate powers to require the representative to undertake other activities in the name of the insurer.

(4) The appointment of the representative referred to in Para (3) shall not in itself constitute the opening of a branch for the purpose of Art. 111, and, where the insurer has failed to appoint a representative, then the claims representative shall be appointed in accordance with specific legal provisions of the home Member State.

(5) As regards Class 10 in Section A of Annexe No. 1, not including carrier's liability, the information under Art. 112(7) shall also include the frequency and average cost of claims.

CHAPTER X

Branches of third country undertakings

Authorisation process

Art. 115. – (1) For the purpose of this chapter, *branch* means a permanent presence in the territory of Romania of a third country undertaking, authorised by ASF to pursue business in Romania or the similar situation of the other Member States.

(2) ASF shall grant authorisation to the branches of a third country undertakings where the undertakings fulfil the following conditions:

a) they are authorised to pursue insurance and/or reinsurance business in the third country;

b) they undertake to keep, at the premises of the branch, all records relating to the business transacted and accounts specific to the business which it pursues there;

c) they designate a general agent, authorised by ASF;

d) they possess within the territory of Romania assets of an amount equal to at least one half of the absolute floor prescribed in Art. 95(1), Letter d) and deposits one fourth of that absolute floor as security;

e) they document the fact they can comply with SCR

and MCR;

f) they communicate the name and address of the claims representative appointed in other Member States, where the risks to be covered are classified under Class 10 of Section A of Annexe No. 1, other than carrier's liability;

g) they submit a scheme of operations in accordance with the provisions in Art. 116;

h) they fulfil the governance requirements laid down in Section 2 of Chapter IV.

Scheme of operations

Art. 116. – (1) The scheme of operations referred to in Art. 115(2), Letter g) shall set out the following:

a) the nature of the risks or commitments which the undertaking proposes to cover;

b) the guiding principles as to reinsurance;

c) estimates of SCR and MCR and methods used to derive those estimates;

d) items of the eligible own funds and basic own funds covering SCR and MCR;

e) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under Class 18 in Section A of Annexe No. 1, the resources available for the provision of the assistance;

f) information on the structure of the system of governance.

(2) In addition to the requirements set out in Para (1), the scheme of operations shall include the following, for the first 3 financial years:

a) a forecast balance sheet;

b) estimates of the financial resources intended to cover technical provisions, SCR and MCR;

c) for non-life insurance:

(i) estimates of administrative costs and expenses other than those referred to in Para (1), Letter e), in

particular current general expenses and commissions;

(ii) estimates of premiums or contributions, as appropriate, and claims;

d) for life insurance, detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

(3) In regard to life insurance, insurers shall submit, at the request of ASF, the technical bases used for calculating tariffs and technical provisions, without that requirement constituting a prior condition for a life insurance undertaking to pursue its business.

Transfer of portfolio

Art. 117. – (1) ASF shall approve that branches transfer all or part of their portfolios to an accepting undertaking established in Romania provided that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover SCR.

(2) ASF shall approve that branches transfer all or part of their portfolios to undertakings set up within the territory of another Member State, provided that the supervisor of that Member State certifies, within 3 months of receiving a request that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover SCR.

(3) Where a branch transfers all or part of its portfolio to a branch set up within the territory of another Member State, ASF shall approve the transfer of portfolio provided that the supervisor of the Member State of the branch of the accepting undertaking or the supervisor of the Member State referred to in Art. 119 certify, within 3 months of receiving a request, that:

a) after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover SCR;

b) the law of the Member State of the accepting undertaking permits such a transfer;

c) it has agreed to the transfer.

(4) Where the branch of the accepting undertaking is set up within the territory of Romania and takes all or part of the portfolio of contracts of a branch set up within the territory of another Member State, ASF shall certify, within 3 months of receiving a request, whether:

a), after taking the transfer into account, the accepting undertaking possesses or not the necessary eligible own funds to cover SCR;

b) the national law permits such a transfer;

c) ASF has agreed or not to that transfer of portfolio.

(5) Where the risk is situated in another Member State or the commitment is assumed also in another Member State, ASF shall approve the transfer of portfolio referred to in Paras (1) and (3) after receiving the approval of the supervisor of the Member State in which the risk is situated or of the Member State of the commitment.

(6) Where ASF is consulted in respect of a transfer of portfolio between two branches set up in other Member States, and that portfolio covers risks and commitments situated in Romania, ASF shall give its opinion or consent to the requesting authorities within 3 months of receiving a request. The absence of any response from ASF shall be considered equivalent to a tacit consent.

(7) The decision on the transfer of portfolio, approved subject to the conditions of this article, shall be published as laid down in ASF's own regulations, if Romania is the Member State of the commitment or the Member State in which the risk is situated.

(8) The transfer of portfolio approved under this article shall be notified by the accepting undertaking to the contracting parties and other persons having rights or obligations arising out of the contracts transferred within the time-limit established in the decision approving that transfer of portfolio. The contracting parties shall be entitled to terminate the contracts and request the return of the premiums paid in advance and corresponding to the period of validity not expired.

Solvency

Art. 118. – (1) The branches of third country undertakings must comply with the provisions of Sections 1 through 5 of Chapter V.

(2) For the purpose of calculating SCR and MCR, the branches shall take into account only the operations effected by them, both for life and non-life insurance, and shall possess the items of the eligible own funds in accordance with Art. 71(3).

(3) The eligible amount of basic own funds required to cover MCR, which shall not be less than half of the absolute floor required under Art. 95(1) Letter d), shall be constituted in accordance with the provisions of Art. 71(4), and the deposit lodged in Romania in accordance with Art. 115(2), Letter d) shall be eligible to cover MCR.

(4) The assets covering SCR up to the amount of MCR shall be kept within the territory of Romania, and the excess within any of the other Member States.

Advantages to undertakings authorised in more than one Member State

Art. 119. – (1) The undertakings with their head offices in third countries whose branches are situated in the Member States, including Romania, may apply to ASF for the following advantages which shall be granted jointly:

a) SCR shall be calculated in relation to the business pursued by all authorised branches within the Member States;

b) the deposit required under Art. 115(2), Letter d) shall be lodged in one of those Member States;

c) the assets covering MCR shall be located in any one of the Member States in which they pursue their activities.

(2) The undertakings concerned shall duly justify in the application referred to in Para (1) the appointment of ASF as supervisor responsible for monitoring the solvency of the entire business of the branches established in the Member States.

(3) ASF shall cooperate with the supervisors of the Member States to reach an agreement in relation to the

granting of the advantages referred to in Para (1).

(4) Where ASF is appointed a responsible supervisor in accordance with Para (2), it:

a) shall inform the supervisors concerned that it has been appointed supervisor, and those advantages shall take effect from that time;

b) shall require that the deposit referred to in Para (1) Letter b) be lodged in Romania;

c) shall require the supervisors concerned any information necessary for the fulfilment of its obligations as appointed supervisor;

d) shall, where the undertaking referred to in Para (1) is in difficulty, apply the provisions of Art. 13(1), Arts. 99 and 100.

(5) Where ASF is not appointed supervisor, it:

a) shall grant the advantages referred to in Para (1) from the time it is informed of the responsibility assumed by the appointed supervisor on monitoring the solvency of the entire business of the branches;

b) shall send the appointed supervisor the information requested by it.

(6) The advantages granted in accordance with this article shall be withdrawn simultaneously by all Member States at the request of ASF or of any other supervisor concerned.

Branches in difficulty

Art. 120. – The provisions of Art. 8, Art. 13(1), Art. 14(5) and Art. 101 shall also apply to the branches covered by this chapter and benefitting the advantages granted subject to the conditions set out in Arts. 119(1) through (5).

Separation of business

Art. 121. – (1) Branches established in Romania shall not simultaneously pursue life and non-life insurance activities.

(2) Branches which, on 1 January 2007 and on the date of entry into force of this law, pursued both activities simultaneously may continue to do so

provided that they comply with Art. 49.

(3) Where the third country undertakings simultaneously pursue both activities and which on 1 January 2007 and on the date of entry into force of this law pursued and pursue in Romania solely life insurance activity through their branches and they wish to pursue non-life insurance activity in Romania they may only pursue life insurance activity through subsidiaries.

Withdrawal of authorisation

Art. 122. – (1) Notwithstanding Art. 110, ASF may also withdraw the operation authorisation granted to branches where they fail to comply with the provisions of this chapter.

(2) Where ASF, as appointed supervisor, withdraws the authorisation of the branch established within the territory of Romania, then ASF shall notify the other authorities concerned.

(3) Where ASF is not an appointed supervisor and it is notified of the withdrawal of the authorisation of a branch of other Member State, then ASF shall:

a) ensure supervision of the branch;

b) withdraw the authorisation of the branch of Romania where the decision of the appointed supervisor is justified by the breach of the requirements of the overall state of solvency.

Branches of reinsurers of third countries

Art. 123. – Where the supervisory regime of a third country has been deemed to be equivalent on a permanent or temporary basis by the European Commission, reinsurance contracts concluded through the branches of undertakings having their head office in that third country shall be treated in the same manner as reinsurance contracts concluded with reinsurers having their head office in Member States.

CHAPTER XI

Specific provisions

Non-life insurance

Art. 124. – (1) General and special conditions of reinsurance contracts shall not include any conditions intended to meet the particular circumstances of the risk to be covered

(2) Insurers covering risks in Class 10 in Section A of Annexe No. 1, not including carrier's liability, must become members of BAAR and FPVS.

(3) Insurers shall join BAAR within 30 days of receipt of the authorisation to cover risks in Class 10 in Section A of Annexe No. 1, not including carrier's liability, and must establish the Joint Fund of Green Paper as of the date of membership.

Community co-insurance

Art. 125. – (1) Insurers may participate in Community co-insurance only subject to the provisions of this article.

(2) Co-insurance operations which do not satisfy the conditions set out in Para (3) shall not be treated as Community co-insurance operations.

(3) Community co-insurance operations shall cover the risks classified under Classes 3 through 16 in Section A of Annexe No. 1, subject to the following conditions:

a) the risk is a large risk;

b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurers, acting as co-insurers, one of them being the leading co-insurer;

c) the risk is situated within the Member States;

d) for the purpose of covering the risk, the leading co-insurer is treated as if it were the insurer covering the whole risk;

e) where the insurer, acting as the leading co-insurer, is authorised by ASF, at least at one of the other co-insurers participates in the contract through a head

office or a branch established in another Member State;

f) the leading co-insurer determines the terms and conditions of insurance and rating.

(4) The provisions of Art. 113(1) through (6) and of Art. 114 shall apply only to the leading co-insurer.

(5) The insurers entering a co-insurance contract must establish and maintain technical provisions corresponding to the proportion covered of the insured risk, in accordance with the legislation in force, but at least equal to those determined by the leading co-insurer, in accordance with the legislation of its home Member State.

(6) Where the insurer, as the leading co-insurer, is authorised by ASF, the level of the technical reserves established and maintained by each co-insurer shall be determined by it, in accordance with the legislation in force.

(7) Co-insurers shall keep statistical data showing:

a) the extent of Community co-insurance operations in which they participate;

b) the Member States where the risk covered is situated.

(8) In the event of insurers being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts, without distinction as to the nationality of the insured and of the beneficiaries.

Activities similar to tourist assistance

Art. 126. – Assistance to persons who get into difficulties in circumstances other than those referred to in Art. 2(2) Letter g) and Para (5) shall be subject to the provisions of this part and shall be treated as if it were classified under Class 18 in Section A of Annexe No. 1.

Legal expenses insurance

Art. 127. – (1) This article shall apply to insurers concluding legal expenses insurance contracts:

a) bearing the costs of legal proceedings;

b) providing other services directly linked to insurance cover:

(i) to secure compensation for the prejudice suffered by the contracting parties, by settlement out of court or through civil or criminal proceedings;

(ii) to bear the legal costs incurred by the contracting parties in civil, administrative, or criminal proceedings or in respect of any claim made against those persons.

(2) Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall, in the case of a single policy, be dealt with in a separate section of a contract in which the nature of the legal expenses cover and the amount of the relevant premium are specified.

(3) Insurers concluding legal expenses insurance contracts shall adopt one of the following methods for the management of claims:

a) insurers shall ensure that its staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof does not pursue a similar activity in another insurer having financial, commercial or administrative links with that insurer; composite insurers shall ensure its staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof is dedicated only to this insurance class;

b) insurers shall outsource the management of claims or legal advice in respect thereof to an entity the name of which shall be mentioned in a contract or separate section referred to in Para (2); such entity shall assign that duty to a staff appointed for such purposes; both such staff, and the management of the entity may not pursue at the same time similar activities in another insurer having links with that insurer;

c) the contract or the separate section referred to in Para (2) shall provide the right of the contracting party to choose a lawyer or mediator in accordance with the national legislation.

(4) The contracting party shall have the right to choose a lawyer or mediator to serve his interests in any

proceedings or whenever a conflict of interest arises.

(5) The provisions of Para (4) shall not apply unless all of the following conditions are met:

a) the insurance is limited to cases arising from the use of road vehicles in the territory of Romania;

b) the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;

c) neither the legal expenses insurer nor the assistance insurer carries out any class of liability insurance;

d) measures are taken by the insurer so that the legal counsel and representation of each of the parties to a dispute is effected by independent lawyers where those parties are insured for legal expenses by the same insurer.

(6) The provisions of Para (3) shall also apply in the case of the exemptions set out in Para (5).

(7) The parties shall provide in the legal expenses insurance contract the settlement procedure of disputes, through mediation or arbitration, and the right of the insured person to have recourse to such procedures, without prejudice to his right to a resort to competent courts of law, in accordance with law.

(8) This article shall not apply in the following cases:

a) the insurance concerns disputes or risks arising in connection with the use of sea-going vessels;

b) the activity pursued by an insurer providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurer under such cover;

c) the activity of legal expenses insurance is undertaken by an insurer under Class 18 in Section A of Annexe No. 1, which complies with the following conditions:

(i) the activity is pursued in a Member State other than that in which the contracting party is habitually resident, clearly stating this and that the cover is

ancillary to the assistance;

(ii) the activity forms part of an insurance contract covering the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence.

(9) Whenever a conflict of interests arises or there is disagreement over the settlement of the dispute, the insurer or the claims settlement staff shall inform the contracting party of the rights deriving from Paras (4) and (7).

Health insurance

Art. 128. – (1) Where contracts covering the risks under Class 2 in Section A of Annexe No. 1 may serve as a partial or complete alternative to health cover provided by the statutory social security system may, then those contracts shall comply with the legal provisions adopted to protect the general good and the general and special conditions of that insurance shall be communicated to ASF before use.

(2) Insurers shall send ASF the technical bases used for the calculation of the premiums before offering the products, which are similar to those of life insurance where all of the following conditions are fulfilled:

a) the insurance premiums are calculated on the basis of morbidity tables and other relevant statistical data in accordance with the actuarial mathematical methods used in insurance and shall be sufficient to settle obligations;

b) insurers shall set up a reserve for increasing age;

c) insurers may cancel the insurance contract within 20 days after notification of the contracting party;

d) insurance contracts provide that premiums may be increased or payments reduced even for current contracts;

e) insurance contracts provide that the contracting parties have the right to conclude a new contract in accordance with Para (1), offered by the same insurer or branch and taking into account their acquired rights; the conclusion of the new contract shall take account of the reserve for increasing age, and a new medical

examination may be required only for increased cover.

(3) ASF shall publish the morbidity tables and other relevant statistical data and transmit them to the supervisory authorities of the home Member State.

Insurance against accidents at work

Art. 129. – Insurers offering, at their own risk, compulsory insurance against accidents at work under the right of establishment and freedom to provide services shall comply with the specific provisions of the national law of the host Member State concerning such insurance.

Life insurance

Art. 130. – Insurers shall establish the level of premiums for new business on reasonable actuarial assumptions so that those premiums are sufficient to cover liabilities and, in particular, to establish technical provisions; for that purpose, all financial aspects shall be taken into account by insurers, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise their solvency in the long term.

Finite reinsurance

Art. 131. – (1) Insurers which conclude finite reinsurance contracts and reinsurers which pursue finite reinsurance activities shall have in place procedure for the proper identification, measurement, monitoring, management, control and reporting of the risks arising from those activities.

(2) For the purposes of Para (1), finite reinsurance means reinsurance under which the maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:

a) the time value of money for services provided is actually and explicitly defined;

b) the contractual provisions moderate the balance of

economic experience between the parties over time to achieve the target risk transfer.

Special purpose vehicles

Art. 132. – (1) Special purpose vehicles shall be established only subject to the authorisation granted by ASF, in accordance with Art. 166(1) Letter e) and in accordance with the legal provisions.

(2) Special purpose vehicles authorised prior to 31 December 2015 shall be subject to the national specific legislation.

TITLE II

Groups

CHAPTER I

Scope

Cases of application of group supervision

Art. 133. – (1) For the purposes of this title, *undertaking* means an undertaking which belongs to a group, authorised either in Romania or in other Member States.

(2) The provisions of Title I shall apply accordingly to the undertakings which are part of a group, unless otherwise provided in this title.

(3) Supervision at the level of the group applies as follows:

a) to participating undertakings of at least one undertaking of Member States or third countries;

b) to undertakings, the parent undertaking of which is an insurance holding company or mixed financial holding company which has its head office in a Member State;

c) to undertakings, the parent undertaking of which is an insurance holding company or mixed financial holding company which has its head office in a third country;

d) to undertakings, the parent undertaking of which is a mixed-activity insurance holding company.

(4) ASF shall supervise third country undertakings, insurance holding companies, mixed-activity insurance holding companies, and mixed financial holding companies only at the group level, and in the case of insurance holding companies or mixed financial holding companies, the provisions of Art. 27 shall apply.

(5) ASF shall decide, on a case-by-case basis, to exclude an undertaking from the group supervision, where:

a) the undertaking is situated in a third country where there are legal impediments to the exchange of information, without prejudice to the provisions of Art. 148;

b) the exclusion of the undertaking shall not significantly influence the achievement of the objectives of the group supervision;

c) the inclusion of the undertaking is inappropriate or misleading with respect to the objectives of the group supervision.

(6) ASF shall include in the group supervision the undertakings referred to in Para (5) Letter b) where, collectively, they have a significantly impact on the achievement of the objectives of the group supervision.

Ultimate parent undertaking

Art. 134. – (1) The provisions of Arts. 15 through 18 and Arts. 137 through 161 shall apply to the ultimate parent undertaking, insurance holding company or mixed financial holding company which has its head office in a Member State, where:

a) the participating undertakings referred to in Art. 133(3) Letter a) are subsidiaries of undertakings which have their head office in a Member State;

b) the insurance holding company or the mixed financial holding company referred to in Art. 133(3) Letter b) is the subsidiary of another insurance holding company or mixed financial holding company with its

head office in a Member State.

(2) Where the ultimate parent undertaking, parent insurance holding company or parent mixed financial holding company is a subsidiary of an entity subject to supplementary group supervision, within the meaning of Government Emergency Ordinance No. 98/2006, approved as amended and supplemented by Law No. 152/2007, as subsequently amended and supplemented, ASF may, after consulting the other supervisors concerned, decide not to carry out the supervision of risk concentration referred to in Art. 157 or of intra-group transactions referred to in Art. 158, or both.

Ultimate parent undertaking at the national level

Art. 135. – (1) For the entities referred to in Art. 133(3) Letters a) and b) which have their head office in Romania and the ultimate parent-undertaking which has its head office in the Member States, ASF may, after consulting the coordinating supervisor and the ultimate parent undertaking at the level of Member States, decide to subject to group supervision the ultimate parent-undertaking at the national level, explaining its decision to both the coordinating supervisor and ultimate parent undertaking at the level of Member States.

(2) In the case referred to in Para (1), the provisions of Arts. 15 through 18 and Arts. 137 through 161 shall apply accordingly, in accordance with the provisions of Paras (3) through (9).

(3) ASF may restrict group supervision of the ultimate parent undertaking at the national level to:

a) the provisions of Chapter II;

b) the provisions of Arts. 157 and 158;

c) the provisions of Art. 159;

d) a combination of the provisions referred to in Letters a) through c).

(4) Where ASF decides to apply the provisions of Chapter II, the decision of the coordinating supervisor concerning the method chosen by the coordinating supervisor for the ultimate parent-undertaking at the level of the Member States, in accordance with Art.

139, shall be determinative and applied also by ASF.

(5) Where ASF decides to apply the provisions of Chapter II to the ultimate parent undertaking at the national level, and the ultimate parent-undertaking at the level of Member States has obtained permission to calculate SCR on the basis of an internal model, both at the group level and at the level of the undertakings in the group, the decision of the coordinating supervisor shall be determinative and applied also by ASF.

(6) In the case referred to in Para (5), where ASF considers that the risk profile of the ultimate parent undertaking at the national level deviates significantly from the internal model approved at the level of Member States and as long as the undertaking concerned does not remedy such situation, ASF may decide:

a) to impose a solvency capital add-on to SCR resulting from the application of such model;

b) to impose the calculation of SCR at the group level on the basis of the standard formula where such capital add-on would not be appropriate.

(7) ASF shall explain the decision adopted for the situation referred to in Para (6), to both the coordinating supervisor, and the ultimate parent-undertaking at the national level.

(8) Where ASF decides to apply the provisions of Chapter II, the subsidiaries of the ultimate parent undertaking at the national level shall not be subject to Art. 155, even if the conditions set out in Arts. 154 or 156 are fulfilled.

(9) The provisions of Para (1) shall not apply where the ultimate parent undertaking at the level of the Member States has obtained permission to calculate SCR and MCR on the basis of the internal model at group level for its subsidiaries, in accordance with Art. 16(9).

Subgroup supervision

Art. 136. – (1) Where the provisions of Art. 135 apply, ASF may conclude an agreement with the authorities of the Member States where a subsidiary of

the group treated as ultimate parent undertaking at the national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

(2) ASF may not carry out the supervision referred to in Art. 135 for a subsidiary of a group, if other authorities conclude an agreement within the meaning of Para (1) for other subsidiaries of that group.

(3) For the situation referred to in Para (1), the provisions of Art. 135(2) through (9) shall apply accordingly.

CHAPTER II

Group solvency

SECTION 1

Own funds and calculation of group solvency

General provisions

Art. 137. – (1) The participating undertaking referred to in Art. 133(3) Letter a) or the holding referred to in Art. 133(3) Letter b) shall ensure on an ongoing basis that eligible own funds are available in the group which are at least equal to the group SCR as calculated in accordance with the provisions of Arts. 139 through 152, and Art. 153.

(2) Where ASF is informed by the participating undertaking that the group SCR is no longer complied with or that there is a risk of non-compliance in the following 3 months, ASF shall inform the other authorities within the college of supervisors so that proper measures are taken.

Frequency of calculation

Art. 138. – (1) The participating undertakings, insurance holding companies or mixed financial holding companies shall determine at least annually the level of eligible own funds referred to in Art. 137(1).

(2) The relevant data based on which own funds are

determined and results of that calculation shall be submitted to ASF by the participating undertaking, insurance holding company, mixed financial holding company or undertaking in the group identified by ASF after consulting the group and the other supervisory authorities concerned.

(3) The participating undertakings, insurance holding companies, and mixed financial holding companies shall monitor the group SCR on an ongoing basis and shall recalculate that requirement, submitting the result to ASF, where from the last reporting:

a) the risk profile deviates significantly from the assumptions underlying the calculation;

b) the risk profile has altered significantly.

Choice of calculation method

Art. 139. – (1) The calculation of the solvency at the level of the group of participating undertakings shall be carried out in accordance with the provisions of Arts. 140 through 148 and Method 1 set out in Art. 149.

(2) If the use of Method 1 is not adequate, ASF may, after consulting the college of supervisors and the group concerned, approve the use of Method 2 which is laid down in Art. 150 or a combination of the two methods.

Inclusion of proportional share

Art. 140. – (1) The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings. the proportional share shall comprise:

a) where Method 1 is used, the percentages used for the establishment of the consolidated accounts;

b) where Method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly.

(2) Where the related undertaking is a subsidiary and does not have sufficient eligible own funds to cover its SCR, regardless of the method used, when calculating the group SCR the total solvency deficit of the subsidiary shall be taken into account. Where in the opinion of ASF and of the college of supervisors, the

responsibility of the undertaking is strictly limited to the share of the capital owned, it may nevertheless allow for the solvency deficit to be taken into account on a proportional basis.

(3) ASF shall determine, after consulting the college of supervisors, the proportional share which shall be taken into account in the following cases:

a) where there are no capital ties between some of the undertakings in a group;

b) where any of the supervisors has determined that the holding, directly or indirectly, of capital or voting rights in an undertaking qualifies as a participation because a significant influence is effectively exercised over that undertaking;

c) where any of the supervisors has determined that an undertaking is a parent undertaking of another because it effectively exercises a dominant influence over that other undertaking.

Double use of own funds

Art. 141. – (1) The undertakings in a group may not use the eligible own funds of another undertaking in the group to cover its own SCR.

(2) When calculating the group SCR and unless otherwise provided by the methods described in Arts. 149 through 152, the following amounts shall be excluded:

a) the value of any asset of the participating undertaking and deemed items of own eligible funds covering SCR of one of its related undertakings;

b) the value of any asset of a related undertaking and deemed items of own eligible funds covering SCR of the participating undertaking or other related undertakings.

(3) Without prejudice to Para (1), the following may be included in the calculation of the group SCR only in so far as they are eligible for covering SCR of the related undertakings:

a) surplus funds falling under Art. 66, arising in life insurance undertakings of the participating undertaking

for which the group solvency is calculated;

b) any subscribed but not paid-up capital of the related undertakings of the participating undertaking participative for which the group solvency is calculated.

(4) Without prejudice to Para (3), the following shall be excluded from the calculation of the group SCR:

a) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

b) subscribed but not paid-up capital of the participating undertaking which represents a potential obligation on the part of a related undertaking;

c) subscribed but not paid-up capital of a related undertaking which represents a potential obligation on the part of another related undertaking.

(5) Where ASF considers that certain own funds eligible for SCR of the related undertakings other than those referred to in Para (3) cannot effectively be made available to cover SCR of the participating undertaking for which the group solvency is calculated, those own funds shall be included in the calculation only in so far as they are eligible for covering SCR of the related undertakings.

(6) The sum of the own funds referred to in Paras (3) and (5) shall not exceed SCR of the related undertaking.

(7) Any ancillary eligible own funds of the related undertakings of a participating undertaking for which the group solvency is calculated shall be included in the calculation of the group SCR after the prior approval by the authority responsible for the supervision of that related undertaking, or after the prior approval by ASF in accordance with Art. 65, in the case of the related undertakings within the territory of Romania.

Intra-group capital

Art. 142. – (1) Reciprocal financing means where an undertaking or any of its related undertakings holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible

to cover SCR of the first undertaking.

(2) When calculating group solvency, no account shall be taken of any eligible own funds arising out of reciprocal financing between the participating undertaking and:

a) the related undertakings;

b) the participating undertakings;

c) other related undertakings of any of its participating undertakings.

(3) When calculating group solvency, no account shall be taken of any own funds covering SCR of a related undertaking of the participating undertaking for which the group SCR is calculated, where the own funds concerned arise out of reciprocal financing with a related undertaking of that participating undertaking.

Valuation

Art. 143. – The value of the assets and liabilities shall be assessed in accordance with Art. 52.

Calculation method for related undertakings

Art. 144. – (1) Where undertakings have more than one related undertaking, the group solvency calculation shall be carried out by including all related undertakings.

(2) Where the related undertaking of an undertaking for which the group solvency is calculated has its head office in another Member State, the calculation of SCR and the assessment of the own funds for the related undertaking shall be carried out in accordance with the legislation of that Member State.

Calculation method for intermediate holdings

Art. 145. – (1) When calculating the group solvency of an undertaking which holds participations in related undertakings of Member States or in third country undertakings through an insurance holding company or mixed financial holding company, the situation of that holding, named *intermediate holding* shall be taken into account; For the sole purpose of that calculation, the intermediate undertaking shall be treated as if it were an

undertaking regulated in accordance with the provisions of Title I, Chapter V, Sections 3 and 4 in respect of own funds eligible and SCR.

(2) Where the intermediate holding referred to in Para (1) holds subordinated debt or other eligible own funds subject to limitation in accordance with Art. 71, they shall be recognised up to the amounts calculated by the application of those limits to the total eligible own funds at group level as compared to SCR at group level; ancillary own funds may be taken into account for the calculation of the group solvency only after approval by ASF in accordance with Art. 65 and Art. 166(1) Letter f).

Calculation method for related third country undertakings

Art. 146. – (1) When calculating, in accordance with Method 2, the group solvency of an undertaking which is a participating undertaking in a third country undertaking, the latter shall, solely for the purposes of that calculation, be treated as a related undertaking.

(2) Where the third country referred to in Para (1) provides for the authorisation of undertakings under the national legislation and imposes a solvency regime at least equivalent to that laid down in Title I, Chapter V, the eligible own funds and SCR of that undertaking shall be in accordance with the legislation of the third country where it has its head office.

Calculation method for related undertakings such as credit institutions, investment firms and financial institutions

Art. 147. – (1) The participating undertakings in financial institutions, credit institutions or investment firms may apply, in a consistent manner over time, Method 1 or Method 2 for the calculation of the group solvency; if Method 1 is chosen, then such method shall be applied only if ASF is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation.

(2) ASF shall, at the request of the participating undertaking or on its own initiative, approve the deduction of the participations referred to in Para (1) from the own funds eligible for the group SCR of the

participating undertakings.

Lack of information

Art. 148. – Where the information necessary for calculating the group solvency of the undertakings, concerning a related undertaking with its head office in a Member State or a third country is not available to ASF, the book value of the participation in that undertaking shall be deducted from the own eligible funds covering the group solvency; the unrealised gains connected with such participation shall not be recognised as own funds covering the group solvency.

Calculation Method 1

Art. 149. – (1) The calculation of the group solvency of the participating undertaking shall be carried out on the basis of the consolidated accounts.

(2) The group solvency of the participating undertaking shall be the difference between the following:

a) the own funds eligible to cover SCR, determined in accordance with the provisions of Title I, Chapter V, Section 3;

b) SCR at group level calculated in accordance with the provisions of Title I, Chapter V, Section 4.

(3) The SCR at group level based on consolidated data, referred to also as consolidated SCR, shall be calculated in accordance with the provisions of Title I, Chapter V, Section 4.

(4) The consolidated SCR, covered by eligible own funds in accordance with Art. 71(4), shall have as a minimum the sum of the following:

a) MCR of the participating undertaking;

b) the proportional share of MCR of the related undertakings.

Calculation Method 2

Art. 150. – (1) The group solvency of the participating undertaking shall be the difference between the following:

a) the aggregated group eligible own funds, as provided for in Para (2);

b) the value of the participations held by the participating undertaking and the aggregated group SCR as provided for in Para (3).

(2) The aggregated group eligible own funds are the sum of the following:

a) the own funds eligible for SCR of the participating undertaking;

b) the proportional shares of the participating undertaking in the own funds eligible for SCR of the related undertakings.

(3) The aggregated group SCR is the sum of the following:

a) SCR of the participating undertaking;

b) the proportional shares in SCR of the related undertakings.

(4) Where the participation in the related undertakings consists, wholly or in part, of an indirect ownership, the value of that participation shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, the proportional shares referred to in Para (2) Letter b) and Para (3) Letter b) being modified accordingly.

(5) In determining whether the aggregated group SCR appropriately reflects the risk profile of the group, ASF and the other supervisors shall pay attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify. Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group SCR, a solvency capital add-on may be imposed in accordance with Art. 35.

Group internal model

Art. 151. – (1) The application sent to ASF, for approval in accordance with Art. 166(1) Letter g), by an undertaking and its related undertakings, insurance holding company or mixed financial holding company and their related undertakings for permission to

calculate the aggregated group SCR and SCR of the undertakings in the group on the basis of an internal model, shall be accompanied by the complete documentation.

(2) ASF shall provide the applicants referred to in Para (1) with the decision approving or rejecting the use of the group internal model, stating the reasons.

(3) Where ASF considers that the risk profile of an undertaking which calculates SCR on the basis of the group internal model deviates significantly from the assumptions underlying that model, ASF may impose a solvency capital add-on in accordance with Art. 35 or, where the situation is not remedied, ASF may require that SCR is calculated on the basis of the standard formula.

(4) ASF may impose a solvency capital add-on in accordance with the provisions of Para (3) also when SCR is calculated on the basis of the standard formula.

(5) The reasoned decision on the solvency capital add-on, adopted in the cases referred to in Paras (3) and (4), shall be communicated to the undertaking concerned and to the college of supervisors.

Solvency capital add-on at group level

Art. 152. – (1) In determining whether the group SCR reflects the risk profile of the group, ASF shall take into account the situations referred to in Art. 35(1) Letters a) through d) which may arise at group level, in particular where:

a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

b) a solvency capital add-on was imposed by the other supervisors on the related undertakings.

(2) Where the group SCR does not reflect the risk profile of the group, ASF shall impose a solvency capital add-on.

Group solvency of insurance holding

Art. 153. – In the case of an insurance holding company or mixed financial holding company, the

company or of a mixed financial holding company

calculation of the group solvency shall be carried out at the level of that holding, applying the provisions of Arts. 139 through 152, which shall be treated as an undertaking which complies with the provisions on own funds and SCR, in accordance with Title I, Chapter V, Sections 3 and 4.

SECTION 2

Group solvency for groups with centralised risk management

Requirements

Art. 154. – (1) The provisions of Art. 155(1) through (3) shall apply to undertakings which are the subsidiaries of a parent undertaking, insurer or reinsurer, if all of the following conditions are met:

a) the subsidiary is included in the group supervision, in accordance with this Title;

b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary and are deemed by the supervisory authorities concerned appropriate for a prudent management of the subsidiary;

c) the parent-undertaking has received the agreement referred to in Art. 159(5);

d) the parent-undertaking has received the agreement referred to in Art. 16(24);

e) the parent-undertaking has submitted a request for application of the centralised risk management and ASF has approved such request, in accordance with the procedure set out in Arts. 15 through 18.

(2) The parent undertaking shall monitor compliance with the conditions referred to in Para (1) Letters b) through d); if they are no longer met, the parent-undertaking shall forthwith inform ASF and the subsidiary thereof, and shall submit a plan to remedy the situation.

(3) Where ASF finds that the conditions set out in Para (1) Letters b) through d) are not complied with, the parent-undertaking shall present a plan to restore

compliance within an appropriate period of time.

Solvency Capital Requirement (SCR) and Minimum Capital Requirement (MCR)

Art. 155. – (1) Where SCR of the subsidiaries authorised by ASF included in the group supervision is calculated in accordance with the provisions of Art. 151(1) and the risk profile deviates significantly from the assumptions underlying the model concerned, ASF may impose the measures set out in Art. 151(3).

(2) Where SCR of the subsidiaries is calculated with the standard formula and the risk profile deviates significantly from the assumptions underlying it and where the subsidiaries fail to remedy the situation, ASF may require them by a decision stating the reasons:

a) to replace, in the standard formula, subsets of parameters by parameters specific to the subsidiary for the non-life underwriting risk module, the life underwriting risk module and the health underwriting risk module, in accordance with the provisions of Art. 81;

b) to set a solvency capital add-on, in accordance with the provisions of Art. 35.

(3) Where SCR or MCR is not complied with, the subsidiaries shall be subject to the provisions of Art. 99 or 100, as appropriate.

(4) The provisions of Paras (1) through (3) shall no longer apply in the following situations:

a) the conditions referred to in Art. 154(1) Letters a), c) and d) are no longer met;

b) the conditions referred to in Art. 154(1), Letter b) are no longer met, and the group fails to take the measures necessary so that compliance with such conditions is restored within an appropriate period of time.

(5) The provisions of Paras (1) through (3) shall apply again in the event that the parent-undertaking requests so and its request is approved, in accordance with the procedure set out in Arts. 15 through 18.

Subsidiaries of an

Art. 156. – The provisions of Arts.154 and 155 shall

insurance holding company or of a mixed financial holding company

apply accordingly to the undertakings which are the subsidiaries of an insurance holding company or a mixed financial holding company.

CHAPTER III

Supervision of risk concentration at group level, intra-group transactions and system of governance

Supervision of risk concentrations

Art. 157. – (1) As part of the supervisory review process carried out by ASF, the supervision of the risk concentration at group level shall be also exercised in accordance with the applicable procedure set out in Arts. 15 through 18 and the provisions of Art. 159.

(2) The undertakings coordinating the groups or, where appropriate, insurance holding companies or mixed financial holding companies shall report at least annually to ASF any significant risk concentration at the level of the group, identified in accordance with Art. 16(21) and (22).

Supervision of intra-group transactions

Art. 158. – (1) As part of the supervisory review process carried out by ASF, the supervision of intra-group transactions shall be carried out in accordance with the applicable procedure set out in Arts. 15 through 18 and the provisions of Art. 159.

(2) The undertakings coordinating the groups or, where appropriate, insurance holding companies or mixed financial holding companies shall report at least annually to ASF all significant intra-group transactions by undertakings, including those performed with a natural person with close links to an undertaking in the group, identified in accordance with Art. 16(21); very significant intra-group transactions shall be reported as soon as practicable.

Supervision of governance system

Art. 159. – (1) Without prejudice to the requirements of Title I, Chapter IV, Section 2 , the reporting

procedures and risk management and internal control systems shall be prepared and implemented consistently in all undertakings included in the scope of group supervision, in accordance with Art. 133(3) Letters a) and b), so that those systems and reporting procedures can be controlled at the level of the group.

(2) The internal control system shall include the following:

a) adequate procedures as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

b) reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration;

c) internal control general framework.

(3) The participating undertakings, insurance holding companies or mixed financial holding companies shall conduct ORSA at group level, in accordance with the provisions of Art. 29, which shall be subject to the supervisory review process by ASF as coordinating supervisor.

(4) Where the participating undertakings, insurance holding companies or mixed financial holding companies decide to calculate the group solvency in accordance with Method 1, referred to in Art. 149, the undertakings shall prove ASF that the difference between the sum of SCR of all related undertakings and that aggregated at group level is correct.

(5) The participating undertakings, insurance holding companies or mixed financial holding companies shall request ASF's approval to undertake ORSA at the level of the group and at the level of any subsidiary at the same time, and shall submit a single report to ASF and supervisory authorities of those subsidiaries.

(6) The exercise by the group of the option referred to in Para (5) shall not exempt the subsidiaries from the obligation to comply with the provisions of Art. 29.

CHAPTER IV

Public report

Group solvency

Art. 160. – (1) The participating undertakings, insurance holding companies or mixed financial holding companies shall disclose, on an annual basis, a report on the solvency and financial condition at the level of the group, in compliance with the provisions of Arts. 39 through 42.

(2) Where the participating undertakings, insurance holding companies or mixed financial holding companies requests ASF's approval on the disclosure of a single report on the solvency and financial condition, such report shall comprise the information referred to in Arts. 39 through 42, as follows:

a) at the level of the group;

b) at the level of the subsidiaries, so that their conditions could be easily identified.

Group structure

Art. 161. – The undertakings, insurance holding companies or mixed financial holding companies shall disclose, on an annual basis, information at the level of the group on the legal structure, governance and organisational structure, including the description of the subsidiaries, of branches and significant related undertakings.

CHAPTER V

Parent undertakings with their head offices in third countries

Absence of equivalence of supervisory regime

Art. 162. – (1) Where the supervisory regime of a third country is not declared equivalent, including temporarily equivalent, or where ASF decides not to rely on the third country in the situation referred to in Art. 16(32), ASF shall apply to the undertakings based in the third country the following provisions:

a) Arts. 137 through 153 and Arts. 157 through 160, in

accordance with the applicable procedures set out in Arts. 15 through 18;

b) any of the methods set out in Art. 16(34) and Art. 17(17).

(2) For the sole purpose of the group solvency calculation, the parent undertaking shall comply with the provisions of Title I, Chapter V, Section 3 and any of the following:

a) SCR determined in accordance with the provisions of Art. 145, where it is an insurance holding company or mixed financial holding company;

b) SCR determined in accordance with the principles of Art. 146, where it is a third country undertaking.

TITLE III

Other provisions

CHAPTER I

Sanctions

Sanctions

Art. 163. – (1) The following deeds are deemed petty offences:

a) failure by the undertakings and by their management, or persons performing key or other critical functions to comply with the delegated acts, regulatory technical and implementing standards issued by the European Commission, and with the regulations issued by ASF for the application of this law;

b) failure by the undertakings to comply with the provisions on the pursuit of the business referred to in Art. 26(1) through (5), Arts. 28 through 33, Arts. 36, 49, 50, Art. 51(1), and also by the branches of third country undertakings established in the territory of Romania to comply with the provisions of Art. 121, Art. 124(2) and (3), Art. 127(3), Art. 128(1) and 130, first sentence;

c) infringement by the undertakings and by their management, or persons performing key or other critical functions, of the provisions of Art. 27;

d) infringement by the undertakings of the provisions of Art. 21(2);

e) breach by the undertakings of the obligations on transmission of information as set out in Arts. 37, 39, 41, 42 and 47, and documents and reports in accordance with the legal provisions;

f) infringement by the undertakings of the provisions of Section 2 of Chapter V on the establishment and calculation of technical provisions, of Section 3 of Chapter V on own funds, of Section 4 of Chapter V on SCR, of Section 5 of Chapter V on MCR, of Section 6 of Chapter V on investments of Title I of Part I, and by the branches of third country undertakings of the provisions of Art. 118;

g) failure by the accepting undertaking to comply with the provisions of Art. 38(5) and Art. 117(8), and transfer of portfolio without ASF's approval;

h) failure by the undertakings to comply with the provisions of Art. 20(15) and to maintain the conditions on the basis of which the operation authorisation referred to in Art. 21 was granted;

i) changes made by the undertakings or their management to the documents and/conditions on the basis of which the operation authorisation was granted, without ASF's approval;

j) failure by the undertakings to comply with the provisions of Art. 99(1), (2) and (5) and Art. 100;

k) failure by the undertakings to comply with the measures adopted by ASF in accordance with Art. 101;

l) failure by the undertakings to comply with the provisions of Art. 107(1) and (3) and Art. 108(1) through (4), (6) and (7) on the information provided to potential contracting parties;

m) failure by the insurers to comply with the provisions of Art. 111, Art. 112(7) and (8), Art. 113(1), (7), (8) and Art. 114;

n) failure by the undertakings defined in accordance

with Art. 133(1) to comply with the provisions of Art. 137(1), Art. 138, Art. 139(1), Art. 140(1) and (3), Art. 141 through 145, Art. 146(2), Arts. 153, 154, Art. 157(2), Art. 158(2) and Arts. 159 through 161;

o) unlawfully preventing ASF from exercising the rights conferred upon it by law, and any person's unjustified refusal to meet the requests of ASF in exercising its tasks under the law;

p) failure by the undertakings and their management to comply with the measures established by authorising, supervisory, regulatory and control acts or as a result thereof;

r) the influence likely to operate against the prudent and sound management of an undertaking exercised by its management, or persons performing key or other critical functions in such undertaking.

(2) The perpetration of the petty offences referred to in Para (1) by undertakings or branches of third country undertakings shall be subject, as appropriate:

a) either to a written warning; or

b) to a fine ranging between RON 10,000 to RON 5,000,000, by way of derogation from the provisions of Art. 8(2) of Government Ordinance No. 2/2001 on the legal regime of petty offences, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented.

(3) In addition to the main non-criminal sanctions referred to in Para (2), ASF's Board may apply, depending on the nature and seriousness of the petty offence, one or both of the following accompanying sanctions to the undertakings and branches of third country undertakings:

a) temporary or permanent prohibition on pursuing the insurance and/or reinsurance business, for one or several classes of insurance, in compliance with the proportionality principle;

b) withdrawal of the operation authorisation for all classes of insurance, or for one or several classes of insurance.

(4) The perpetration of the petty offences referred to in

Para (1) Letters a), c), i), o), p) and r) shall be subject, as appropriate:

a) either to a written warning; or

b) to a fine ranging between RON 10,000 to RON 1,000,000, by way of derogation from the provisions of Art. 8(2) of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented.

(5) In addition to the main non-criminal sanctions referred to in Para (4), ASF's Board may apply, depending on the nature and seriousness of the petty offence, one or both of the following accompanying sanctions to the management of the undertakings or persons performing key or other critical functions within those undertakings:

a) withdrawal of the approval granted by ASF;

b) prohibition of the right to hold any positions requiring ASF's approval for a period between one and 5 years of the communication of the sanctioning decision or another date expressly mentioned therein.

(6) The influence exercised by the shareholders or members of mutual undertakings likely to operate against the prudent and sound management of the undertaking shall be sanctioned by ASF by the suspension of the exercise of the voting rights cast by the shareholders concerned. If the suspension decision is not complied with, ASF may request in court the annulment of the votes cast by the shareholders or members of mutual undertaking during the suspension period.

(7) Where a qualifying holding was acquired without complying with the notification obligation referred to in Art. 43, throughout the assessment referred to in Art. 44, or without taking into account the opposition filed by ASF in accordance with Art. 45(2), the corresponding voting rights shall be null and void, and any votes already cast shall be annulled accordingly.

(8) Where the significant shareholders no longer meet the criteria referred to in Art. 45(1) Letters a) through d) and the legal requirements concerning the approval thereof, and where there are any reasonable grounds to

suspect, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Law No. 656/2002, republished, as subsequently amended and supplemented, is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof, ASF may order the suspension of the voting rights attached to the shares held by the shareholders concerned or the withdrawal of the approval granted.

(9) ASF shall require the shareholders referred to in Paras (7) and (8) to sell, within 3 months, the shares corresponding to the holding in connection with which ASF did not give its approval. The quorum necessary for the general meeting of shareholders shall take into account those shares. After expiry of this time limit, if the shares were not sold, ASF shall require the undertaking to cancel those shares, issue new shares with the same number and sell them. The price obtained from the sale thereof shall be deposited at the disposal of the initial acquirer, minus the expenses incurred with the sale.

(10) The board of directors or the members of the executive board of the undertaking, as appropriate, shall take the measures necessary for the cancellation of the shares, in accordance with the provisions of Para (9), and the sale of the newly issued ones. Where the price obtained is not satisfactory, or where the sale did not take place for lack of buyers, or where only a partial sale of the newly issued shares took place, the undertaking shall forthwith reduce the share capital by the difference in value between the share capital registered and that owned by the shareholders with voting rights.

(11) When determining the type of the sanction or of the sanctioning measure and amount of fine, ASF's Board shall, for the petty offences referred to in Paras (1), (3) and (5), take into account the proportionality and qualified reasoning principle and all relevant circumstances of the perpetration of the petty offence, including the following, as appropriate:

a) nature and seriousness of the deeds, including those which may generate a systemic risk, within the

meaning of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;

b) form of guilt;

c) financial condition;

d) financial stability;

e) amount of the profits made or losses avoided, in so far as they may be determined;

f) prejudices to third parties, in so far as they may be determined;

g) level of cooperation with ASF;

h) previous infringements.

(12) The sanctioning decisions issued by ASF shall comprise the *de facto* and *de jure* reasons, provide that the persons and undertakings sanctioned have the right to challenge it in accordance with Art. 165, the time limit within such challenge shall be filed, and the court to which they may apply; the decisions shall be communicated to the persons and undertakings concerned.

(13) The amount of the fines referred to in Para (2) Letter b) and Para (4) Letter b) shall be updated by ASF's own regulations.

(14) ASF shall publish the sanctioning measures referred to in Paras (3) and (5) in the Official Journal of Romania, Part I.

(15) The application of the sanctions and sanctioning measures shall not release the parties from their material, civil or criminal liability, as appropriate.

(16) By way of derogation from the provisions of Art. 8(3) of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, the non-criminal fines established by law and applied by ASF's Board shall be transferred to the State budget as revenue at the rate of 50%, and the difference of 50% shall be transferred to ASF's budget as revenue.

(17) The limitation period for the application of the non-criminal sanctions provided by this law shall expire within 6 months from the date on which the deed is found, but not later than 3 years from the perpetration of such deed.

(18) The petty offences referred to in Para (1) shall be established by the persons with supervisory and control duties within ASF, and ASF's Board shall apply the non-criminal sanctions referred to in Paras (2) through (8).

(19) Unless otherwise provided by this law, the petty offences referred to in Para (1) shall be subject to the provisions of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented.

Crimes

Art. 164. – Pursuit of the insurance and reinsurance business without the operation authorisation issued by ASF or pursuit of the business without registration in the Register of Insurers and Reinsurers shall be deemed a crime and shall be punished by imprisonment between 3 months and 2 years, or fine.

Remedies and rules of procedure

Art. 165. – (1) The acts adopted by ASF, in accordance with the legal provisions, concerning natural and legal persons in accordance with Art. 163 may be challenged with the Bucharest Court of Appeal, Administrative-Dispute and Fiscal Section, within 30 days of communication.

(2) The challenge filed with the Bucharest Court of Appeal, Administrative-Dispute and Fiscal Section, shall not suspend, while pending settlement, the measures ordered by ASF.

(3) ASF does not hold the capacity to be sued [*calitate procesuală pasivă*] and may not be sued in the lawsuits against undertakings, although the undertakings are subject to financial recovery or bankruptcy proceedings, and in the lawsuits against the Policyholders' Guarantee Fund, to be held liable for those undertakings' failure to fulfil their obligations

under the law and/or international conventions.

CHAPTER II

Provisions applicable during the transitional phases

ASF's powers

Art. 166. – (1) As from the date of entry into force of this law, in accordance with the provisions of Art. 182, ASF shall approve the:

a) ancillary own funds, in accordance with the provisions of Art. 65;

b) classification of own-fund items referred to in Art. 69(2);

c) specific parameters, in accordance with the provisions of Art. 75(7);

d) full and partial internal model, in accordance with the provisions of Arts. 82 and 83;

e) establishment of special purpose vehicles, in accordance with the provisions of Art. 132;

f) ancillary own funds of intermediate holding companies, in accordance with the provisions of Art. 145(2);

g) group internal model, in accordance with the provisions of Art. 151;

h) application of the matching adjustment to the relevant risk-free interest term structure, in accordance with the provisions of Art. 55(2) through (7);

i) application of the volatility adjustment to the relevant risk-free interest term structure, in accordance with the provisions of Art. 55(8) through (17);

j) application of the transitional measure to the risk-free interest rate, in accordance with the provisions of Art. 168;

k) application of the transitional measure to the technical provisions, in accordance with the provisions of Art. 169.

(2) As from the date of entry into force of this law, in accordance with the provisions of Art. 182, ASF shall:

a) determine the level of supervision at group level and decide on the undertakings included in the scope of supervision at group level, in accordance with the provisions of Title II Chapter I;

b) participate, as part of the college of supervisors, in the appointment of the coordinating supervisor, in accordance with the criteria laid down in Art. 16(1);

c) participate in the establishment of the colleges of supervisors, in accordance with the provisions of Art. 15(1) and (2).

(3) As from the date of entry into force of this law, in accordance with the provisions of Art. 182, ASF shall:

a) decide on the deduction of participations, in accordance with the provisions of Art. 147(2);

b) establish the calculation method of group solvency, in accordance with the provisions of Art. 139;

c) determine the equivalence of the solvency and supervisory regime of third countries, as appropriate, in accordance with the provisions of Art. 16(30) and (33) and determine the manner of application of the provisions of Art.162;

d) permit, in accordance with the provisions of Art. 154, the application of the provisions of Art. 155(1) subject to the conditions of Arts. 15 through 18;

e) decide, where applicable, on the application of transitional measures, as set out in Art. 167 and the application of the previsions of Art. 155(1), subject to the conditions of Arts. 15 through 18.

(4) The decisions and approvals granted in accordance with the provisions of Paras (1) and (3) shall apply as from 1 January 2016.

(5) ASF shall send the list of the undertakings covered by Art. 167(1) and (2) to the supervisors of the other Member States.

(6) ASF shall, by 1 January 2021, annually report the following information to EIOPA:

a) whether any products with long-term guarantees

exist on the national market and the investment practices of the undertakings to cover the obligations arising from those products;

b) the number of undertakings applying the matching adjustment, volatility adjustment, extension of the recovery period in accordance with Art. 99(4), equity risk sub-module depending on the duration and transitional measures set out in Arts. 168 and 169;

c) the impact of the matching adjustment, volatility adjustment, symmetric adjustment mechanism applied to the cost of capital corresponding to the investments in shares, equity risk sub-module depending on the duration and transitional measures set out in Arts. 168 and 169, on the financial condition of the undertaking at the national level and, anonymously, for each undertaking, without disclosing its identity;

d) the effect of the matching adjustment, volatility adjustment, symmetric adjustment mechanism applied to the cost of capital corresponding to the investments in shares, and equity risk sub-module depending on the duration on the investment practices of the undertakings and whether the application of such measures results in the unjustified reduction of the capital requirements;

e) the effect caused by a possible extension of the recovery period in accordance with Art. 99(4) on the measures applied by undertakings to restore the level of own funds eligible to cover SCR or to reduce the risk profile in order to comply with that requirement;

f) where the undertakings apply the transitional measures set out in Arts. 168 and 169, the situations in which they comply with the phasing-in plan set out in Art. 170 and the possibility to reduce the dependence on these transitional measures, including the measures adopted or envisaged to be adopted by undertakings and ASF, in compliance with the legal provisions.

General provisions

Art. 167. – (1) The undertakings which by 1 January 2016 ceased to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be

subject to Title I Chapters I through IX, in any of the following cases:

a) they inform ASF that they shall close their activity prior to 1 January 2019;

b) they are subject to the reorganisation measures in accordance with the applicable national legislation and a special administrator has been appointed.

(2) The provisions of Title I Chapters I through IX shall apply to the undertakings referred to in Para (1) Letter a) as from 1 January 2019, and those referred to in Para (1) Letter b), as from 1 January 2021; where ASF considers that the process of closing the activity of the undertakings has not made any progress, then it shall decide to apply the provisions of Title I Chapters I through IX as from a date previous to those mentioned above.

(3) The provisions of Paras (1) and (2) shall apply provided that the following conditions are met:

a) the undertakings do not form part of a group or, if they form part of a group, all undertaking in that group shall cease to conduct new contracts;

b) the undertakings shall report to ASF on an annual basis indicating the progress made in order to close their activity;

c) the undertakings inform ASF that they apply the transitional measures referred to in this chapter.

(4) The provisions of Paras (1) and (2) shall not prevent the undertakings from pursuing their business in accordance with Title I Chapters I through IX.

(5) The undertakings referred to in Para (1) shall send ASF the information referred to in Art. 37(1) through (4), (6) and (7), annually or less frequently, and shall publish the report referred to in Art. 39, as follows:

a) for the financial year ending on 31 December 2016, prior to 19 May 2017;

b) for the financial year ending on 31 December 2017, prior to 4 May 2018;

c) for the financial year ending on 31 December 2018, prior to 19 April 2019;

d) for the financial year ending on 31 December 2019, prior to 3 April 2020.

(6) The undertakings referred to in Para (1) shall send ASF the information quarterly in accordance with Art. 37(1) through (4), (6) and (7), as follows:

a) for the financial year ending on 31 December 2016:

(i) quarter I, prior to 25 May 2016;

(ii) quarter II, prior to 24 August 2016;

(iii) quarter III, prior to 24 November 2016;

(iv) quarter IV, prior to 28 February 2017;

b) for the financial year ending on 31 December 2017:

(i) quarter I, prior to 19 May 2017;

(ii) quarter II, prior to 18 August 2017;

(iii) quarter III, prior to 17 November 2017;

(iv) quarter IV, prior to 16 February 2018;

c) for the financial year ending on 31 December 2018:

(i) quarter I, prior to 11 May 2018;

(ii) quarter II, prior to 10 august 2018;

(iii) quarter III, prior to 9 November 2018;

(iv) quarter IV, prior to 11 February 2019;

d) for the financial year ending on 31 December 2019:

(i) quarter I, prior to 3 May 2019;

(ii) quarter II, prior to 2 August 2019;

(iii) quarter III, prior to 4 November 2019;

(iv) quarter IV, prior to 4 February 2020.

(7) Without prejudice to Art. 68, basic own-fund items shall be included in Tier 1 basic own funds for a maximum period of 10 years after 1 January 2016, provided that they:

a) were issued either prior to 1 January 2016 or prior to the date of entry into force of the specific delegated act, whichever is the earlier;

b) cover at least 50% of the available solvency margin calculated in accordance with the national legislation in force until 31 December 2015;

c) are not classified as Tier 1 or Tier 2 own funds, in accordance with the provisions of Art. 68.

(8) Without prejudice to Art. 68, basic own-fund items shall be included in Tier 2 basic own funds for a maximum period of 10 years after 1 January 2016, provided that they:

a) were issued either prior to 1 January 2016 or prior to the date of entry into force of the specific delegated act, whichever is the earlier;

b) cover at least 25% of the available solvency margin calculated in accordance with the national legislation in force until 1 January 2016.

(9) The undertakings investing in tradable securities or other financial instruments based on restructured loans issued prior to 1 January 2011 shall comply with the provisions of the specific delegated act only if new underlying exposures were added or certain underlying exposures were replaced after de 31 December 2014.

(10) Without prejudice to Art. 72(1) and (2) and Art. 74, the following shall apply:

a) prior to 31 December 2017, the standard parameters used in the calculations of the market risk concentrations sub-module and of the spread risk sub-module in the standard formula are the same in the case of exposures to central governments or central banks of Member States, denominated and funded in the national currency of each Member State, as those applied to exposures denominated and funded in RON;

b) in 2018, the standard parameters used in the calculations of the market risk concentrations sub-module and of the spread risk sub-module in the standard formula are reduced by 80% in the case of exposures to central governments or central banks of Member States, denominated and funded in the national currency of that Member State;

c) in 2019, the standard parameters used in the calculations of the market risk concentrations sub-module and of the spread risk sub-module in the standard formula are reduced by 50%, in the case of exposures to central governments or central banks of Member States, denominated and funded in the national

currency of that Member State;

d) as from 1 January 2020, the standard parameters used in the calculations of the market risk concentrations sub-module and of the spread risk sub-module in the standard formula are not reduced in the case of exposures to central governments or central banks of Member States, denominated and funded in the national currency of that Member State.

(11) Without prejudice to Art. 99(2) through (4), where the undertakings comply as at 31 December 2015 with the minimum solvency margin required by the national legislation, but in 2016 they do not comply with the provisions of this part in respect of SCR, ASF shall require them to take the measures necessary to restore the level of own funds eligible to cover SCR or reduce the risk profile to ensure compliance with SCR by 31 December 2017 and to report ASF, every 3 months, on the measures adopted and progress made.

(12) The extension of the term until 31 December 2017 in accordance with Para (11) shall be withdrawn where that progress report shows that the undertakings made no progress between the date of observation of non-compliance with SCR and the date of submission of the progress report.

(13) The ultimate undertakings of Romania may, by 31 March 2022, request ASF to approve the use of a group internal model by the undertakings in the group situated within the territory of Romania, since they have a risk profile significantly different from that of the rest of the group.

(14) Without prejudice to Art. 137(1), the provisions of Para (7) through (10) and (13) and Arts. 168 through 170 shall apply accordingly to the level of the group.

(15) Without prejudice to Art. 137, the provisions of Paras (11) and (12) shall apply accordingly at the level of the group also if the participating undertakings or the undertakings in the group comply with the adjusted solvency calculated in accordance with the national legislation in force, but they do not comply with SCR.

(16) By way of derogation from Arts. 100 and 110, where undertakings comply on 31 December 2015 with

the minimum solvency margin referred to in Art. 16(5) and (5^1) of Law No. 32/2000 on the insurance activity and supervision of insurance, as subsequently amended and supplemented, but do not hold sufficient eligible basic own funds to cover MCR, shall comply with Art. 95(1) prior to 31 December 2016; otherwise, ASF shall withdraw the authorisation of the undertakings concerned in accordance with the provisions of this law.

Transitional measures on risk-free interest rate

Art. 168. – (1) After obtaining ASF's approval, in accordance with Art. 166(1) Letter j), the undertakings may apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

(2) For each currency, the adjustment shall be calculated as a portion of the difference between:

a) the interest rate determined by the undertakings in accordance with the national legislation in force as at 31 December 2015; and

b) the accrued interest rate, calculated as the single discount rate.

(3) The rate referred to in Para (2) Letter b), where applied to the cash flows of the portfolio of admissible insurance or reinsurance obligations, result in a value that is equal to the value of the best estimate of the portfolio of insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure, referred to in Art. 54(2).

(4) The portion referred to in Para (2) shall decrease linearly at the end of each financial year, from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(5) Where the undertakings apply the volatility adjustment, the relevant risk-free interest rate term structure referred to in Para (2) Letter b) shall be the adjusted relevant risk-free interest rate term structure set out in Art. 55(8) through (16).

(6) The admissible insurance and reinsurance

obligations shall comprise only insurance or reinsurance obligations that meet the following requirements:

a) the contracts that give rise to the insurance and reinsurance obligations were concluded before 1 January 2016, excluding contract renewals on or after that date;

b) the technical provisions for the insurance and reinsurance obligations were determined in accordance with the national legislation in force as at 31 December 2015;

c) Art. 55(2) through (7) are not applied to the insurance and reinsurance obligations.

(7) The undertakings applying the provisions of Para (1) shall:

a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in Art. 55(8) through (16);

b) not apply Art. 169;

c) as part of the report referred to in Art. 39 disclose:

(i) that they apply the transitional risk-free interest rate term structure;

(ii) the quantification of the impact of not applying the volatility adjustment on their financial position.

Transitional measures on technical provisions

Art. 169. – (1) After obtaining ASF's approval, in accordance with Art. 166(1) Letter k), the undertakings may apply a transitional deduction to technical provisions at the level of homogeneous risk groups referred to in Art. 57.

(2) The deduction referred to in Para (1) shall correspond to a portion of the difference between the following amounts:

a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated either in accordance with the provisions of Art. 53 on 1 January 2016, or with the volatility adjustment referred to in Art. 55(8) through (16), if used by the undertakings on

1 January 2016;

b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the national legislation in force as at 31 December 2015.

(3) The maximum portion deductible calculated in accordance with Para (2) shall decrease linearly at the end of each financial year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(4) After obtaining ASF's approval or on the initiative of ASF, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in Para (2), may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

(5) The deduction referred to in Paras (1) through (3) may be limited by ASF, if its application could result in a reduction of SCR when compared with the capital requirements calculated in accordance with the national legislation in force as at 31 December 2015.

(6) The undertakings applying the provisions of Para (1) shall:

a) not apply Art. 168;

b) when they would not comply with SCR without application of the transitional deduction, submit annually a report to ASF setting out measures taken and the progress made to re-establish, prior to 1 January 2032, level of eligible own funds covering SCR, or to reduce their risk profile;

c) as part of the report referred to in Art. 39 disclose:

(i) that they apply the deduction referred to in Para (1);

(ii) the quantification of the impact of not applying this measure on their financial position.

Plan for compliance with SCR by using transitional measures

Art. 170. – (1) The undertakings that apply the transitional measures set out in Arts. 168 and 169 shall inform ASF as soon as they observe that SCR would

not be complied with without application of these measures.

(2) Within two months from observation of non-compliance as referred to in Para (1), the undertakings shall submit to ASF a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering SCR or to reduce its risk profile to ensure compliance with SCR at the end of the transitional period; the phasing-in plan shall be updated during the transitional period.

(3) The undertakings shall submit annually a report to ASF setting out the measures taken and the progress made in accordance with the plan referred to in Para (2).

(4) ASF shall revoke the approval for the application of the transitional measure where that report referred to in Para (3) shows that compliance with SCR at the end of the transitional period is unrealistic.

Specific measures at group level

Art. 171. – (1) The provisions of Art. 167(5) and (6) concerning the reports to ASF and publication of the annual report shall apply accordingly also to the participating undertakings, insurance holding companies and mixed financial holding companies.

(2) The time-limits for the annual or less frequent submission of the reports referred to in Art. 37(1) through (4), (6) and (7), and for the publication of the report referred to in Art. 39 shall be as follows:

a) for the financial year ending on 31 December 2016, prior to 30 June 2017;

b) for the financial year ending on 31 December 2017, prior to 15 June 2018;

c) for the financial year ending on 31 December 2018, prior to 31 May 2019;

d) for the financial year ending on 31 December 2019, prior to 15 May 2020.

(3) The time-limits for the transmission of quarterly reports referred to in Art. 37(1) through (4), (6) and (7) shall be as follows:

a) for the financial year ending on 31 December 2016:

(i) quarter I, prior to 6 July 2016;

(ii) quarter II, prior to 5 October 2016;

(iii) quarter III, prior to 11 January 2017;

(iv) quarter IV, prior to 11 April 2017;

b) for the financial year ending on 31 December 2017:

(i) quarter I, prior to 30 June 2017;

(ii) quarter II, prior to 6 October 2017;

(iii) quarter III, prior to 29 December 2017;

(iv) quarter IV, prior to 30 March 2018;

c) for the financial year ending on 31 December 2018:

(i) quarter I, prior to 22 June 2018;

(ii) quarter II, prior to 21 September 2018;

(iii) quarter III, prior to 21 December 2018;

(iv) quarter IV, prior to 25 March 2019;

d) for the financial year ending on 31 December 2019:

(i) quarter I, prior to 14 June 2019;

(ii) quarter II, prior to 13 September 2019;

(iii) quarter III, prior to 16 December 2019;

(iv) quarter IV, prior to 17 March 2020.

PART II

National supervisory regime

General provisions

Art. 172. – The provisions of this part shall apply to the:

a) undertakings seeking authorisation and which do not wish to be supervised in accordance with the provisions of Part I;

b) undertakings established in the territory of Romania which do not fulfil at least one of the conditions set out in Art. 2(2);

c) undertakings which are in any of the situations set

out in Art. 3.

Authorisation and supervision of insurance and reinsurance business

Art. 173. – (1) For the undertakings set out in Art. 172, ASF shall issue regulations that include provisions relating to the:

a) minimum limit of the paid-up share capital, of the security fund and of the reserve fund freely paid up;

b) conditions for granting and maintaining the operation authorisation;

c) conditions for pursuing the compulsory insurance business and maintaining the authorisation necessary to pursue such business;

d) conditions to pursue certain classes of insurance;

e) governance system and critical functions, including key functions;

f) conditions for reinsurance acceptance and reinsurance cessions;

g) minimum limit of the solvency margin, of the liquidity coefficient and calculation methods thereof;

h) categories of assets admitted to cover the technical provisions and rules of spread thereof;

i) calculation, assessment and record-keeping methods of minimum technical provisions for the non-life insurance business;

j) conditions for the management of the life insurance fund, investments and valuation of assets, mathematical calculation of assets and aspects regarding the actuarial rules;

k) statutory audit;

l) form and contents:

(i) information and periodical reporting;

(ii) financial statements;

m) supervisory authority;

n) transfer of portfolio, merger and division;

o) financial recovery of the undertakings in difficulty and special administration;

p) authorisation, pursuit of the activity and supervision of mutual undertakings;

r) objectives of the supervisory review process, main functions and activities thereof;

s) petition handling;

t) other aspects concerning the pursuit of the insurance and reinsurance business.

(2) ASF has the authority to require the undertakings referred to in Art. 172 to provide the documents and information necessary for the performance of the supervisory review process, including the minutes of the meetings of the management and committees assembled, and to carry out inspections at their premises.

(3) The provisions of Art.25(1) and (2) Letters a) and c) shall also apply to the management of the undertakings referred to in Art. 172.

Exclusions

Art. 174. – (1) The insurers authorised and supervised in accordance with the provisions of this part may not pursue non-life and life business simultaneously.

(2) Composite insurers supervised in accordance with the provisions of this part shall pursue non-life and life business simultaneously subject to the conditions set out in Art.49.

Expansion of insurance business to third countries

Art. 175. – The undertakings pursuing business in accordance with the provisions of this part may not establish subsidiaries in third countries unless they request, even if they are in any of the situations referred to in Art. 172, to be subject to the provisions of Part I.

Applicable provisions

Art. 176. – The charges laid down in Part I shall also apply to the undertakings authorised to pursue business in accordance with the provisions of this part.

Sanctions

Art. 177. – The undertakings authorised and

supervised in accordance with the provisions of this part shall be subject to the sanctions laid down in Arts.163 and 164.

PART III

Final provisions

Currency

Art. 178. – The undertakings shall calculate the RON equivalent value of EUR amounts, with effect as of 31 December of each year, by reference to the exchange rate communicated by the National Bank of Romania for 31 October.

Final provisions

Art. 179. – (1) The Register of Actuaries shall be obtained from ASF by the Romanian Actuarial Association, within 60 days of the publication of this law in the Official Journal of Romania, Part I.

(2) The undertakings may associate into professional unions to represent their collective interests. Such unions may join international unions in the same field.

(3) The National Office of the Trade Register is obliged to grant ASF free access to its database concerning the undertakings authorised in accordance with the provisions of this law, and other natural or legal persons which are significant shareholders or request the approval to become significant shareholders; the National Office of the Trade Register must provide, at ASF's request, the economic and financial information sent by undertakings.

(4) ASF shall issue own regulations for the application of the provisions of Part I. ASF shall issue accounting regulations specific to the insurance field, with the approval of the Ministry of Public Finance.

(5) Annexes Nos. 1 and 2 are an integral part of this law.

Amendment and

Art. 180. – Law No. 32/2000 on the insurance activity

supplementation of Law No. 32/2000 on the insurance activity and supervision of insurance

and supervision of insurance, published in the Official Journal of Romania, Part I, No. 148 of 10 April 2000, as subsequently amended and supplemented, is hereby amended and shall be supplemented as follows:

1. The title of the Law is hereby amended and shall read as follows:

"**LAW on the activity and supervision of insurance and reinsurance intermediaries**"

2. The title of Chapter I is hereby amended and shall read as follows:

"CHAPTER I

Subject matter and meaning of terms"

3. Article 1 is hereby amended and shall read as follows:

"Art. 1. – This law shall regulate the organisation and operation of insurance and reinsurance intermediaries and the supervision of the business of insurance and reinsurance intermediaries, and other related business."

4. Article 2 is hereby amended and shall read as follows:

"Art. 2. – For the purposes of this Law, the terms and expressions below shall have the following meanings:

1.significant shareholder/associate – means any person which, directly and independently or through or in connection with other natural or legal persons, exercises the rights deriving from holding shares which, cumulatively, account for at least 10% of the share capital of an insurance/reinsurance broker, or give such person at least 10% of the total voting rights in the general meeting of shareholders, or which give such person the possibility to exercise significant influence over the management of the insurance/reinsurance broker in which it holds a significant position, as appropriate;

2. reinsurance intermediation activity – means the activity of introducing, proposing or carrying out other activities preceding the execution of reinsurance contracts, or providing assistance for the management or performance of contracts, particularly when related to claims. These activities shall not be deemed reinsurance intermediation activities when carried out by a reinsurer or by any of its employees acting under the responsibility of the reinsurer. Nor shall the following be deemed reinsurance intermediation activities: the provision of information on an occasional basis, when related to another professional activity whose purpose is not to provide assistance to clients for the conclusion or management of a contract, management of claims of a reinsurer on a professional basis, as well as to claim settlement;

3. insurance agent – means the natural or legal person empowered, on the basis of the authorisation of an insurer or reinsurer, to sign in the name and on behalf of the insurer or reinsurer, insurance or reinsurance contracts with third parties, as provided for in the contract of mandate, without being an insurer/reinsurer, insurance and/or reinsurance broker;

4. subordinated insurance agent – means any natural or legal person that, in addition to its main professional activity, intermediates, in the name and on behalf of one or several insurers, insurance products complementary to the products provided by credit institutions and non-banking financial institutions which act on a regulated market;

5. brokerage assistant – means any natural or legal person which, based on a contract with an insurance/reinsurance broker, receives a power of attorney in connection with a brokerage mandate of that broker, and which, under the professional liability contract of that broker, must carry out certain activities necessary for the fulfilment of the brokerage mandate;

6. competent authorities – means the national authorities which, by law or other regulations, are able to register or authorise reinsurance intermediaries;

7. bancassurance – means the intermediation activity of insurance products which are complementary to the

products of credit institutions and non-banking financial institutions, carried out through the network of these institutions as provided for in the rules issued for the implementation of this law;

8. insurance broker means*:*

a) the Romanian legal person, authorised under this law, which negotiates for its natural or legal person, insured or potentially insured clients the execution of insurance or reinsurance contracts, and which provides legal assistance prior and during the term of the contracts and with regard to claim settlement, as appropriate;

b) an intermediary of a Member State carrying out intermediation activities in Romania, under the right of establishment and the freedom to provide services, as appropriate;

9. broker in the insurance/reinsurance business – means the natural person holding a professional certification in accordance with the provisions of the rules issued for the implementation of this law, who pursues business solely under a contractual relationship with an insurance/reinsurance broker;

10. executive management of the insurance/reinsurance intermediate – means the person or, in the case of intermediaries which are joint-stock companies, the natural persons, at least two, of which one is, in accordance with the documents of incorporation and/or resolutions of the statutory bodies of the insurance and/or reinsurance intermediate, the rightful substitute of the person empowered to manage and to supervise the day-to-day business and invested with powers to render the insurance and/or reinsurance intermediate liable; the persons who manage directly the departments of the insurance or reinsurance intermediate, and the branches or other secondary premises shall be excluded from such category. Where the branches of insurance or reinsurance intermediates of Member States carry out activities in Romania under the right of establishment, the executive management shall be the person(s) empowered by them to manage the activity of the branch and to legally bind the insurance and/or reinsurance intermediate in Romania;

11.insurance intermediaries – means the natural or legal persons, hereinafter referred to as *insurance broker*, *brokerage assistant*, *insurance agent*, *subagent* or *subordinated insurance agent*, which carry out the insurance intermediation activity, in exchange for a commission/fee, authorised or registered under this law and the rules issued for the implementation hereof, as well as the intermediaries of Member States which carry out the insurance intermediation activity in Romania, under the right of establishment and the freedom to provide services, as appropriate;

12.reinsurance intermediary – means the Romanian natural or legal person authorised under this law, hereinafter referred to as *reinsurance broker*, which intermediates mainly reinsurance activities, in exchange for a commission/fee, as well as the intermediaries of Member States, which carry out the reinsurance intermediation activity in Romania, under the right of establishment and the freedom to provide services, as appropriate;

13. place in which the vehicle is normally based – means the territory of the State of which the vehicle bears a registration plate, or:

a) in cases where no registration is required for a type of vehicle but the vehicle bears an insurance plate, or a distinguishing sign analogous to the registration plate, the territory of the State in which the insurance plate or the sign is issued; or

b) in cases where neither a registration plate nor an insurance plate nor a distinguishing sign is required for certain types of vehicle, the territory of the State in which the person who has custody of the vehicle is permanently resident;

14. brokerage mandate – means the contract between an insured person or a potential insured person, as the principal, and the insurance and/or reinsurance broker, as the agent, whereby the agent is entrusted with the negotiation or execution of insurance or reinsurance contracts, provision of assistance prior and during the term of the contracts, or in connection with the settlement of claims, as appropriate;

15. significant persons – means the directors,

members of the board of directors and/or of the management board and/or of the supervisory board, the executive management of the insurance and/or reinsurance intermediary, and members of the management board of the Road Traffic Victim Protection Fund;

16. Member States – means the Member States of the European Union and the other states of the European Economic Area;

17. third country – means the State which is not a member state of the European Union or of the European Economic Area;

18. subagents – means the natural persons, other than the manager of the legal person insurance agent, who are employed by means of an employment contract concluded with the legal person and who act on its behalf;

19. home Member State of the intermediary means*:*

a) where the intermediary is a natural person – means the Member State where such natural person has her/his residence and where she/he carries out the activity;

b) where the intermediary is a legal person – means the Member State in which the registered office of such legal person is situated or, if a registered office is not provided for in the legislation of said Member State, the Member State in which the head office is situated;

20. host Member State of the intermediary – means the Member State, other than the home Member State, where an insurance or reinsurance intermediary carries out its activity under the right of establishment and the freedom to provide services;

21. branch of the insurance or reinsurance intermediary – means the entity devoid of legal personality of an insurance or reinsurance intermediary, which is empowered, under a mandate, to carry out the insurance or reinsurance activity, either in part or in full.”

5. Article 3 is hereby repealed.

6. The title of Chapter II is hereby amended and shall read as follows:

"CHAPTER II

General provisions"

7. Article 4 is hereby amended and shall read as follows:

"Art. 4. – (1) In order to implement this law, the supervision and control of compliance with its provisions shall be the responsibility of the Financial Supervisory Authority, hereinafter referred to as *ASF*, which shall act to protect the rights of the insured persons and promote stability of the insurance market in Romania.

(2) Where the needs of ASF, and of its representative offices established by it, so require, the Government and, as appropriate, the local public administration authorities, shall place under ASF's management the necessary real estate – land and buildings – falling within the public domain of national or local concern, as appropriate, within 60 days of the request. ASF may use its own revenues to build, acquire or rent appropriate real estate, in accordance with the legal provisions in force.

(3) ASF shall sign memorandums of understanding with similar authorities regarding the exchange of confidential information, as required for the supervisory activity. The memorandums shall provide that said information shall be disclosed to the public only where the competent authorities have given their express agreement and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.

(4) ASF may sign memorandums of understanding with third country authorities provided that the same level of confidentiality ASF uses for that information in Romania, in accordance with the national legislation, is guaranteed for the information made available to those authorities.

(5) ASF shall inform the European Commission of the difficulties resulting from the application of this law, and of any barriers that could emerge to the detriment of the business of insurance and/or reinsurance brokers authorised or established in Romania, as compared with the branches situated outside the territory of Romania."

8. Article 5 is hereby amended and shall read as follows:

"Art. 5. – ASF shall have the following main tasks:

a) prepare and/or endorse draft legislation concerning the insurance business or in connection with the insurance business and, in respect of the accounting regulations specific to the insurance business, also after the same are endorsed by/communicated to the Ministry of Public Finance, as appropriate and as provided by law; it shall also endorse all individual administrative acts related to the insurance business;

b) authorise insurance and/or reinsurance brokers to carry out the insurance and/or reinsurance intermediation activity, as appropriate, and approve any amendments to the documents or conditions on the basis of which such authorisation was granted; *documents* shall mean the articles and/or instruments of incorporation of the undertaking, feasibility study and, for significant persons only, the organisational chart and/or the organisation and operation regulation, as well as any other documents established through the authorisation rules issued for the implementation of this law. Approval of the amendments, including for the persons referred to in Letter d), shall be requested within the timeframes laid down by the rules for the implementation of this law;

c) approve the direct and/or indirect significant shareholders of insurance and/or reinsurance brokers, in accordance with the provisions of the rules issued for the implementation of this law;

d) approve and, as appropriate, withdraw the approval, in accordance with the applicable law and rules issued for the implementation thereof, of significant persons of insurance and/or reinsurance brokers and endorse

and, as appropriate, withdraw the endorsement, of members of the Management Board of the Road Traffic Victim Protection Fund;

e) approve the division or merger of an insurance and/or reinsurance broker authorised in Romania, in accordance with this law and rules issued for the implementation hereof. ASF shall issue a decision approving or rejecting the request for division/merger within 45 days of the submission of the complete documentation;

f) approve, at the request of insurance and/or reinsurance brokers, the limitation, suspension or, as appropriate, termination of the activity, after verification of their financial condition;

g) supervise the financial condition of insurance and/or reinsurance brokers, as well as the activity of other natural or legal person insurance and/or reinsurance intermediaries, in accordance with the provisions of this law and rules issued for the implementation hereof, including the financial condition of their branches established within the territory of other Member States, under the right of establishment, after consultation with the competent authority of the Member State of that branch;

h) in order to implement prudential and preventive supervisory principles, exercise permanent control over the activity of insurance and/or reinsurance brokers through reviews and assessments, conducted by its specialised directorates at ASF's premises, of the information contained in the reports, notes and documents submitted to it in compliance with the provisions of this law and rules issued for the implementation hereof, as well as in compliance with the requests for information, endorsements and decisions issued by ASF;

i) in order to protect the interests of insured persons and potential insured persons, carry out periodic or unannounced inspections at the premises of legal person insurance and/or reinsurance intermediaries, conduct detailed investigations on the conditions relating to the pursuit of their activity, including, but not limited to, by collecting information and requesting

documents concerning their activity;

j) in order to ensure a uniform vocational training of the persons working in the insurance business, authorise the entities organising qualification, training and continuing professional development post-secondary or postgraduate courses, with the exception of higher education establishments accredited by the Ministry of Education and Scientific Research, and certify the trainers for these courses, in accordance with the provisions of this law and rules issued for the implementation hereof;

k) establish and supervise the Institute for Financial Studies, set up as a private non-profit legal person;

l) request the provision of information and documents, including statistical data, regarding the activity carried out, its management and executive management, from both insurance and/or reinsurance intermediaries, and also from any other natural or legal person, that is directly or indirectly connected with their activity;

m) take the necessary measures so that the intermediation insurance activity is managed in compliance with specific prudential rules;

n) enforce the sanctioning measures laid down by this law;

o) receive and reply to all notices and complaints regarding the activity of insurance and/or reinsurance intermediaries;

p) inform the competent authorities of the Member States in whose territories the branches of Romanian insurance and/or reinsurance brokers or insurance agents are situated or where they provide services, of any sanctioning measures taken against them, including the withdrawal of the authorisation;

q) open and keep the Register of insurance and/or reinsurance brokers, and manage the Register of insurance and/or reinsurance intermediaries, whose form and content are established in the rules issued for the implementation of this law;

r) fulfil any other duties laid down by this law.”

9. After Article 5 another article, Art. 5^1, is hereby inserted and shall read as follows:

"Art. 5^1. – (1) The Road Traffic Victim Protection Fund, hereinafter referred to as the *Fund,* is established as an association, a private non-profit legal person, in accordance with the legal provisions concerning associations and foundations, this law and rules issued for the implementation of this law, having as members all insurers authorised to pursue compulsory insurance against civil liability arising out of the use of motor vehicles.

(2) The instruments of incorporation of the association, and any subsequent amendments thereof, shall be first approved by ASF.

(3) The fund shall be managed by a management board which shall consist of 5 members, subject to ASF's prior approval.

(4) One member of the Fund's management board shall be appointed by ASF.

(5) The Fund members are required to contribute through a membership fee to the establishment and maintenance of the Fund's financial stability in proportion to the volume of gross premiums earned from the sale of insurance policies against civil liability covering damages arising out of the use of land motor vehicles, excluding carrier's liability, until all payment obligations are covered.

(6) The level of the membership fee and the payment deadlines thereof shall be determined annually by ASF. The amount of the membership fee shall be up to 5% of the volume of gross premiums earned for such insurance.

(7) The revenue and expenditure budget of the Fund, as well as its amendments, shall be approved by ASF's Board.

(8) Where there is a budget deficit, ASF may increase during the year the level of the membership fee.

(9) The Fund shall be established for the following purposes:

a) to provide information to the parties injured by

motor vehicle accidents, as information centre (CEDAM);

b) to compensate the parties injured by motor vehicle accidents:

(i) if the motor vehicle, *i.e.* the tram, which caused the accident, remained unidentified or was not insured against civil liability for damages caused by motor vehicle accidents, although, in accordance with the legal provisions in force, its owner had to conclude such insurance;

(ii) if, within three months of the date when the injured party presented his claim for compensation, the person resident in Romania who has suffered an injury as a result of a traffic accident caused in the territory of a State within the territorial limits of the coverage, with the exception of Romania, or in the territory of a third country whose national office has joined the Green Card system, by a motor vehicle which is normally based in a Member State of the European Economic Area or the Swiss Confederation, did not receive a reasoned response from the insurance undertaking of the vehicle causing the accident or from its claims representative, or if the insurance undertaking has not designated a claims representative in the territory of Romania, or if, within two months of the date of the accident, the undertaking cannot be identified. The Fund shall perform these tasks as compensation body.

(10) The insurers referred to in Para (1) must designate, in each State belonging to the European Economic Area and the Swiss Confederation, a claims representative responsible for handling and settling claims arising from accidents caused by vehicles subject to the obligation of insurance in Romania, resident in these States, provided that that the accident was caused in the territory of a Member State other than the State of residence of the injured party.

(11) The Fund shall have the capacity to bring proceedings in any lawsuit against the persons that have a legal relationship with it, for the payment obligations paid or which shall be paid by the Fund, without any doubt.

(12) The act whereby the insurer’s payment obligations

to the Fund are established and individualised constitutes, under the law, a debt instrument.

(13) The debt instrument shall become, on the due date, an enforceable title, under which the Fund shall initiate the forced recovery procedure of all claims, in accordance with the Civil Procedure Code.

(14) In order to recover the amounts spent, the Fund shall have a right of recourse against the entity that caused the injury.

(15) The Fund shall submit an annual activity report to ASF, whose form and content shall be determined by rules issued for the implementation of this law.

(16) The report shall be accompanied by the annual financial statements drawn up in accordance with the legislation in force and audited in accordance with the provisions of this law and rules issued for the implementation hereof.

(17) The Fund shall, within 6 months of the end of the previous year, publish a report, whose form and content shall be determined by rules issued for the implementation of this law.

(18) The modality in which the sums of money are established, used and made available to the Fund, as well as the persons entitled to compensation, shall be determined by rules issued for the implementation of this law by ASF."

10. Articles 6 and 7 are hereby repealed.

11. Article 8 is hereby amended and shall read as follows:

"Art. 8. – (1) ASF shall adopt rules for the implementation of the provisions of this law, as well as specific prudential rules, in accordance with insurance practices.

(2) ASF shall issue decisions whereby it shall:

a) impose prohibitions, grant, suspend or withdraw authorisations;

b) amend or revoke conditions, requirements or terms

imposed by it through its acts;

c) approve the division or merger of insurance and/or reinsurance brokers;

d) set/indicate other objectives and/or impose obligations concerning the activity of insurance and/or reinsurance intermediaries, Fund and other entities organising qualification, training and continuing professional development courses;

e) exercise, through its specialised directorates at its premises, a permanent control over the activities of insurance and/or reinsurance intermediaries through the analysis of the data and information contained in the reports, periodic and annual notes, and of those submitted at ASF's request, and of the documents requiring the prior approval of the amendments to the initial conditions of authorisation, and order that periodic or unannounced inspections are carried out at their premises;

f) give instructions on the presentation of documents, statements, communications and hearings;

g) establish and apply sanctions, as a result of the permanent, periodic or unannounced inspection, on insurance and/or reinsurance intermediaries, significant shareholders or their significant persons, or on the Fund's management board or on the entities organising qualification, training and continuing professional development courses or on the management of such entities for infringement of this law, regulations, decisions and endorsements issued by ASF;

h) apply other measures laid down by the legislation in force.

(3) The sanctioning decisions shall include the legal justification for their application and shall be communicated to natural or legal persons against whom those sanctions were ordered. The sanctioning decisions shall also mention the right of the persons concerned to challenge the sanctioning measures ordered, the time limit by which such challenge may be filed, and the court or authority with which it may be filed."

12. Article 9 is hereby amended and shall read as follows:

"Art. 9. – ASF's decisions shall not be published in the Official Journal of Romania, Part I, except for those provided for in Art. 8(2), Letters a) and c)."

13. Article 10 is hereby amended and shall read as follows:

"Art. 10. – The following shall be deemed own revenues in ASF's budget:

a) the fees and increases referred to in Arts. 10^1 and 36;

b) the amounts resulting, according to the law, from non-criminal fines;

c) the income from donations, publications and other legal sources."

14. After Article 10 another article, Art. 10^1, is hereby inserted and shall read as follows:

"Art. 10^1. – (1) An insurance and/or reinsurance intermediary, the Fund or an entity organising qualification, training and continuing professional development courses seeking approval of the amendments to the conditions and documents on the basis of which the authorisation/endorsement was granted, as well as any information or certifications from ASF to be used in their relations with third parties, shall pay an approval fee, as appropriate, representing the RON equivalent of EUR 35, at the exchange rate communicated by the National Bank of Romania on the date of payment.

(2) Any natural or legal person, with the exception of insured persons, prejudiced parties, and public institutions, requesting ASF to provide information, certifications, or points of view, shall pay a fee representing the RON equivalent of EUR 35, at the exchange rate communicated by the National Bank of Romania on the date of payment.

(3) Where the authorisations issued by ASF under this law are destroyed, lost or stolen, duplicates shall be issued at the request of the entitled persons, as provided by the rules issued for the implementation of this law, against a fee representing 25% of the amount referred to in Art. 36(1).

15. Chapter III, consisting of Articles 11 through 15, Chapter III[1], consisting of Arts. 15[1] through 15[14], Chapter III[2], consisting of Arts. 15[15] through 15[19], Chapter III[3], consisting of Arts. 15[20] and 15[21], Chapter IV, consisting of Arts. 16 through 25[1], Chapter V, consisting of Arts. 26 through 26[8], Chapter V[1], consisting of Arts. 27 and 28, Chapter VI, consisting of Arts. 28[1] and 28[2], are hereby repealed.

16. Under Article 34, Paragraphs (4), (10) and (11) are hereby amended and shall read as follows:

"(4) Insurers shall open and maintain a register referred to as the *Register of Insurance Agents*, in a computerised system, archiving all amendments thereto; the Register shall be a part of the Register of insurance and/or reinsurance intermediaries referred to in Art. 5, Letter q). The form and content of the said register shall be established by rules issued for the implementation of this law.

……

(10) The natural and legal person insurance agents and the subagents registered in accordance with the provisions of this law and the rules issued for its implementation, must include, in all of the documents issued, other than those of the insurers from whom they have a mandate, and in their own correspondence with third parties, the unique code assigned by the register referred to in Art. 5 Letter q), and also: <*înregistrat la Autoritatea de Supraveghere Financiară*> [registered with the Financial Supervisory Authority].

(11) The natural and legal person insurance agents and subordinated insurance agents, including the subagents, must write the unique code assigned by the Register of

insurance and/or reinsurance intermediaries referred to in Art. 5, Letter q) on all documents received from the insurers from whom they have a mandate."

17. Under Article 35, Paragraphs (4^1), (4^2) and (11^5) are hereby amended and shall read as follows:

"(4^1) Insurance and/or reinsurance brokers authorised in accordance with the provisions of this law and rules issued for its implementation must include, in all of the documents issued and in their own correspondence with third parties, the unique code assigned by the Register of insurance and/or reinsurance brokers referred to in Art. 5, Letter q), and also: <*autorizat de Autoritatea de Supraveghere Financiară*> [authorised by the Financial Supervisory Authority].

(4^2) Insurance and/or reinsurance brokers must write the unique code assigned by the register referred to in Art. 5, Letter q) on all documents received from insurers or reinsurers.

.....

(11^5) The insurance and/or reinsurance broker's own staff, whose main job duty is the intermediation of insurance and/or reinsurance contracts, shall be registered in the register referred to in Art. 5, Letter q), subject to the conditions laid down in the rules issued for the implementation of this law."

18. Article 37 is hereby amended and shall read as follows:

"Art. 37. – No action or inaction of the insurance agent, which constitute an infringement of any of the provisions of this law, of the law applicable to the insurance contract and of the conditions or amount of insurance premiums, as well as of other elements regarding the conclusion of the insurance contract, shall be invoked by the insurer that mandated that agent to terminate an insurance contract."

19. Article 38 is hereby repealed.

20. Article 38[1] is hereby amended and shall read as follows:

"Art. 38[1]. – (1) ASF shall carry out permanent, periodic or unannounced inspections of the activities of insurance and/or reinsurance intermediaries, of the Fund or entities organising qualification, training and continuing professional development courses to establish whether the provisions of this law, of the rules adopted for its implementation and of the endorsements, decisions or requests for information, documents and reports, have been infringed.

(2) ASF's Board shall lay down sanctions based on the reports drawn up by the specialised directorates responsible for the permanent control at the premises of the supervisory authority, or on the minutes concluded as a result of the periodic or unannounced inspections carried out by the inspection teams designated for that purpose at the premises of the insurance and/or reinsurance intermediary, of the Fund or entities organising qualification, training and continuing professional development courses.

(3) The specialised directorates that prepared the reports, or the inspection directorate, in the case of periodic or unannounced inspections, shall oversee the enforcement of sanctions.

(4) The permanent control shall be carried out at ASF's premises by its specialised directorates over:

a) the data contained in the periodic or annual reports and notes, laid down by this law and by the rules issued for its implementation;

b) the documents and information requested by ASF for the pursuit of a prudential supervision;

c) the documents and information whose amendments decided by insurance and/or reinsurance brokers require prior approval;

(d) the compliance with the deadlines for submission of the reports, notes, documents and information referred to in Letters a) through c).

(5) The specialised directorates of ASF responsible for

the permanent control in accordance with the provisions of Para (4) shall inform, by registered letter with acknowledgement of receipt, the significant persons of insurance and/or reinsurance intermediaries, the management board of the Fund or the management of the entities organising qualification, training and continuing professional development courses, that the provisions of this law, of the rules adopted for its implementation and of the endorsements, decisions or requests for information, documents and reports, have been infringed and shall request them to provide a reply stating the reasons of such infringement.

(6) The specialised directorate concerned shall, within 3 working days of receipt of the reply to the notification referred to in Para (5), propose to ASF's Board the sanctioning measures through a report to which the reply received shall be attached.

(7) The report shall be prepared and submitted to ASF's Board within the same time-limit as referred to in Para (6) also where no reply to the notification referred to in Para (5) is received.

(8) The time-limits referred to in Paras (5) and (6) shall run from the date of registration of the notification by the insurance and/or reinsurance intermediaries, the Fund or the entities organising qualification, training and continuing professional development courses, as appropriate, and from the date of registration of the reply to the notification by the specialised directorate issuing that notification.

(9) Depending on the nature, seriousness and frequency of the misconduct, ASF's Board may decide to apply a sanction, in accordance with the provisions of this law, as well as to carry out an unannounced inspection at the premises of the insurance and/or reinsurance intermediary or, where the periodic inspection is in progress, to extend such control so as to also cover the negative aspects found.

(10) Periodic inspections and their scope shall be notified to the executive management of insurance and/or reinsurance brokers or, where appropriate, to the management board of the Fund, insurance or insurance agents and legal person subordinated insurance agents,

15 working days prior to the date of commencement.

(11) The legal person insurance and/or reinsurance intermediaries, the Fund or the entities organising qualification, training and continuing professional development courses must provide the periodic or unannounced inspection teams, as appropriate, with an adequate space which shall be used during such inspection only by the team members.

(12) The unannounced inspections shall cover only particular aspects shown by the analysis of the periodic or annual reports and notes, or of the complaints and notifications registered with ASF, concerning the activity of insurance and/or reinsurance intermediaries, of the Fund or entities organising qualification, training and continuing professional development courses.

(13) No insurance and/or reinsurance intermediary, the Fund or entity organising qualification, training and continuing professional development courses may deny the performance of an unannounced inspection."

21. Under Article 39, Paragraphs (2) and (3) are hereby amended and shall read as follows:

"(2) The following deeds shall be deemed petty offences:

a) failure, in any manner whatsoever, to comply with the rules adopted in accordance with Art. 8(1), and with the decisions or endorsements of the Insurance Supervisory Commission/ ASF issued in accordance with Art. 8(2) and (3);

b) infringement, in any manner whatsoever, by insurance and/or reinsurance intermediaries, Fund or entities organising qualification, training and continuing professional development courses, as appropriate, of the provisions of Art. 5 Letters b) through j), l) and n), of the rules issued for the implementation of this law, and of the endorsements, decisions or requests for information, documents and reports;

c) the insurance and/or reinsurance broker's failure to request ASF's approval or endorsement, as appropriate,

for the direct and/or indirect significant shareholders and for the significant persons of the insurance and/or reinsurance brokers or, in the case of the Fund, prior endorsement for the members of the management board;

d) infringement, in any manner whatsoever, by insurance and/or reinsurance brokers of the obligations to keep the records and transmission of the reports laid down by the law and/or rules adopted for its implementation;

e) infringement of the obligations referred to in Art. 35 and of the rules issued for the implementation of this law concerning the compliance with the minimum limit of the share capital;

f) failure to comply with the provisions of Art. 33(3), (4), (4^1), (6), (7) and (14), Art. 34, Art. 38^1(5), (11) and (13), and with the rules on the pursuit of the activity of insurance agents, subagents and subordinated insurance agents;

g) infringement of the obligations referred to in Art. 35(13) and (13^1);

h) infringement of the obligations of insurance and/or reinsurance brokers, referred to in Art. 33(3), (4^1), (6), (7) and (14), Art. 35, 36, Art. 38^1(5), (11) and (13) and in the implementation rules;

i) infringement by the insurance and/or reinsurance brokers, management board of the Fund or management of the entities organising qualification, training and continuing professional development courses of the submission deadlines of or transmission of incomplete or inaccurate data contained in the reports, notes, analyses, documents and information laid down by this law, rules issued for its implementation, or by decisions or endorsements;

j) infringement by the management board of the Fund of the provisions of Art. 5^1 and of the rules issued for its implementation;

k) infringement by the management of the entities organising qualification, training and continuing professional development courses and/or by the trainers of the provisions of Art. 38^1(5), (8), (11) and (13) and

of the rules issued for the implementation of this law;

l) non-fulfilment or defective fulfilment of the obligation to keep the journal of brokerage assistants, as provided by law and rules issued for its implementation;

m) amendment of the documents and/or conditions on the basis of which the operation authorisation was issued, without ASF's prior approval;

n) pursuit of the activity by the insurance and/or reinsurance intermediaries without fulfilling or complying with the professional requirements laid down by this law and rules issued for its implementation;

o) infringement of the provisions of Para (8^1).

(3) Any wilful or negligent perpetration, by action or inaction, of any of the petty offences referred to in Para (2) shall be punished as follows:

a) by written warning;

b) by fine imposed on: insurance and/or reinsurance intermediaries, from RON 2,500 to RON 50,000; natural person insurance agents, subagents or natural person subordinated insurance agents, from RON 500 to RON 1,000 lei; persons directing the entities organising qualification, training and continuing professional development courses, from RON 1,000 to RON 10,000; the person directing or, as appropriate, the significant persons of legal person insurance and/or reinsurance intermediaries, and members of the management board of the Fund, from RON 2,500 to RON 50,000;

c) by fine imposed on any person using the names of insurance and/or reinsurance broker, insurance or reinsurance agent, subagent or subordinated insurance agent or any derivatives thereof, without authorisation or without being registered with the Insurance Supervisory Commission/ASF, from RON 10,000 to RON 100,000 lei, for legal persons, and from RON 5,000 to RON 10,000, for natural persons;

d) temporary or permanent prohibition on pursuing business in the case of insurance and/or reinsurance

brokers, defined in Art. 2 Points 9, 12 and 15;

e) withdrawal of the authorisation of insurance and/or reinsurance brokers, entities organising qualification, training and continuing professional development courses, withdrawal of the approval of the significant persons of insurance and/or reinsurance brokers and, as appropriate, the withdrawal of the endorsement of the members of the management board of the Fund, removal of a member or of the entire management board of the Fund, revocation of the approval granted and/or trainers, instructions to insurance/reinsurance brokers to deregister the brokerage assistants from the special registers."

22. Under Article 39, Paragraph (5) is hereby repealed.

23. Under Article 39, after Paragraph (7), another paragraph, Para (7^1), is hereby inserted and shall read as follows:

"(7^1) Unless otherwise provided by this law, the petty offences referred to in Para (2) shall be subject to the provisions of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented."

24. Under Article 39, Paragraphs (8) through (8^3) are hereby amended and shall read as follows:

"(8) The deed of any person to pursue the insurance and/or reinsurance intermediation activity in/from Romania without ASF's authorisation and the pursuit of the activity without registration in the registers referred to in Art. 5 Letter q) shall be deemed a crime, and is punishable by imprisonment between 3 months and 2 years, or by fine.

(8^1) Any person who does not have an authorisation issued by, or it is not registered with, ASF shall be prohibited from using the names of insurance and/or reinsurance broker, insurance or reinsurance agent,

subagent or subordinated insurance agent or any derivatives thereof, in connection with an activity, product or a service, except if such use is established or recognised by law or by an international agreement , or when it is apparent from the context in which those words are used that it is not about insurance and/or reinsurance intermediation activities.

(8^2) Any form of advertising, official acts, contracts or other such documents, the initials, logo, emblem or other identification elements of an insurance and/or reinsurance intermediary pursuing business in Romania or which suggests a link with it shall be used only by and in conjunction with a subunit of that entity, including in its name.

(8_3) For the purposes of the pursuit of specific activities, foreign entities may use, in the territory of Romania, the name which they use in their home country. Where confusion may arise, for clarification purposes, ASF may require that the name of the insurance and/or reinsurance intermediary is accompanied by an explanatory statement in the Romanian language."

25. Under Article 39, Paragraph (9) is hereby repealed.

26. Under Article 42, Paragraphs (3) and (4) are hereby repealed.

27. Article 42^1 is hereby amended and shall read as follows:

"Art. 42^1. – A ASF does not hold the capacity to be sued [*calitate procesuală pasivă*] and may not be sued in the lawsuits against insurance and/or reinsurance intermediaries, although they are bankrupt, to be held liable for intermediaries' failure to fulfil their obligations under the law and/or international conventions, or in the lawsuits against entities organising qualification, training and continuing professional development courses and/or trainers."

28. Article 43 is hereby amended and shall read as follows:

"Art. 43. – (1) The National Office of the Trade Register is obliged to grant ASF free access to the information in the trade central register, kept in computerised system, concerning insurance and/or reinsurance brokers of Romania, authorised in accordance with the provisions of this law, registered insurance and/or reinsurance intermediaries, as well as other natural and legal persons seeking approval to become direct or indirect significant shareholders of a broker; also, the National Office of the Trade Register must supply, at ASF's request, economic and financial information reported by insurers, reinsurers, legal person insurance agents, and insurance and/or reinsurance brokers in their annual financial statements.

(2) The act whereby the payment obligations of an insurance and/or reinsurance broker, authorised or registered insurance agent or of the persons referred to in Art. 39(3) Letter b), as appropriate, are established and individualised, drawn up and issued by ASF's bodies, under the law, constitutes a debt instrument.

(3) The debt instrument shall become, on the due date, an enforceable title, under which ASF shall initiate the forced recovery procedure of all of its receivables, in accordance with the Civil Procedure Code."

29. Article 47^1 is hereby repealed.

30. Article 47^2 is hereby amended and shall read as follows:

"Art. 47^2. – Insurance and/or reinsurance intermediaries shall have the right to use the personal data of insured persons or beneficiaries of insurance or reinsurance contracts, contained therein, including the fiscal identification code, only for the purpose of managing the insurance or reinsurance contracts and handling claims files, in compliance with Law No. 677/2001 on the protection of individuals with regard

to the processing of personal data and on the free movement of such data, as subsequently amended and supplemented."

31. Article 47^4 is hereby repealed.

32. Annexes Nos. 1 through 3 are hereby repealed.

Legislative adaption

Art. 181. – Whenever by laws and other legislative acts, reference is made to the provisions relating to insurers and reinsurers of Law No. 32/2000, as subsequently amended and supplemented, repealed by this law, the reference shall be deemed as made to this law.

Entry into force

Art. 182. – This law shall enter into force on 1 January 2016, except for Art. 166(1) through (3), which shall enter into force within 3 days after the date of publication of this law in the Official Journal of Romania, Part I.

*

This law transposes:

1. Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), published in the Official Journal of the European Union L 335 of 17 December 2009, except for Articles 160, 161, 303 and 304 and Title IV;

2. Article 4 of Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate, published in the Official Journal of the European Union L 326 of 8 December 2011;

3. Article 2 of Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), published in the Official Journal of the European Union L 153 of 22 May 2014.

This law was adopted by the Parliament of Romania, in compliance with Art. 75 and Art. 76(1) of the Constitution of Romania, republished.

PRESIDENT OF THE CHAMBER OF DEPUTIES

VALERIU-ŞTEFAN ZGONEA

PRESIDENT OF THE SENATE

CALIN-CONSTANTIN-ANTON POPESCU-TARICEANU

Bucharest, 19 October 2015

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