

## ***Rule 18/2018***

### ***on the adherence and registration of the participants in optional pensions funds***

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Considering the provisions of Article 29(4), Articles 74, 75, 76 and Article 77(1) and (2) of Law no. 204/2006 on optional pensions, as subsequently amended and supplemented,

based on the provisions of Article 2(1) letters c) and d), Article 3(1) letter b), Article 5 letter c), Article 6(1) and (2), Article 7(2) and Article 28 of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as subsequently amended and supplemented,

under the provisions of Article 24 letter c) of Government Emergency Ordinance no. 50/2005 on the establishment, organization and functioning of the Private Pensions System Supervisory Commission, approved with amendments and completions by Law no. 313/2005, as subsequently amended and supplemented,

following the deliberations of the Board of the Financial Supervisory Authority during the meeting of 31.10.2018,

The Financial Supervisory Authority issues this rule.

#### **CHAPTER I**

##### **General dispositions**

Article 1 - This rule governs:

- a) the conditions for acquiring and terminating the status of a participant in an optional pensions fund;
- b) the form and the content of the individual framework act for adherence to an optional pensions fund and the procedure for its modification;
- c) the record of the participants in an optional pensions fund;

d) updating by each administrator of the participant information contained in the Register of Participants.

Article 2. - (1) The terms and expressions used in this Rule have the meanings provided in Article 2 of the Law no. 204/2006 on optional pensions, as subsequently amended and supplemented, hereinafter referred to as Law no. 204/2006.

(2) Also, the terms below have the following meanings:

a) adherence represents the manifestation of will of a person, made with the intention of becoming a participant in an optional pensions fund, by signing an individual act of adherence to an optional pensions fund;

b) identification elements mean the name and surname, the personal numerical code, the serial number and the identity document number;

c) contact elements are the home address, as well as the mailing address, telephone number and e-mail address, as appropriate;

d) eligible person is the person defined in Article 74(1) of the Law no. 204/2006;

e) The Register of Eligible Persons and Participants, hereinafter referred to as the Register of Participants, contains all data organized and registered in a chronological and systematic manner on:

(i) the eligible persons who have signed an individual act of adherence, namely their identification and contact details;

(ii) participants in optional pensions funds, their identification and contact details, all changes made to them, as well as the converted contributions and transactions on their behalf;

f) biometric signature is a handwritten signature used on a specialized computer support that records temporal data, such as speed and acceleration, the pressure to be signed on the specialized computer support, the biometric signature graphic data, the angle and angle difference used in the signature.

g) personal data is the name and surname, the personal identification number, the serial number and the number of the identity document, the home address, the correspondence address, the telephone number, the e-mail address, the identity card image and the data related to it, the civil status documents, the handwritten signature, the employer data, the details from the adherence act, the bank account details, the contributions history and transactions, the online identifiers, the petitions history, the biometric data, the court orders data / qualifications for disability / administrative decisions on the granting of the disability pension / medical decisions on work capacity.

## **CHAPTER II**

### **Acquiring and terminating the status of a participant in an optional pensions fund**

#### **SECTION 1**

##### **Acquiring the status of a participant in an optional pensions fund**

Article 3 - An eligible person becomes a participant in an optional pensions fund as a result of the cumulative fulfillment of the following conditions:

- (a) adheres to an optional pensions fund by signing an individual act of adherence in the form approved by the Financial Supervisory Authority, hereinafter referred to as A.S.F.
- b) has at least one contribution to the optional pensions fund, within 6 months from the date of signing of the individual act of adherence, to the minimum amount stipulated in the individual act of adherence concluded with an optional pensions fund administrator, authorized according to the legislation in force.

Article 4. - (1) The administrators shall draw up and update the Register of Participants.

(2) The Register of participants shall include:

- a) the identification and contact elements of the eligible persons;
- (b) the names of the employers and the contact details, if available, of the employers;
- c) the identifying and contacting elements of the participants;
- d) the registration codes of the marketing agents, legal persons and natural persons, registered in the A.S.F. Register, registered with the respective Administrator and who have concluded individual acts of adherence;
- e) the series and unique numbers of the individual acts of adherence;
- f) the date when the individual acts of adherence were signed;
- g) the records of converted contributions;
- h) the amount of gross contributions transferred and identified in the collector account;
- i) the amount of net contributions converted into units of fund;
- j) the amount of the commissions deducted from the participants' gross contributions;
- (k) the date on which the gross contributions were transferred;

- l) the date on which net contributions were converted into fund units;
- m) the unit value of the net asset to which the conversion of the contribution was made;
- n) the number of fund units of the converted net contribution;
- o) the total number of fund units;
- p) any other information requested by A.S.F.

Article 5 - The administrators have the obligation to verify the identification and contact details of the person who signed an individual act of adherence and the authorization and / or the approval of the marketing agent who concluded the individual act of adherence, at the date of signing the individual act of adherence.

Article 6. - (1) The administrators train the marketing agents, legal entities and natural persons, in connection with the transmission of the individual acts of adherence.

(2) Marketing Agents shall submit to the Administrator the acts of adherence in paper form, signed by the eligible persons, within 5 working days from the date of their signature.

(3) Marketing agents shall transmit to the administrator, by means of a specialized electronic device, within one working day of signing, the acts of adherence signed with biometric signatures on an specialized computer support.

(4) The administrators are obliged to register the individual acts of adherence in the Register of participants, only after verifying the information included in the individual acts of adherence with the data inscribed in the copy of the identity document, as well as after verifying the correctness of the preparation of the individual act of adherence.

(5) The administrators are obliged to register the eligible persons with the identification and contact elements in the Register of participants, within maximum 10 working days from the date of signing the individual act of adherence, provided that the provisions of para. (4) are met.

(6) The administrators have the obligation to scan all individual acts of adherence and all the identity documents of the persons who have been registered in the Register of participants and to archive them in electronic format.

Article 7. - The administrators have the obligation to ensure the correctness of the data entered in the Register of Participants provided by Article 4.

Article 8. - (1) The administrators must have a computer system that ensures the safe keeping of the information from the Register of participants.

(2) The administrators are required to make and maintain a safety back-up of the information stored in the Information System on the Register of Participants.

Article 9 – The administrators are required to safely keep the individual acts of adherence that have been completed by using electronic devices and signed using the biometric signature, ensuring the defining elements of data security, such as their confidentiality, integrity and availability.

## **SECTION 2**

### ***Suspension of payment of the contribution and change in the level of contribution to an optional pensions fund***

Article 10. - (1) The eligible person owes to the voluntary pension fund, to which he has adhered, from the date of signing the individual act of adherence, the contribution in the minimum amount stipulated in the individual act of adherence.

(2) If the eligible person and / or the employer do not pay the first contribution to the optional pensions fund within 6 months from the date of signing of the individual act of adherence, the individual act of adherence shall cease to be lawful.

(3) The administrator has the obligation to archive and keep all individual acts of adherence which have ceased in the situation stipulated in paragraph (2).

Article 11. - (1) The participant may at any time suspend, terminate the payment of the contribution or modify its level, under the provisions of Law no. 204/2006 and in compliance with the provisions of the prospectus of the optional pensions scheme.

(2) The employer, in the event that he / she makes and transfers the contribution to the optional pensions fund, notifies the administrator in writing about the suspension or termination of payment of his own contribution, at least 5 working days before the date of suspension or termination of the payment.

(3) At the request of the employed participant, the employer shall, in the event that he / she makes and contributes to the optional pensions fund on his behalf, notify the administrator in writing of the

suspension, cessation or resumption of payment of the participant's contribution, at least 5 working days before the date of suspension, termination or resumption of payment.

(4) The employer may at any time change the level of his / her own contribution to the optional pensions fund by notifying the administrator and the employee in writing at the latest on the date of payment of the contribution.

Article 12. - (1) If, for a period longer than 3 consecutive months from the due date of the minimum contribution payment stipulated in the individual act of adherence, the employer does not pay the contributions for the optional pensions fund, the administrator may consider the payment of the contribution being suspended.

(2) If the participant fails to comply with the obligations stipulated in Article 76(11) of the Law no. 204/2006, the administrator shall continue to manage the personal assets of the participant, who retain its rights according to the rules of the optional pensions scheme.

(3) Suspension or cessation of the payment of the contribution is without prejudice to the status of the participant or his personal asset.

(4) The participant and the employer, as the case may be, may resume the payment of the contribution at any time.

### **SECTION 3**

#### ***Cessation of the status of participant in an optional pensions fund***

Article 13. - The status of participant in an optional pensions fund shall cease when any of the following cases occur:

- a) on the date of the opening of the right to the optional pension, under the applicable law;
- b) by making the single payment, respectively by making the last payment in staggered manner, as the case may be, of the value of the net asset of the participant to the fund, according to the applicable law.

## **CHAPTER III**

### **General provisions on the individual act of adherence and the procedure of its amendment**

#### **SECTION 1**

##### **The Individual Act of Adherence**

Article 14. - (1) The form and contents of the individual act of adherence are authorized by A.S.F. with the approval of the prospectus for the optional pension scheme.

(2) The form and contents of the individual act of adherence adopted in the adherence process are set out in the Annex.

(3) It is forbidden the introduction by the administrators in the individual act of adherence of information other than those provided in the annex, with the exception of the serial number and the unique number assigned by the administrator, the administrator's symbol and logo, as well as other information about the administrator, mandatory according to the law.

(4) The individual act of adherence containing data and information likely to prejudice the interests of the participants in the optional pension funds or which is concluded in disregard of the provisions of this Rule shall entail the liability of the administrator, the legal person marketing agent and the natural person marketing agent , as the case may be.

#### **SECTION 2**

##### **The amendment of the individual act of adherence**

Article 15. - (1) The amendment of the form and content of the individual act of adherence shall be made by the administrator only with the prior approval of the modification by A.S.F.

(2) The decision approving the amendment of the form and content of the individual act of adherence shall be issued by A.S.F., following a written request filed with A.S.F. by the Administrator, together with the amended Individual act of adherence and the Explanatory Memorandum underlying the request.

Article 16. - (1) The administrator is obliged, within 10 working days from the date of entry into force of an authorization or an approval issued by A.S.F. which determines the amendment of the information provided for in the individual act of adherence, to request authorization to modify the individual act of adherence.

(2) Submission of documents or documents with the amendments requested by A.S.F. cannot be made, under the sanction of rejection of the application, later than 10 working days from the date of the request made by A.S.F.

(3) If the documents requested are missing or the documents submitted are incomplete, illegible or have an inappropriate form, A.S.F. may request their completion or replacement, as the case may be, within the time limit set out in paragraph (2).

(4) The authorization decision for the amendment shall be communicated to the applicant within 5 working days after its adoption by A.S.F.

(5) The individual act of adherence in the modified form shall enter into force in 5 working days after the date of communication of the decision stipulated in paragraph (4).

Article 17. - (1) Failure or inadequate fulfillment of one of the conditions provided in the present Rule draws the rejection of the request for authorization of the amendment of the individual act of adherence.

(2) The decision of rejection, written and reasoned, shall be communicated to the applicant within 5 working days from its adoption by A.S.F.

(3) The decision of rejection may be challenged within 30 days from the date of its communication, in accordance with the Law of administrative contentious no. 554/2004, as subsequently amended and supplemented.

Article 18. - A new application for authorization of the amendment of the individual act of adherence may be addressed to A.S.F. only after the deficiencies that led to the rejection of the initial request have been remedied.

## **CHAPTER IV**

### ***The adherence to an optional pensions fund***

Article 19. - (1) By signing the individual act of adherence, the eligible person expresses his / her consent to become a member of an optional pensions fund, to be a party to the civil society contract, to the management contract and to the prospectus of the optional pension scheme.



(2) The individual act of adherence shall be filled in by the adhering eligible person or the natural person marketing agent on the basis of the information provided by the eligible person and signed by the eligible person in the presence of the natural person marketing agent, with the exception of the individual acts of adherence concluded for transfer to another optional pensions fund.

(3) If the eligible person opts for the signing of an individual act of adherence to a specialized computer support using a biometric signature, the act shall be filled in by the marketing agent by using an electronic device.

(4) At the time of signing the individual act of adherence, the marketing agent shall have the following obligations:

a) to request a photocopy of the valid identity document, with the original signature of the eligible person on the same page on which the image is reproduced by copying;

b) to verify the conformity of the data in the original identity document with its photocopy, as well as with the data included in the individual act of adherence;

(c) to present the prospectus in force on the date of signature and to hand over a copy of the simplified prospectus free of charge or, on request, a copy of the prospectus in detail to the adhering person in accordance with the regulations in force;

(d) to hand over to the eligible person an original copy of the individual act of adherence, duly completed and signed if the act of adherence was signed on paper;

e) to send to the eligible person a signed copy of the individual act of adherence, on its e-mail address or address of domicile or correspondence, as the case may be, if the act of adherence has been signed using the biometric signature.

(5) If the eligible person opts for the signing of an act of adherence on an electronic device, using a biometric signature, the handwriting signature on the copy of the act of adherence is not required.

(6) It is forbidden the use or signing of individual acts of adherence whose form and content were not authorized by A.S.F.

(7) It is forbidden to delegate, empower or represent the eligible person in the relationship with the marketing agent for signing the individual act of adherence, under the sanction of absolute nullity of the individual act of adherence.

Article 20. - (1) The individual act of adherence shall be completed in two counterparts, each counterpart signed in original by the eligible person and by the marketing agent, and it shall be distributed as follows:

a) a counterpart for the Administrator of the optional pensions fund to which the eligible person has adhered;

b) a counterpart for the eligible person who has adhered an optional pensions fund.

(2) Where the employer makes and transfers the contribution to the optional pensions fund, the eligible person shall hand him a copy of the individual act of adherence.

(3) In the event of loss by the participant or total or partial destruction of the individual act of adherence, the administrators shall issue certified copies thereof upon request.

Article 21. - (1) The individual act of adherence may be filled in by using of electronic devices and it may be signed by using the biometric signature if the administrator of the optional pensions fund to which the eligible person wishes to adhere has the computer systems necessary for the use of the biometric signature in the adherence process.

(2) The administrators shall notify A.S.F. the intention to use the biometric signature in the adherence process, 5 working days before the start of the process.

Article 22. - (1) The participant has the obligation to notify the administrator and the employer about the acquisition / loss of Romanian citizenship, within 30 calendar days from the date of issuance of the identity documents, with the attachment of the supporting documents to the copy.

(2) The notified body referred to in paragraph (1) has the obligation to check the information received from the participant in consultation with the Directorate for Personal Records and Database Administration, hereinafter referred to as DEPABD, and / or the General Inspectorate for Immigration.

(3) The administrator, based on the verification provided in para. (2), shall operate the change of the participant's personal numerical code in its records and he shall inform him / her at least about the date of the change and the total number of fund units held in it within 5 working days after completion of the operations.

Article 23. - (1) The participant has the obligation to send to the employer and to the administrator a copy of the new identity document, with the original signature on the same page as the copy reproduced, if the DEPABD records show that it was modified the personal numeric code and has a new identity document, within 30 calendar days of the release of the new document.

(2) The notified body referred to in paragraph (1) has the obligation to verify the information received from the participant, in consultation with the DEPABD.

(3) The administrator, based on the verification provided in para. (2), shall operate the change of the participant's personal numerical code in its records and he shall inform him / her at least about the date of the change and the total number of fund units held in it within 5 working days after completion of the operations.

## **CHAPTER V**

### **Transitional and final provisions**

Article 24. - Within 60 calendar days from the date of entry into force of this Rule, the administrators are required to submit to A.S.F. all documents necessary for the authorization of the amendment of the individual act of adherence, according to the provisions of the present Rule.

Article 25. - The administrators use the personal numerical code and personal data of the eligible persons, participants, beneficiaries and representatives / legal representatives of the participants and beneficiaries, collected in the management activity in accordance with the legal and / or contractual provisions for determined, explicit and legitimate purposes and which are protected by appropriate technical and organizational measures against unauthorized access, unauthorized processing, accidental loss, unauthorized alteration or destruction, for their identification and for performing any operation necessary to fulfill the legal and / or contractual obligations of the administrator towards the participants / beneficiaries / eligible persons.

Article 26 - The administrators are obliged to store / archive all documents containing the personal data of the participants, in compliance with the relevant legislation.

Article 27. - (1) The following acts are contravened:

- a) the failure of the administrators to draw up the Register of participants according to Article 4 and not updating it;
- b) non-fulfillment of the obligations stipulated in Article 6;
- c) non-fulfillment of the obligations stipulated in Article 7;
- d) failure of the administrators to make backup copies of the information stored in the information system regarding the Register of Participants according to Article 8 and 9;

e) non-fulfillment of the obligation of archiving and keeping the record regarding the individual acts of null adherence according to Article 10 para. (3);

f) the conclusion or use by the administrator, the legal person marketing agent or the natural person marketing agent of individual acts of adherence with non-observance of the form and their content, authorized by A.S.F. and / or without having previously obtained the A.S.F authorization;

g) the failure of the marketing agent to fulfill the obligations stipulated in Article 19 para. (3) and (4);

h) failure by the administrators to fulfill the obligations stipulated in Article 22 para. (2) and (3) and Article 23 para. (2) and (3).

(2) The commission of any of the deeds stipulated in para. (1) shall be sanctioned in accordance with the provisions of the legislation in force, Article 120 para. (1), Article 121 para. (1) lit. k) and para. (2) - (11) of Law no. 204/2006 respectively.

Article 28. - The annex is an integral part of this Rule.

Article 29. - This Rule shall be published in the Official Gazette of Romania, Part I, and it shall enter into force on the date of its publication.

Article 30. - On the date of entry into force of this Rule, Rule no. 2/2011 regarding the adherence and registration of the participants to the optional pensions funds, approved by the Decision of the Private Pensions System Supervisory Commission no. 2/2011, published in the Official Gazette of Romania, Part I, no. 151 of March 2<sup>nd</sup>, 2011, as subsequently amended and supplemented, shall be abrogated.

The Chairman of the Financial Supervisory Authority,

**Leonardo Badea**

Bucharest, November 1<sup>st</sup>, 2018

No. 18

ANNEX

ACT - INDIVIDUAL FRAMEWORK FOR ADHERENCE

Series ..... no. ....

The number of the authorizing decision as administrator. ....

The number of the authorizing decision for the prospectus of the optional pensions scheme. ....

The number of the authorizing decision for the optional pensions fund. ....

Surname and first name of the participant. ....

Personal Numeric Code (CNP). ...., B.I./C.I. series. .... no. ...., issued/ released by  
..... on the date of. .... by ...

Date of birth: dd / mm / yyyy: .....

Home address and / or residence. .... (locality, county / sector, street, no., bl., sc., floor, ap.,  
postcode)

Correspondence address (optional). .... (locality, county / sector, street, no., bl., sc., floor, ap.,  
postcode)

Phone number: landline ....., mobile. ...., email address .....

The name of the optional pensions fund. ....

Administered by. .... (name of the administrator)

Address of the administrator. .... (locality, county / sector, street, no., bl., sc., floor, ap.,  
postcode)

Name and address (optional) of the employer ....., CIF / CUI. ....

According to the provisions of Law no. 204/2006 on optional pensions, as subsequently amended and supplemented, administrators, marketing agents or persons affiliated to them shall be prohibited:

1. to provide collateral benefits in order to persuade a person to adhere an optional pensions fund or to remain a participant therein;
2. to provide benefits to facilitate the adherence of potential participants.

Total Value of the Contribution . . . . ., (the minimum amount expressed in RON) of which:

The value of your own contribution . . . . . (expressed in RON)

The value of the employer's contribution. . . . . (expressed in RON)

The date on which the first payment is made. . . . . (Dd / mm / yyyy)

Payment of the employer's contribution shall be made by the date of. . . . . (dd) of each month.

The contribution will be transferred to the IBAN account . . . . ., (IBAN code - 24 characters)  
opened on behalf of the Fund at the Bank. . . . ., (name of the bank)  
depository of the Fund. . . . . (name of the fund)

Statement of the Participant:

1. I declare on my own responsibility that I meet the requirements of the legislation to participate in an optional pensions fund.
2. I declare on my own responsibility that I respect the provisions of Article 76 para. (2) of the Law no. 204/2006, as subsequently amended and supplemented, in relation to my contribution to an optional pensions fund, which may amount to up to 15% of my monthly gross earned income or income assimilated to it.
3. I got acquainted with the provisions of the prospectus of the optional pensions scheme, I received this document and I agree to become a party to the company contract, to the management contract and to the prospectus of the optional pensions scheme.
4. I declare on my own responsibility that I have signed this individual Act of adherence in order to:
  - adhere an optional pensions fund;
  - transfer myself from another optional pensions fund.(To be marked with X by the participant depending on the situation at the time of signing.)
5. I was informed that ... (name of the administrator) is processing my personal data as follows:

a) In order to fulfill its legal obligations resulting from the administration of the optional pensions fund (... name of the fund) according to the provisions of Law no. 204/2006, as subsequently amended and supplemented and the Rules issued for its implementation;

b) In order to fulfill the obligations incumbent on the administrator following the conclusion of the individual act of adherence, for the management of the relationship with the participants, including the handling of the requests, referrals and complaints addressed to him;

c) In order to achieve the above-mentioned processing purposes, the administrator shall process the data that I provide directly for the purposes communicated to me.

d) The administrator may also process data that is not generated based on the information provided directly by me.

e) The refusal to provide personal data will make it impossible for the administrator to provide you with private pension products and services directly related to them, in accordance with the legal provisions.

f) In the context of carrying out its activity, the administrator may disclose some or all of the categories of personal data to public authorities, pensions fund marketing agents, other private pensions administrators, employers, deposit banks, suppliers, as well as to comply with any legal obligations.

g) The administrator shall process the personal data during the contractual relationship resulting from the act of adherence, and subsequently in the application of the legal provisions.

6. I understand that under the legislation on the protection of personal data, I have the following rights: the right to information, the right of access, the right to rectification, the right to delete the data (the right to be forgotten) - to the extent that the legal provisions are met, the right to restriction of data processing, the right to data portability, the right to oppose, the right not to be the subject of decisions based solely on automatic processing, including the creation of profiles, and the right to address with a complaint to the National Supervisory Authority for Personal Data Processing.

7. I can exercise these rights by a request addressed to (...) (name of the administrator) by the following means of contact (...).

8. I have been informed that the detailed information on the processing of personal data is available in ...

9. I am contractually bound to inform the administrator of the optional pensions fund within 30 calendar days of any change in my identification or contact details.

10. I have been aware that after the signing of the individual act of adherence, the administrator has the obligation to verify the correctness of the preparation of the individual act of adherence, by any means that can be subsequently proved.

11. I am aware that if no contribution to the optional pensions fund is made, within six months of the signing of the individual act of adherence, this act ceases to be lawful.

Administrator,

.....

(name of the administrator)

Legal representative,

.....

(name, surname, signature and stamp)

Participant,

.....

(name and surname)

.....

(signature of the participant)

Date .....

(Dd / mm / yyyy)

Legal person marketing agent,

.....

(name of the marketing agent)

Code of the Financial Supervisory Authority Register

.....

Natural person marketing agent,

.....

(name and surname)

Code of the Financial Supervisory Authority Register

.....

.....

(signature of the marketing agent)

Date

.....

(Dd / mm / yyyy)

Field filled in by the administrator

Verified

Date



Name. ....

First name .....

Signature.....