

The Financial Supervisory Authority's - ASF - Rule no. 22/2016 of April 15, 2016

Rule no. 22/2016
on the authorisation to establish pension companies and
authorisation to manage privately managed pension funds

In force starting April 27, 2016

Published in the Official Journal, Part I no. 321 of April 27, 2016

Considering the provisions of art. 55 par. (1) - (4), art. 57, 58, art. 62-66 and Art. 71-80 of Law no. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented,

under the provisions of art. 24 letter a) of the Government Emergency Ordinance No. 50/2005 on the establishment, organization and operation of the Private Pension System Supervisory Commission, approved as amended and supplemented by Law No. 313/2005, as subsequently amended and supplemented,

under the provisions of art. 2 par. (1) letters c) and d), art. 3 par. (1) letter b), art. 5 letter c), art. 6 par. (1) și (2) and art. 7 par. (2) of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as subsequently amended and supplemented

following deliberations of the Financial Supervisory Authority's Board in the meeting of April 13, 2016,

The Financial Supervisory Authority issues this rule.

CHAPTER I

General provisions

Art. 1. - (1) This rule regulates the procedure, the authorization conditions and the documents to be submitted to the Financial Supervisory Authority, hereinafter referred to as "ASF", in the process of authorizing the establishment of pension companies and authorization as an administrator of a privately managed pension fund.

(2) The provisions of this Rule are applicable to the assessment of founders / shareholders whose holdings of share capital and / or voting rights do not exceed the 10% threshold required to become a significant shareholder.

(3) For the significant shareholders, the provisions of the Regulation no. 3/2016 on the applicable criteria and the procedure for the prudential assessment of acquisitions and increase of shareholdings in the entities regulated by the Financial Supervisory Authority shall be applicable, hereinafter referred to as Regulation no. 3/2016.

Art. 2. - The pension company, a Romanian legal entity, can manage a privately managed pension fund only on the basis of the decision of authorization issued by ASF

Art. 3. - (1) The terms and expressions used herein shall have the meanings set out in:

a) art. 2 of Law no. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented, hereinafter referred to as the „Law”;

b) art. 2 par. (2) of Regulation No. 14/2015 on the assessment and approval of the members of the management structure and of persons holding key functions in the entities regulated by the Financial Supervisory Authority , hereinafter referred to as Regulation no. 14/2015;

c) art. 4 par. (2) of Regulation no. 3/2016.

(2) Also within the meaning of this Rule, the terms and expressions below shall have the following meanings:

a) executive management - the persons defined in art. 2 par. (2) lit. e) of Regulation no. 14/2015;

b) authorized persons - the persons assessed, defined in art. 2 par. (2) letter i) of Regulation no. 14/2015, subject to approval by ASF;

c) persons holding authorized key functions - persons defined in art. 2 par. (2) letter (h) points (i), (ii) and (iv) of Regulation no. 14/2015;

d) persons holding notified key functions - the persons defined in art. 2 par. (2) letter (h) points (iii) and (v) of Regulation no. 14/2015;

e) management structure - members of the board of directors or supervisory board and executive management.

CHAPTER II

Authorization to establish the pension company.

SECTION 1

General provisions

Art. 4. - For the issuance of the decision to authorize the establishment of the pension company, on the basis of the request, ASF analyzes the documentation submitted by the founders or their legal representatives and checks whether the conditions laid down by the Law and the applicable regulations are met cumulatively.

Art. 5. - In order to obtain the decision authorizing the establishment of the company, the pension company must meet cumulatively the following general conditions:

- a) be established in the form of a joint stock company;
- b) have as unique object of activity the management of pension funds;
- c) the name of the pension company shall necessarily include the term "pension fund" so that it would not be confused with the pension fund and not contain any elements likely to mislead the participants, potential participants or other persons;
- d) the share capital shall be represented by nominative shares, which cannot be converted into bearer shares and cannot be preference shares;
- e) the Articles of Incorporation must provide that shareholders may not enjoy preferential rights or other privileges and that it is forbidden to limit the rights or impose additional obligations on shareholders;
- f) the cumulative shareholding of natural persons may not exceed 5% of the share capital of the pension company;
- g) have a board of directors / supervisory board made up of an odd number of members, but not less than 3 natural persons;
- h) founders shall prove full payment in cash of the share capital, which must meet the requirements of the law and relevant regulations.

SECTION 2

Requirements regarding founders

Art. 6. - (1) At the assessment of the founders the following shall be taken into account: they should have a financial situation that allows them to honour their patrimonial obligations and participation in the share capital of the pension company.

(2) Legal entities that are founders must meet cumulatively the following conditions:

- a) register, according to the latest financial statement, positive equity;
- b) have been in business for at least 3 years, except for those resulting from the merger or division of another legal entity that has been in business for at least 3 years prior to the merger or division;
- c) not to be founders / shareholders of a pension company or of another entity registered in countries with which Romania does not maintain diplomatic relations or in jurisdictions that do not establish the obligation to organize and keep accounting records and / or publication of financial statements, keeping commercial registers and / or which allow the anonymity as regards the identity of the shareholders / and the directors;
- d) not to be in a judicial reorganization or bankruptcy procedure, not to have not contributed, directly or indirectly, to the bankruptcy of legal entities, as the case may be;
- e) not to have outstanding debts to the state budget, state social security budget, local budgets and special fund budgets.

(3) collective investment undertakings without legal personality cannot participate as founders of a pension company.

(4) collective investment undertakings with legal personality may participate as founders up to a maximum of 5% of the share capital of a pension company.

Art. 7. - (1) Natural persons who are founders must meet cumulatively the following requirements:

a) not to be shareholders, members of the management structure of other administrators of privately managed pension funds or of the persons affiliated to it;

b) not to be shareholders, members of the management structure of the credit institution that performs the function of depositary of the privately managed pension fund or of the persons affiliated to it;

c) not be shareholders, members of the management structure of financial investment services companies providing services for privately managed pension funds or of the persons affiliated to it;

d) have personal income that is unaffected by the fulfilment of their patrimonial obligations towards third parties, which, through their annual level, adequately justify the origin of the funds intended for participation in the share capital of the pension company and which have a continuity;

e) the funds intended for participation in the share capital of the pension company shall not have as source income from activities carried out in the states or jurisdictions referred to in art. 6 par. (2) letter c);

f) not to have contributed, directly or indirectly, to the bankruptcy of legal entities.

(2) The persons nominated in the list drawn up according to the provisions of art. 27 of Law no. 535/2004 on the prevention and control of terrorism, as subsequently amended and supplemented, as well as the natural or legal entities subject to international sanctions, defined according to the Government Emergency Ordinance no. 202/2008 on the enforcement of the international sanctions, approved with amendments by Law no. 217/2009, as subsequently amended and supplemented cannot act as founders.

(3) Persons who have been convicted through a final judgment for corruption and malfeasance in office, money laundering, offences against property, forgery, tax evasion, perjury or other facts that lead to the conclusion that the prerequisites to ensure a sound and prudent management of the pension company are not met, cannot act as founders.

(4) The provisions of par. (2) and (3) shall also apply to legal entity founders in which one or more founders / shareholders were convicted by a final judgment for the offenses referred to in paragraphs (2) and (3).

SECTION 3

Documents required for the authorization to establish a pension company.

Art. 8. - (1) The decision to authorize the establishment of a pension company is issued following the application for the authorization to establish a pension company, drawn up in accordance with Annex no. 1.

(2) The application accompanied by the complete documentation shall be submitted to ASF by the founders or by their legal representatives.

Art. 9. - The application provided by art. 8 shall be accompanied by the following documents:

a) authentic special power of attorney or, as the case may be, legal representation mandate signed by all the founding members by which they designate one or more persons to represent them in the relationship with ASF during the processing of the file relating to the application for establishment;

b) the draft of the Articles of Incorporation, which shall contain the name of the company pension as booked to the Trade Register, which must be prepared in compliance with laws and organizational and financial plan which shall ensure correct and prudent management of the pension fund for which the authorization is requested ;

c) the documentation regarding the founders, provided in art. 10 and 11;

d) the documentation on proposed members for the management structure of the administrator, in accordance with the provisions of Regulation no. 14/2015;

e) statutory declaration of founders, of the members proposed of the board of directors or supervisory board, showing the holdings, either individually or in relation to other persons involved, representing at least 5% of the share capital or voting rights of any companies, according to the model of Declaration no. 2 set out in Annex no. 5;

f) documents on the founders regarding their possible affiliation according to art. 2 par. (2) of the Law, as well as the nature of the relationships between them, according to the model of Declaration no. 1 set out in Annex no. 4;

g) the draft of the regulation on the organization and operation of the pension company, drawn up in accordance with art. 12, as well as the draft of internal procedures, drafted in accordance with art. 13;

h) the legal document attesting to the right of use of the company being established on the premises for the registered office and the secondary offices, as the case may be, as well as documents proving that they meet the requirements provided in art. 14 and 15;

i) proof of the full and cash payment of share capital;

j) proof of payment of the authorization fee for the establishment of the pension company.

Art. 10. - (1) For each of the founders, which are legal entities, the following documents shall be submitted:

a) certificate of good standing issued by the Trade Registry or any other equivalent official document issued by the similar authority of the country of origin, which must at least certify the name, number and date of the registration, the object of activity, the persons legally empowered to represent the legal entity and the structure of the shareholders to the level of natural persons. The shareholding structure up to the level of a natural person must be detailed, including for legal entities that indirectly hold shares in the founder's share capital;

b) a description of the founder / shareholder of the legal entity, under the signature of the legal representative, which will show its organization, including the network of secondary offices held in the country of origin and abroad, the work carried out by it in all his secondary offices;

c) the last 3 annual financial statements audited by a financial auditing firm, which is a member of the Chamber of Financial Auditors of Romania, the most recent interim financial statements and the final balance of the founder's accounts and, where applicable, those drawn up at the level of the accounting consolidation area that the founder is part of. In the case of founders resulting from a merger or division, the legal entity from which they come must have been in business for at least 3 years;

d) in the case of founders, which are foreign legal entities, the annual financial statements referred to in letter c) shall be audited by an authorized financial audit company, an active member of a professional body recognized by the International Federation of Accountants and who has assimilated its Code of Ethics; in this regard, ASF may request documents attesting to the fulfilment of these requirements;

e) the documentation on the share capital according to the provisions of ASF's Rule no. 11/2015 regarding the share capital of the administrator of the privately managed pension fund and of Regulation no. 3/2016;

f) fiscal record certificate;

g) criminal record certificate.

(2) the founders, which are legal entities, with less than 1% of the share capital of the pension company, but not more than 5% cumulated, shall submit only the documentation provided in paragraph (1) lit. a).

(3) the documentation provided in paragraph (1) shall also be submitted by founders, which are legal entities, with less than 1% of the share capital of the pension company, which hold shares in the share capital of another founder of the same pension company, regardless of the participation share.

Art. 11. - (1) For each of the founders, which are natural persons, the following documents shall be submitted:

a) the copy of the identity document, the conformity of which with the original is certified by the holder, by handwritten signature, on the same page on which the image is reproduced by photocopying;

b) curriculum vitae, dated and signed, prepared according to art. 31 par. (3) letter b) of Regulation no. 3/2016;

c) criminal record certificate, which shows that the person has not been convicted by a final judgment for the offenses stipulated in art. 7 par. (2) and (3);

d) statement of income, drawn up in accordance with the laws of the country of origin, authorised the tax authority or, where appropriate, certified according to the law of that country; if the laws of the country of origin does not provide for such a statement, an official document proving the equivalent shall be provided;

e) data about the founders / shareholders of the privately managed pension fund management company, according to the model set out in Annex no. 2;

f) signature specimen, in accordance with the model in Annex no. 3;

g) Declaration no. 1, according to the model set out in Annex no. 4, and Declaration no. 2, according to the model set out in Annex no. 5;

h) the documentation on the share capital according to the provisions of ASF's Rule no. 11/2015 regarding the share capital of the administrator of the privately managed pension fund and of Regulation no. 3/2016;

i) Fiscal record certificate.

(2) the founders, which are natural persons, with less than 1% of the share capital of the pension company, but not more than 5% cumulated, are exempt from the provisions of par. (1) and art. 7 par. (1) letter f).

(3) Persons not residing in Romania shall submit the criminal record certificate and fiscal record certificate or other documents with the same legal value issued by the authorities of the country of origin and the country of their current residence, even if the latter is different from the country of origin.

(4) Persons not domiciled but residing in Romania shall submit the criminal record certificate and fiscal record certificate issued by the Romanian authorities and the criminal record certificate and fiscal record certificate or other documents with the same legal value issued by the authorities of the country of origin, as the case may be, from the country where they previously resided, even if the latter is different from the country of origin.

Art. 12. - The draft of the regulation on the organization and operation of the pension company shall contain at least the following:

a) the organizational structure, duties, competences of the structures within the pension company, the levels of authority, their responsibilities, their mechanisms of relationships and their reporting;

b) activities carried out within the secondary offices of the pension company, as the case may be;

c) the duties and responsibilities of the management structure, including of those who ensure in fact or in law the management of the structures of the pension company and within secondary offices;

d) the persons / bodies responsible for approving internal procedures.

Art. 13. - The internal procedures shall contain written instructions describing the steps to be taken for the conduct of the work, the working methods, the rules to be applied and the time limits for carrying out the tasks, taking into account the responsibilities, and shall cover at least the following:

a) description of the suitability of the information system to be used for the specifics of the activity to be carried out, taking into account aspects such as the ability to carry out the proposed activities, the degree of information security, the ability to provide the required ASF reporting, fulfilment of the minimum criteria provided by the regulations in force by the automatic data processing systems;

b) decision making mechanisms;

c) vertical reporting methods and deadlines, separation of duties for decision-makers from those with execution duties and those with control duties;

d) managing conflict of interest so as to ensure that persons in a potential conflict of interest act in the sole interest of the pension fund, the participants and the administrator;

e) method of solving complaints and claims;

f) records and control of work in secondary offices, if any.

Art. 14. - The premises used for the registered office must meet at least the following conditions:

- a) be in exclusive use of the pension company;
- b) be appropriate to the organizational structure and activities to be carried out;
- c) have a useful floor area of at least 100 m²;
- d) be properly partitioned so as to ensure optimum performance of activity;
- e) not to be located in the basements of buildings or floors of dwellings;
- f) have adequate technical equipment for carrying out the activity so as to ensure the security, storage and confidentiality of information and documents in the entity's archive.

Art. 15. - The premises used for the secondary offices must meet at least the following conditions:

- a) be in exclusive use of the pension company;
- b) be appropriate to the organizational structure and activities to be carried out;
- c) have a useful floor area of at least 25 m²;
- d) be properly partitioned so as to ensure optimum performance of activity;
- e) not to be located in the basements of buildings or floors of dwellings;
- f) have adequate technical equipment for carrying out the activity so as to ensure the security, storage and confidentiality of information and documents in the entity's archive.

SECTION 4

The procedure for approving or rejecting the application for the authorization to establish a pension company.

SUBSECTION 1

The authorization to establish the pension company.

Art. 16. - (1) ASF shall decide on the authorization to establish the pension company within 30 calendar days starting the registration of the application and full documentation of the applicant.

(2) The decision to authorize the establishment of the pension company shall be communicated to the applicant within 5 calendar days of its adoption by ASF.

Art. 17. - (1) Any request from ASF for additional information or completion of the documents originally submitted, interrupts the deadline stipulated in art. 16 par. (1) with a new deadline starting from the date of submission of such information or additions, which cannot be made later than 30 calendar days from the date of application with ASF, under the penalty of rejection of the application for authorization for the establishment of the pension company .

(2) If the submitted documents are incomplete, illegible or found to be submitted in an inappropriate form, as well as in the absence of any documents, they are requested to be filled in or replaced, as the case may be.

Art. 18. - (1) The founders submit the company's registration documents to the Trade Register within which the registered office of the pension company is located within 30 calendar days of receipt of the decision to authorize the establishment.

(2) If the time limit stipulated in paragraph (1) is exceeded, the validity of the decision to authorize the establishment is lost.

Art. 19. - The pension company will submit to ASF a copy of the certificate of incorporation within 5 working days of obtaining the certificate of incorporation as a company from the Trade Register.

Art. 20. - (1) Obtaining the decision to authorize the establishment of a pension company does not guarantee the decision to authorize as an administrator of a privately managed pension fund.

(2) The management authorization must be obtained within one year from the decision to authorize the establishment, otherwise it will lose its validity.

(3) Within 3 months from the date of expiry of the authorization decision, the pension company has the obligation to change its name and object of activity and to inform ASF within 5 working days stating the date of registration of amendments with the Trade Register.

Art. 21. - (1) If there are changes to the conditions under which the decision to authorize the establishment of the pension company was granted, a new assessment by ASF shall be required in the process of granting the management authorization, and may result in the revocation of the decision to authorize the establishment, if such changes are contrary to the legal provisions or this rule.

(2) If the changes do not meet the requirements of the applicable law and regulations, ASF will issue a written and reasoned rejection decision, which shall be communicated within 5 calendar days of its adoption.

(3) Within no more than 30 days from the date of its communication, the rejection decision may be challenged in accordance with the provisions of Law no. 554/2004 regarding the procedure in administrative litigations, as subsequently amended and supplemented.

(4) The pension company must meet, throughout the duration of its activity, the conditions envisaged for the authorization to establish the pension company.

SUBSECTION 2

Rejection of the application for authorization to establish a pension company.

Art. 22. - (1) Failure to meet one of the conditions provided by the Law and the applicable regulations leads to the rejection of the application for authorization for the establishment of the pension company.

(2) The rejection decision, written and reasoned, shall be communicated to the founders within 5 calendar days of its adoption by ASF.

(3) Within maximum 30 days from the date of its communication, the rejection decision may be contested in accordance with the provisions of Law no. 554/2004, as subsequently amended and supplemented.

Art. 23. - A new application for authorization for the establishment of the pension company may be addressed to ASF only if the deficiencies that caused the rejection of the initial request are remedied

CHAPTER III

Authorization of the pension company as a management company of a privately managed pension fund.

SECTION 1

General provisions

Art. 24. - In order to become an administrator, the pension company registered with the Trade Register must obtain from ASF the authorization to manage a privately managed pension fund.

Art. 25. - For the issuance of the management authorization decision, ASF analyzes the documentation submitted by the pension company through its legal representatives and checks whether the conditions laid down by the Law and the applicable regulations are met cumulatively.

SECTION 2

Conditions for shareholders

Art. 26. - (1) In the evaluation of the shareholders of the management company of the privately managed pension funds, the provisions of art. 6 and 7 of this rule or of Regulation no. 3/2016, as applicable.

(2) If no changes are made to the documents and conditions envisaged in the assessment referred to in paragraph (1), in the process of obtaining the decision to authorize the establishment of the pension company, the shareholders submit a statutory declaration.

(3) Where changes have occurred in relation to the documents and conditions envisaged in the assessment provided for in paragraph (1), the supporting documents for the changes in question shall be submitted to ASF.

(4) The conditions provided in paragraph (1) must be maintained throughout the life of the pension company.

SECTION 3

Conditions regarding the proposed members for the management structure.

Art. 27. - (1) The members proposed for the management structure are individually authorized by ASF for the exercise of the function for which they are proposed, both in the process of granting the authorization to manage the privately managed pension fund, and subsequently during the activity of the administrator, in accordance with the provisions of Regulation no. 14/2015.

(2) The persons referred to in par. (1) shall exercise the functions and responsibilities of the function for which they were proposed from the date of communication of the authorization decision.

(3) Throughout his / her activity, the administrator must ensure at least one replacement of the General Manager.

(4) The person referred to in paragraph (3) is designated by the competent statutory body and is individually authorized by ASF on the basis of an authorization process similar to that foreseen for the General Manager.

Art. 28. - (1) The quality and experience of the members proposed for the management structure are elements that ensure the sound and prudent management of the privately managed pension fund.

(2) Members of the management structure of the administrator may not have employment, commercial or other relationships similar to:

a) other administrators of privately managed pension funds and their affiliates;

b) the depository and its affiliates;

c) companies of financial investment services with which the administrator concluded a contract and their affiliates.

(3) Members of the executive management may not have employment, commercial or other similar relations with the persons affiliated with the administrator or with other entities in their group, except for the boards of representation in the board of directors or in the supervisory board.

SECTION 4

Conditions for persons holding key positions authorized by ASF.

Art. 29. - (1) The persons referred to in art. 3 par. (2) letter b) are individually authorized by ASF prior to commencing in office, in accordance with the provisions of Regulation no. 14/2015.

(2) The persons referred to in par. (1) perform the duties and responsibilities of the function for which they were proposed from the date of communication of the authorization decision, based on an individual full-time contract of employment.

(3) The persons referred to in par. (1) may not have employment, commercial or other similar relations with:

a) other administrators of privately managed pension funds and their affiliates;

b) the depository of the privately managed pension fund and the persons affiliated to it;

c) Companies of financial investment services with which the administrator concluded a contract and their affiliates

SECTION 5

Documentation required for obtaining the management authorization decision.

Art. 30. - (1) The decision to authorize the administration is issued on the basis of the application for the management authorization, drawn up in accordance with Annex no. 1.

(2) The application, together with the complete documentation, shall be filed and registered with ASF by companies that intend to be authorized as a privately managed pension fund administrator.

Art. 31. - (1) The application for the management authorization shall be accompanied by the following documents:

- a) certificate of incorporation with the Trade Register, in copy;
- b) The Articles of Incorporation, updated, which will include the information stipulated in art. 59 par. (3) of the Law;
- c) the organization and operation regulation of the company, drawn up in accordance with art. 12 and internal procedures, prepared in accordance with art. 13, together with the decision of the statutory body competent for their approval;
- d) the draft of the deposit contract, drawn up according to the model described in the Rule of the Financial Supervisory Authority no. 11/2014 on the depository and custody activity of the privately managed pension funds' assets;
- e) the draft of the custody contract;
- f) the draft of the memorandum of association, by which the private pension fund will be established, prepared according to the Rule of the Financial Supervisory Authority no. 22/2015 on the authorization of the private pension fund;
- g) the audit contract of the administrator concluded with an external financial auditor, legal entity, registered with the competent authority, namely the Chamber of Financial Auditors of Romania;
- h) statement on investment policy;
- i) business plan for at least 3 years;
- j) draft the prospectus for the private pension scheme;
- k) notification of the persons providing the internal audit, according to the provisions of Regulation no. 14/2015;
- l) the proof of payment of the authorization and management authorization fee of each proposed member for the management structure, respectively of each person holding an authorized key position.

(2) If the documents provided in art. 9 were changed since they registration with ASF, they shall be filed with ASF in their altered form.

Art. 32. - The business plan is developed by the administrator and must include at least the following:

- a) information on the activities to be carried out;
- b) information on how the administrator intends to act in a prudent manner;
- c) market study and factors that may affect the feasibility of the business plan;
- d) investment policy and business financing plan, including the period of recovery of investment in the company.

Art. 33. - (1) The premises for the registered office and for the secondary offices of the pension companies must meet at least the conditions stipulated in art. 14, respectively, art. 15.

(2) The extension of the contract for the use of the premises for the registered office and the secondary offices shall be notified to ASF within 5 calendar days of the date of the extension of the contracts.

(3) Documents proving the extension of the contract will be submitted to ASF within 10 calendar days of the date of registration of amendments with the Trade Register.

SECTION 6

Procedure for approving or rejecting the application for authorization to manage a privately managed pension fund.

SUBSECTION 1

The authorization to manage a privately managed pension fund

Art. 34. - ASF decides on the management authorization within 30 calendar days of the registration of the application and full documentation by the applicant.

Art. 35. - The decision to authorize the management will be accompanied by the authorization decisions for each of the persons authorized according to the provisions of Regulation no. 14/2015.

Art. 36. - The decision on the management authorization shall be communicated to the applicant within 5 calendar days of its adoption by ASF.

Art. 37. - (1) Any request from ASF for additional information or modification of the documents submitted initially interrupts the time limit stipulated in art. 34, a new time limit starting from the date of submission of the respective information or amendments, which cannot be made later than 30 calendar days from the date of ASF's request, under the sanction of rejection of the application for the authorization of management.

(2) If the submitted documents are incomplete, illegible or found to be submitted in an inappropriate form, as well as in the absence of any documents, they are requested to be filled in or replaced, as the case may be.

Art. 38. - (1) After obtaining the decision to authorize the management, any modification of the documents provided in art. 31 and the conditions under which this authorization was granted shall be approved in advance by ASF unless the change is made outside the control of the administrator.

The paragraph was derogated by Rule no. 22/2016 on April 27, 2016.

(2) For the purpose of issuing the decision to approve the modifications provided in paragraph (1), ASF shall analyze the documentation submitted by the administrator through its legal representatives and checks whether the conditions laid down by the Law and the applicable regulations are met cumulatively.

(3) In the situation foreseen in par. (1), if the modification of a document involves the simultaneous modification of other documents, the administrator may file with ASF at the same time, the applications together with the documentation for each change.

(4) ASF shall decide on the authorization to establish the pension company within 30 calendar days starting the registration of the application and full documentation of the applicant.

(5) The decision to authorize the establishment of the pension company shall be communicated to the applicant within 5 calendar days of its adoption by ASF.

(6) By way of exception to the provisions of par. (1) shall be subject to the approval of ASF any changes to the organization and operation regulations of the company.

(7) By way of exception to the provisions of paragraph (1), within 30 calendar days from the date of issue of the amending documents, the administrator shall notify ASF on any changes regarding:

a) identity papers and curriculum vitae of founders / shareholders, which are natural persons or members of the management structure, as well as of persons holding authorized key positions;

b) the audit contract concluded for auditing the administrator's activity;

c) the deposit contract and the custody contract for the assets of the privately managed pension fund, provided that the amendments made to them do not refer to the contracting parties, the object of the contract or the price thereof;

d) business plan;

e) the internal procedures provided for in art. 13.

(8) In case of amendment of the Articles of Incorporation, within 5 working days from the receipt of the certificate of recorded amendments, the administrator submits to ASF a copy thereof, as well as a copy of the certificate of good standing and the certificate of incorporation, as the case may be.

Art. 39. - (1) After each change of the investment policy statement, according to art. 24 paragraph (2) of the Law, within 5 working days from the date of communication of the decision to authorize the change by the ASF, the administrator shall publish on its own website, for a period of at least 30 calendar days, a notice announcing the alteration of the investment policy statement.

(2) The administrator shall publish too the notice referred to in paragraph (1) in at least one national circulation newspaper for a period of at least two consecutive days.

(3) The publication of the announcement on the administrator's website provided in paragraph (1) and publication of the notice in accordance with paragraph (2) shall be carried out on the same day.

Art. 40. - (1) Within 30 calendar days of the issuance of the management authorization decision, the administrator shall notify to ASF the number of employees, direction / compartment / service where they work, specifying working time, full-time or part-time.

(2) Any modification of the information provided in paragraph (1) shall be notified to ASF within 10 calendar days of the occurrence of the event.

(3) ASF has the right to request the amendment of the organization and operation regulation as well as of the internal procedures if they consider that they do not correspond to an organization appropriate

to the specificity, scope and complexity of the activity, allowing safe operation and ensuring the continuity of operations, as well as observance of provisions of art. 12 and 13.

Art. 41. - (1) The administrator shall notify to ASF the agenda of each meeting of the ordinary or extraordinary general meeting of the shareholders, before the meeting or at the latest on the day of its holding.

(2) In the case of meetings on whose agenda are included proposals for amendments to the Articles of Incorporation, the agenda will necessarily include the full text of the proposals.

SUBSECTION 2

Rejection of the application for authorization to manage a privately managed pension fund

Art. 42. - (1) Failure to meet one of the requirements provided by the law and the applicable regulations leads to the rejection of the application for the management authorization.

(2) The decision of rejection, written and reasoned, shall be communicated to the company within 5 calendar days of its adoption.

(3) Within no more than 30 days from the date of its communication, the rejection decision may be challenged in accordance with the provisions of Law no. 554/2004 as subsequently amended and supplemented.

Art. 43. - A new application for authorization for the establishment of the pension company may be addressed to ASF only if the deficiencies that caused the rejection of the initial request are remedied.

CHAPTER IV

Final provisions

Art. 44. - (1) The validity of the authorization of the members of the management structure as well as of the persons holding authorized key positions, according to the provisions of Regulation no. 14/2015 terminates by law on the date of termination of the mandate or of the contract for the authorized position, as well as in the case of the withdrawal of the authorization decision of the administrator.

(2) During the conduct of the administrator's activity, he has the obligation to ensure that until the authorization of a new person holding an authorized key position, the person providing the interim must have been previously authorized and notified to ASF.

The paragraph was derogated by Rule no. 22/2016 on April 27, 2016.

(3) In the cases provided by art. 27 par. (3) and (4) and art. 44 par. (2), the period up to the proposal and submission of the complete documentation for a new person shall not exceed 60 days from the date of notification of the decision to withdraw the authorization, respectively from the date of notification of termination of the authorization, except for the members of the board, for which the period can be extended at the request of the administrator, with a maximum of 60 days.

(4) By way of exception to the provisions of par. (2) for the members of the Board of Directors, the Supervisory Board or the Managing Board shall not be notified the person exercising temporarily the relevant duties and has the responsibilities of the relevant position.

Art. 45. - (1) All documents submitted to ASF for the purpose of obtaining the decision to authorize the establishment of the pension company, and for the authorization of management, as well as the decisions for the authorization of the persons are numbered and signed for compliance by the legal representatives of the applicant and are accompanied by a list of documents in which they are mentioned.

(2) All documents and information provided in this Rule shall be submitted in Romanian and documents issued in another language shall be submitted in original, in authentic form, as appropriate, together with the certified translation.

(3) ASF may request in writing, in compliance with the provisions of art. 73 par. (1) and art. 78 par. (4) of the Law, any additional information or documents, if the information submitted is not sufficient or relevant to the assessment or if the documentation has other deficiencies.

(4) Applicants may submit, on their own initiative, any information and documents considered by them appropriate to support the application for authorization.

Art. 46. - (1) The following are considered to be offences:

a) non-fulfilment by the shareholders of the conditions stipulated in art. 6 par. (2) letter c) and d) and art. 7 par. (1) letters a) -c) and f), par. (2) and (3) throughout the life of the pension company;

b) non-fulfilment by the members of the management structure of the conditions envisaged for authorization throughout the exercise of the position in which the persons concerned were authorized;

c) the exercise of membership in the management structure or the activity by the persons holding authorized key positions, after the termination of the authorization;

d) non-fulfillment by the persons holding authorized key positions of the conditions envisaged in the authorization during the entire period of the exercise of the position in which the persons were authorized;

e) failure to notify ASF according to the provisions of art. 33 par. (2), art. 38 par. (7), Art. 40 par. (1) and (2) and Art. 42 par. (1);

f) non-fulfilment of the publishing obligations according to the provisions of art. 39;

g) non-compliance with the other obligations under this rule.

(2) The execution by the shareholders of the pension company, by the pension fund administrators, by the members of the management structure, or by the persons holding key authorized positions of any of the facts provided in paragraph (1) shall be sanctioned according to the provisions of art. 16 par. (1), art. 81 par. (1) letter c), art. 140 par. (1) and art. 141 par. (1) letter g), paras. (2) to (11) of the Law.

Art. 47. - Annexes no. 1-5 are an integral part of this rule.

Art. 48. - (1) P This rule shall be published in the Official Journal of Romania, Part I, and shall enter into force on the date of its publication.

(2) On the date of entry into force of this rule, Rule No. 12/2010 on the authorisation of formation of pension companies and authorisation of management of privately managed pension funds, approved by Decision no. 22/2010 of the Supervisory Commission of the Private Pension System, published in the Official Journal of Romania, Part I, no. 691 of October 14, 2010, as subsequently amended and supplemented shall be repealed as well as any other contrary provisions.

(3) The provisions of this regulation supplement the provisions of Regulation no. 14/2015, as well as of Regulation no. 3/2016.

President of the Financial Supervisory
 Authority,
 Mişu Negriţoiu

Bucharest, April 15, 2016.

No. 22.

ANNEX No. 1

Company identification data	APPLICATION FOR AUTHORIZATION FOR THE ESTABLISHMENT OF THE PENSION COMPANY / FOR AUTHORIZATION AS ADMINISTRATOR OF THE PRIVATELY MANAGED PENSION FUND
The undersigned,, (full name)	
as empowered (no. and date of special and authenticated power of attorney / lawyer delegation), hereby request the authorization to establish the pension company / administration of the privately managed pension fund., (company name)	
with:	
registered office (locality), (Street and number), (County), (Postal code), secondary office. (locality), (Street and number), (County), (Postal code),	
registration form: (branch, representative office, agency, work point)	
Telephone number, Fax number.	

E-mail address.
This application is accompanied by a number of. documents, totaling a number of pages.
Signature of the representative.
Date

ANNEX No. 2

DATA REGARDING THE FOUNDERS / SHAREHOLDERS OF THE PENSION COMPANY					
Founders of the pension company / Administrator's shareholders - natural persons					
No.	Founders / Shareholders Full name	Home state	Holding		Personal identification number 1)
			No. of shares	% of the share capital	
Founders of the pension company / Administrator's shareholders - legal entities 2)					
No.	Founders 3)/Shareholders 3) Name	Home state	Holding		Registration number 4)
			No. of shares	% of the share capital	

1) Foreign natural persons shall fill in the passport series and number.

2) Only the shareholders of the company holding at least 5% of the share capital will be registered, the last line being filled in with "other shareholders / natural persons holding less than 5%" and the total number of their holdings.

3) To be filled in starting with the shareholding of the company requesting the authorization. It shall not be filled in for companies admitted to trading on a regulated market and those to which the State or a public administration authority is a shareholder, and shall state this situation.

4) Foreign legal entities shall fill in the registration number with the institution similar to the trade register in the country of origin.

Name and first name of the
representative.
Signature of the representative
..
Date.

ANNEX No. 3

SIGNATURE1) SPECIMENS

for members of the management structure and for those holding key positions

1) This form will be filled in before the representative of ASF. If one of the board members cannot sign in these conditions, a notarised statement regarding the signature specimen will be filed.

(name of the company requesting authorization to manage the privately managed pension fund)
registered with the Trade Register under number. , with the registration number.

No.	Full name readable	Capacity	Signature
1.		<input type="text"/>
2.		<input type="text"/>
3.		<input type="text"/>

ANNEX No. 4

Statutory DECLARATION No. 1
on Affiliate Relationships

The declaration shall be drawn up according to this model. Declarations signed by representatives are not accepted.

I, the undersigned 1)., residing in, holder of identity document type 2)., series. no., issued by on., valid by, PIN, in my capacity as 3). of the management company of the private pension fund., hereby declare that I have / do not have the status of a person affiliated with a natural or legal entity, as defined in art. 2 par. (2) of the Law no. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented.

1) To be filled in only for individuals.

2) Fill in with "BI" for Identity Card or "ID" for Identity Card or "PAS" for passport for foreign natural persons.

3) Fill in with the position held: shareholder, board member, supervisory board member, general manager, board member, investment managers, persons managing the internal control and risk management structure.

I, the undersigned 4)., as legal representative of the Company 5). with registered office in. registered with the Trade Registry under no. and registration number. (series, number and date of issue), hereby declare that the Company 5). as a shareholder of the private pension fund management company., has / does not have the status of a person affiliated with a natural or legal person, as defined in art. 2 par. (2) of the Law no. 411/2004, republished, as subsequently amended and supplemented.

4) To be filled in only in the case of legal entities by the natural person in the capacity of legal representative of the legal entity shareholder, in accordance with the provisions of its Articles of Incorporation.

5) To be filled in with the same name

Affiliate relationships 6):

6) To be filled in, where appropriate, by both natural persons and legal entities.

No.	Full name of the natural person / Name of the company with which the declarant is affiliated	The type of affiliation, according to art. 2 par. (2) of the Law no. 411/2004, republished, as subsequently amended and supplemented	State of nationality and state of residence / State of residence of the company in which shares are held.	Participation in the company's share capital / voting rights (%)

Date

Signature

ANNEX No. 5

Statutory DECLARATION No. 2

regarding the holdings representing at least 5% of a company's share capital or voting rights

The declaration is drawn up according to this model. Declarations signed by representatives are not accepted.

I, the undersigned¹⁾, residing in, holder of identity document type 2)....., series..... no....., issued by on....., Valid until....., PIN....., in my capacity as 3)..... of the private pension fund management company, hereby declare that I have / do not have holdings that represent at least 5% of the share capital or the voting rights of a company:

1) To be filled in only by natural persons.

2) Fill in with "BI" for Identity Card or "ID" for Identity Card or "PAS" for passport for foreign natural persons.

3) To fill in the positions held: shareholder, board member, supervisory board member, general manager, director, investment manager, person proposed to ensure the management of the internal control structure or the person proposed to ensure the management of the risk management structure .

I, the undersigned 4)....., as legal representative of the Company 5)..... with registered office in....., registered with the Trade Register under no..... (series, number and date

of issue) and registration number. , hereby declare that the Company 5). has / does not have holdings representing at least 5% of the share capital or the voting rights of a company:

4) To be filled in only for legal persons by the natural person who is the legal representative of the legal entity shareholder.

5) To be filled in with the same name.

Individual holdings 6):

6) To be filled in, where appropriate, by both natural persons and legal persons.

No.	Name of the company / Name and surname of the natural person	State of residence of the company in which the shares are held	Participation in the company's share capital / voting rights (%)

Date

Signature