

LAW No.32 of 3 April 2000
on insurance companies and insurance supervision
(L32/2000)

ISSUER: THE PARLIAMENT

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The Romanian Parliament has adopted this law.

CHAPTER I

Purpose of the law, definition of terms and of categories of insurance

Article 1

This law regulates: the organisation and operation of insurance, insurance-reinsurance and reinsurance enterprises, of mutual companies, hereinafter referred to as insurers, reinsurers respectively, as well as the organisation and operation of insurance agents, of the Insurance Supervision Commission, the supervision of insurers and reinsurers carrying out activity in or from Romania, the supervision of activity conducted by insurance and reinsurance agents, as well as of other activities related thereto.

Article 2

Within the scope of this law, the terms and expressions below shall mean:

1. *insurance activity* - the activity carried out in or from Romania, designating mainly the supply, intermediation, negotiation, conclusion of insurance and reinsurance contracts, collection of premiums, payment of losses, court action by insurers against the party responsible for loss to the insured and the recovery activity, as well as the investment and usage of own funds and funds drawn in the course of business carried out;
2. *insurance agent* - the natural or legal person duly authorised, under licence from an insurer, to negotiate or conclude, on behalf and for the account of the insurer, insurance contracts with third parties, subject to the terms provided in the signed mandate contract, not acting as an insurer or insurance broker;
3. *insurance* - the operation whereby an insurer sets aside, according to the principle of mutuality, an insurance fund through contributions of a number of insured parties, exposed to the occurrence of certain risks, indemnifying policyholders sustaining losses from the fund supplied from premiums collected and other revenues generated in the course of business;
4. *insured* - the person bound by an insurance contract with the insurer;
5. *insurer* - the Romanian or foreign legal person or the mutual company authorised as per this law to perform insurance activities;
6. *insurance broker* - the Romanian or foreign legal person, authorised as per this law, who negotiates or concludes insurance contracts for its clients, and provides other services relating to protection against risks or settlement of losses;
7. *loss* - an event or series of events causing substantial damage in a short period of time;
8. *co-insurance* - the operation whereby two or more insurers underwrite the same risk, each bearing an agreed proportion thereof;
9. *freely paid-up reserve fund* - the aggregate amounts contributed by the members of the mutual company to its funds;

10. *significant shareholders* - shareholders who, between themselves or through or together with other persons, hold at least 5% of the total voting rights in the shareholders' general meeting;
11. *significant persons* - the administrators and general manager;
12. *insurance portfolio* - all or part of the insurance contracts concluded by an insurer;
13. *gross premiums subscribed* - premiums collected and receivable, including reinsurance premiums collected and receivable, relating to all insurance and reinsurance contracts which take effect in the reference period, prior to deducting any amounts therefrom;
14. *net premiums subscribed* - gross premiums subscribed, from which the paid and payable amounts by way of reinsurance premiums are deducted;
15. *gross premiums collected* - the aggregate premiums collected, including the reinsurance premiums collected during the reference period, prior to the deduction of any amounts therefrom;
16. *net premiums collected* - the gross premiums collected, from which the amounts paid by way of reinsurance premiums are deducted;
17. *reinsurance* - the insurance of an insurer by another insurer, the former being reinsured, and the latter, reinsurer;
18. *retention* - the portion of risk retained by an insurance enterprise for its own account subsequent to deduction of reinsurance;
19. *mutual insurance enterprise* - an enterprise governed by civil law, whose associates are both insured and insurers.

Article 3

(1) Insurance activity is grouped into:

- a) life insurance;
- b) general insurance.

(2) The classes of insurance related to the categories mentioned in paragraph (1) shall be laid down by rules.

CHAPTER II

The Insurance Supervision Commission

Article 4

(1) Implementation of this law, supervision and control of compliance with the provisions herein shall be the responsibility of the Insurance Supervision Commission, with a view to defending the rights of the insured and promoting the conduct of sound insurance activity in Romania.

(2) The Insurance Supervision Commission shall be established as a specialised autonomous legal person administrative authority and with its head-office in Bucharest, which shall carry out its duties as per the provisions herein.

(3) The Insurance Supervision Commission may open representative offices in any other location in Romania.

(4) To meet the needs of the Insurance Supervision Commission, and of the representative offices set up thereby, the Government, and where appropriate, the local government authorities shall assign to them the necessary immovable property - land and buildings - from the national or local public property, as the case may be, within 60 days from the receipt of an application to this effect from the Insurance Supervision Commission.

(5) A board made up of 5 persons, i.e. a president, a vice-president and 3 members shall head the Insurance Supervision Commission.

(6) The organisation and staff of the Insurance Supervision Commission, the duties of management and the performance and control duties of its staff shall be prescribed by rules of procedure, adopted by the board of the Insurance Supervision Commission, as per the provisions herein.

(7) The members on the board of the Insurance Supervision Commission shall be appointed by Parliament, in joint meeting of the two chambers, as proposed by the joint budget, finance and banking committees of the Senate and Chamber of Deputies. The president and the vice-president shall be entered on the list of nominations to be submitted for approval to Parliament.

(8) Appointment of the members of the Insurance Supervision Commission board shall be on the joint list proposed by the budget, finance and banking committees of the Senate and Chamber of Deputies.

(9) Revocation of the Insurance Supervision Commission board, whether as a group or individually, shall fall under the authority having appointed them, subject to the procedure laid down in paragraph (8).

(10) The term of office of each member on the Insurance Supervision Commission board shall be 5 years, with the option of renewal.

(11) The first members on the Insurance Supervision Commission board shall be appointed for different terms in office, to the effect that every year one board member shall end his term of office.

(12) The president shall be appointed for a 5-year term, and the vice-president, for a 4-year term.

(13) The members having completed their term shall remain in office until after the new members are appointed.

(14) In the event that one board member cannot see his term through, the parliamentary committees set forth under paragraph (8) shall nominate the person due to be appointed by Parliament for the remainder of the term.

(15) Full impossibility to exercise one's term of office shall be deemed to mean any circumstance generating incapacity over a period of 90 consecutive days.

(16) The members of the Insurance Supervision Commission board shall be bound to meet the following requirements:

- a) to be Romanian citizens, resident in Romania, having a good reputation and professional background and at least 5 years of experience in the financial and banking activity and/or the insurance and reinsurance activity;
- b) not to be members of any political party while sitting on the board of the Insurance Supervision Commission;
- c) not to exercise any other profession or hold a public office or private position, except for a higher education professorial position;
- d) not to sit on the board of directors or board of internal auditors (censors) of legal persons subject to supervision by the Insurance Supervision Commission, or act as significant shareholders therein;
- e) to have no history of bankruptcy or as manager of an insurance or financial and banking enterprise which, in any form, ceased business and failed to meet its obligations towards third parties;
- f) not to have a police record.

(17) The capacity of member of the Insurance Supervision Commission board shall end in the following situations:

- a) upon expiry of the term for which the member was appointed;
- b) in case of resignation;
- c) in case of revocation by Parliament;
- d) where a case of incompatibility or an impediment arises, as provided under paragraph (16);
- e) in case of replacement, as per paragraph (14).

(18) The members of the Insurance Supervision Commission board shall be liable to notify Parliament forthwith about the occurrence of any situation of incompatibility laid down in paragraph (16); until after notification of Parliament's decision, the relevant member of the Insurance Supervision Commission board shall be suspended *de jure*.

(19) The president shall be the rightful representative of the Insurance Supervision Commission, as an autonomous administrative authority, and as a legal person subject to public law.

(20) Should the president be temporarily incapacitated from exercising his powers, the representation function shall fall, *de jure*, to the vice-president.

(21) Where both the president and vice-president are unable to exercise their powers, the Insurance Supervision Commission shall be represented by the most senior of the 3 members.

(22) The board of the Insurance Supervision Commission shall hold valid deliberations in the presence of at least 3 of its members, including the president, or if he should be absent, the vice-president.

(23) Decisions shall be passed with the vote of the majority of members present, and in the case of a draw, the vote of the president or, in his absence, that of the vice-president shall be decisive.

(24) The decision passed shall be binding on all members of the Insurance Supervision Commission board; the members who voted against and those absent may have their separate opinion written down in the minutes of the meeting.

(25) In the process of exercising its powers, the Insurance Supervision Commission shall work together with other public authorities or foreign institutions engaged in regulating or monitoring insurance markets, for the purpose of ensuring protection of the insured, of potential insured and the transparency of the insurance market.

(26) To fulfil the duties laid down under Article 5, the Insurance Supervision Commission shall adopt regulations, opinions and decisions, under the president's signature, following deliberation during such meetings held as per the provisions of paragraphs (22) - (24), in compliance with paragraph (28).

(27) The Insurance Supervision Commission shall pass regulations that are implemented by order of its president, and the individual documents issued shall be in the form of decisions and opinions.

(28) The Insurance Supervision Commission shall consult the panel formed of representatives of the professional associations of insurance market operators.

(29) The Insurance Supervision Commission shall include professional staff - economists, legal advisers, certified accountants, actuaries, statisticians, mathematicians, engineers, IT experts, physicians as well as other insurance and finance professionals.

(30) The board of the Insurance Supervision Commission shall prescribe by decision the salaries of its members and the professional staff, having regard to the level of remuneration for similar positions on the insurance market.

Article 5

The Insurance Supervision Commission shall have the following duties:

- a) to develop or approve draft legislation relevant to insurance or having an impact on this field, and to approve individual administrative documents, if relating to the insurance activity;
- b) to monitor the insurers' financial standing, in order to protect the interests of the insured or of the potentially insured; to this end, the Commission may order examinations into the activity of insurers or insurance brokers;
- c) to take all necessary steps to ensure that the insurance activity is managed in compliance with the specific prudential regulations;
- d) to take part, as a member, in the international associations of insurance supervision authorities and to represent Romania in international conferences and meetings on insurance supervision;
- e) to approve the insurer's significant shareholders and significant persons, according to the criteria prescribed by regulations;
- f) to approve the splitting or merger of an insurer registered in Romania;
- g) to approve the portfolio transfer;
- h) may request information and documents regarding the insurance activity both from the insurers and from any other person connected with the activity thereof;
- i) to contribute to the preparation of the chart of accounts, to the development of accounting regulations and methodologies, following consultations with the insurance operators' professional associations;
- j) to perform any such other duties as may be provided by law.

Article 6

(1) The Insurance Supervision Commission cannot disclose information acquired in the course of exercising its powers.

(2) The confidentiality requirement provided under paragraph (1) shall not apply where the information is supplied:

- a) with the relevant insurer's written consent;
- b) at the request of a court of law;
- c) in the interest of the insured.

Article 7

(1) The Insurance Supervision Commission shall submit to Parliament, within 6 months from the end of each financial year, a report on the insurance market in Romania, as well as a report on the activities carried on.

(2) The Insurance Supervision Commission shall prepare and publish an annual report on the insurance market and the institutions and bodies operating thereon, in compliance with article 6.

Article 8

(1) The Insurance Supervision Commission shall adopt regulations for the enforcement of this law.

(2) The Insurance Supervision Commission shall issue decisions to:

- a) place bans, issue, suspend or withdraw licenses;
- b) alter or revoke conditions, requirements or terms prescribed by its own guidelines;
- c) approve the splitting or merger of insurers;
- d) approve the insurance portfolio transfer;
- e) approve the persons due to examine the life insurance activity;
- f) approve the insurer's significant shareholders and persons;
- g) approve the composition of the Insurance Practitioners' Organisation, which functions under it, and approve its statute;
- h) prescribe the remuneration of members on the Insurance Supervision Commission board and of its staff, pursuant to article 4;
- i) instruct the conduct of examinations, guidance and control of the companies having regulatory and supervision responsibilities;
- j) instruct the presentation of documents, reports and information and the holding of hearings;
- k) ascertain violation of provisions herein, of regulations and decisions for enforcement thereof, and imposing sanctions to operators in the field.

(3) Opinions are documents whereby the Insurance Supervision Commission provides formal answers to insurance or related matters.

Article 9

(1) The regulations issued by the Insurance Supervision Commission in accordance with the duties laid down herein shall be published in Romania's Official Journal, Part I.

(2) The decisions and opinions shall not be subject to the publication requirement, save for those provided under article 8 (2) (a) and (d).

Article 10

- (1) The following shall be deemed income into the Insurance Supervision Commission budget:
 - a) the taxes and penalties provided in articles 13 and 36;
 - b) incomes from donations, publications and other legal sources.
- (2) The budgetary surplus of the Insurance Supervision Commission shall be carried over to the following year.

CHAPTER III

Licensing of Insurers

Article 11

- (1) The insurance activity may be carried on in Romania only by:
 - a) holdings, mutual companies, subsidiaries of foreign insurers incorporated as Romanian legal persons licensed by the Insurance Supervision Commission pursuant to the procedure laid down in article 12;
 - b) branches of insurers, foreign legal persons, licensed by the Insurance Supervision Commission pursuant to the procedure laid down in article 12.
- (2) An insurer may not register with the Register of Trade without the preliminary authorisation issued by the Insurance Supervision Commission.

Article 12

- (1) Applications for authorisation to incorporate and operating licence shall be lodged with the Insurance Supervision Commission in such form and with such documentation as are prescribed by regulations.
- (2) Should it consider necessary, the Insurance Supervision Commission may request additional information or conduct its own inquiries, or else conduct inquiries with the support of other competent authorities, or use information from other sources.
- (3) The Insurance Supervision Commission shall decide, within at most 4 months from registering the licensing application on whether to allow the incorporation or reject the application to this effect.
- (4) The Insurance Supervision Commission may grant the permission laid down at par. (3) provided that all of the following requirements are met:
 - a) the feasibility study submitted shows the enterprise as having the statutory solvency ratio;
 - b) the share capital remitted into a bank duly authorised by the National Bank of Romania or, in the case of a mutual company, the freely paid-up reserve fund shall be in conformity with the statutory provisions;
 - c) the enterprise submits a satisfactory reinsurance programme for its insurance activity or supplies arguments to the effect that such plan is not required for its purposes;
 - d) the enterprise presents actuarial calculations specific for the life insurance activity;
 - e) the enterprise name is not misleading to the public;

- f) the enterprise shall carry out only insurance-related activities;
 - g) in the case of a foreign insurer, providing he proves that he was legally incorporated in the country of registration and for at least 5 years has been conducting an activity similar to that for which he lodges the incorporation permit application in Romania.
- (5) The Insurance Supervision Commission shall reject the application for the authorisation of the establishment, should it find that:
- a) the documentation submitted has not been prepared subject to the statutory provisions in effect;
 - b) the documentation furnished indicates that:
 - the enterprise will not carry out its activity pursuant to this law;
 - the significant shareholders and persons do not satisfy the criteria laid down in the rules;
 - c) the appraisal of the feasibility study or the annual reports of the foreign company, as the case may be, shows that the enterprise is not in a position to meet its goals in such a way as to observe prudential rules, and therefore ensure the safety of the insured;
 - d) there is a form of association whereby ownership of the shares, including the *de facto* owner of the shares, is held back from the Insurance Supervision Commission;
 - e) the authorisation runs against some public interest.
- (6) The Insurance Supervision Commission shall communicate to the applicant the grounds for rejecting the application for incorporation permit.
- (7) The applicant may lodge with the Court of Appeal a complaint against the rejection of the application within 30 days from the notification of the decision of the Insurance Supervision Commission, according to the law.
- (8) Establishment authorisation shall not warrant licensing for an insurance activity; it shall merely indicate that the associates have been permitted to proceed to registering the enterprise according to the establishment documentation and the statutory provisions.
- (9) In order for the Insurance Supervision Commission to reach a final decision, within 6 months from being issued the permission to establish the applicant shall lodge with the Insurance Supervision Commission such documents as to certify the enterprise's legal registration.
- (10) The full or partial alteration of the original feasibility study shall result in a further examination by the Insurance Supervision Commission, possibly entailing revocation of the establishment authorisation.
- (11) The Insurance Supervision Commission shall decide on issuance of the operating licence within at most 60 days of receipt of documents set forth under paragraph (9).
- (12) In case the operating licence is granted, the insurer may carry on insurance activity as from the date of being issued the licence.
- (13) Denial of the operating license shall automatically entail revocation of the establishment authorisation.
- (14) Should the Insurance Supervision Commission deny the insurance licence, it may request in court that the applicant's form of association be dissolved.

(15) Within 30 days from being notified of the decision the applicant may lodge a complaint at the Court of Appeal against this decision of not having been granted the licence, according to the law.

(16) The provisions of this article shall correspondingly apply to the branches of foreign insurers.

Article 13

(1) An insurer applying for licensing according to Articles 12 and 44 shall be liable, upon lodgement of the licensing application, to a Lei 75,000,000 licensing fee. The amount of the licensing fee may be subject to annual adjustment, by decision of the Insurance Supervision Commission, in relation to the price index communicated by the National Commission for Statistics.

(2) In case of rejection of the application, the licensing fee shall not be refunded.

(3) The insurer shall be liable, as from the date of being granted the operating licence, and for the duration of the licence, for a fee assessed on an annual basis by the Insurance Supervision Commission, accounting for at most 0.3% of the gross premiums collected in the period for which they are owed.

(4) Insurers shall be liable to the operating fee at such time as is prescribed by the rules.

(5) Failure to comply with the timely remittance of the operating fee laid down under paragraph (3) shall lead the Insurance Supervision Commission to calculate late payment penalties, pursuant to the effective regulations relative to delinquent amounts to the state budget.

Article 14

(1) The Insurance Supervision Commission may withdraw the operating licence where a licensed insurer fails to start insurance activity within 12 months of being issued the licence or ceases to conduct insurance activity over a period of 12 consecutive months.

(2) The insurer may file with the Court of Appeal a complaint against withdrawal of the licence within 30 days from being notified to such effect, pursuant to the law.

Article 15

The Insurance Supervision Commission shall publish at least once a year in Romania's Official Journal and in a wide circulation publication the updated list of licensed insurers and such other information that it may deem necessary for enforcement of this law.

CHAPTER IV

Activity of Insurers

Article 16

- (1) Every insurer shall retain both:
 - a) the paid-up share capital or, in the case of a mutual company, the freely paid-up reserve fund;
 - b) the solvency ratio.

- (2) The paid-up share capital or, as appropriate, the freely paid-up reserve fund may not be lower than:
 - a) Lei 7 bn for the general insurance activity, save for compulsory insurance;
 - b) Lei 14 bn for the general insurance activity;
 - c) Lei 10 bn for the life insurance activity;
 - d) The sum-total of amounts set out at letters a) and c) or b) and c), as appropriate, depending on the insurance activities carried on.

- (3) The paid-up share capital and the freely paid-up reserve fund, prescribed under paragraph (2) shall be subject to periodic adjustment by rules of the Insurance Supervision Commission.

- (4) The paid-up share capital or the freely paid-up reserve fund stated at paragraph (1) (a) must be fully remitted in cash only on incorporation.

- (5) The solvency ratio, representing the amount by which the value of assets exceeds the value of liabilities, shall be higher than the value prescribed by rules.

- (6) In assessing the liabilities of an insurer regard shall be had both to the certain liabilities and to those likely to arise in the future.

- (7) In order to determine the solvency ratio, valuation of an insurer's assets and liabilities shall be in conformity with the rules, which shall also include details on the class of assets and debts not to be taken into account or to be taken into account only to a certain extent.

Article 17

- (1) Shares issued by insurers may only be registered shares.

- (2) Any form of association whereby ownership of the shares is concealed from the Insurance Supervision Commission shall be void.

Article 18

The minimum in kind value of assets maintained in Romania by each insurer, taken into account for the purpose of determining the solvency ratio, must be such as to enable the insurer to cover its overall liabilities in the country, at any time of carrying out insurance activity.

Article 19

Insurers may invest the share capital, the capital and technical reserves in movable and immovable assets, such as shares, bonds, other equity interest, bank deposits, buildings for business use or for lease.

Article 20

- (1) The insurer must run its business in compliance with specific prudential rules, according to insurance activity practices, and to provide for:
 - a) the organisation and conduct of activity in prudent and professional fashion, pursuant to the nature and magnitude of the activity carried on;
 - b) employment of sufficient staff meeting the professional and competency standards;

- (2) In respect of optional coverage provided, the insurer must draft:
 - a) own insurance terms, as per the statutory provisions regarding the insurance contract;
 - b) own insurance clauses, which may alter the insurance terms, depending on the insurer's or the insured's option
 - c) own criteria of determining the level of premiums;
 - d) own regulations and instructions for claims registration and settlement, in strict compliance with the insurance terms and clauses;
 - e) own internal regulations concerning the setting aside and maintenance of technical reserves, depending on the insurer's own operative accounting system, pursuant to the rules issued by the Insurance Supervision Commission.

- (3) The insurer shall be liable to:
 - a) maintain the accounting and operative records allowing:
 - the preparation of reports requested by the Insurance Supervision Commission;
 - the examination of technical results by classes of insurance, in order to determine the profitability of the activity.
 - b) oversee the activity of reporting entities and that of its agents, so as not to endanger the activity performed by the insurer;
 - c) organise its internal control procedures in such a way as to act in compliance with the statutory provisions.

Article 21

- (1) The insurer engaged in the provision of general insurance shall be liable to set aside and maintain the following technical reserves:
 - a) the premium reserve - calculated monthly by adding up the quota-shares of net written premiums, for the non-expired portion of the insurance contracts, so that the differential between the volume of net written premiums and the reserve should reflect the net premiums assigned to the party from risks expired as at the time of calculation;
 - b) the claims reserve - set aside and adjusted monthly, based on estimates of claims against the insurer, to the effect that the fund set aside should be sufficient to cover payment of the claims;
 - c) un-reported claims reserve - set aside and adjusted at least at the end of the financial period, unless otherwise provided by the insurer's internal regulations, based on its estimates, statistical data or actuarial calculations, in respect of claims occurred but not notified. ;
 - d) the loss prevention reserve - set aside by applying monthly a 5% rate to the volume of gross written premiums for contracts covering loss risks, up to the point where the reserve fund reaches at least the level of own retention or 10% of accrued liability assumed under contracts covering loss risks ; this reserve is intended for coverage of claims for catastrophe-caused claims;
 - e) the reserve for non-expired risks - calculated on the basis of estimates of claims to arise subsequent to the end of the financial year, relating to insurance contracts concluded prior to that date, to the extent that the estimated value of the damages exceeds the difference between the premium reserve and the premiums to be collected on such contracts;

- f) equalisation reserve - set aside in the years recording favourable technical results for the purpose of supplying claims coverage sources for the years with negative technical results.
- (2) The calculation of reserves stated at paragraph (1) (b - f) shall take into account the estimated amount of claims and the liquidation costs therefore, after deducting the portion to be recovered from the reinsurers.
- (3) The insurer carrying out life insurance activity shall be liable, pursuant to Article 28, to set aside and maintain technical reserves, hereinafter referred to as mathematical reserves, for the life insurance fund.
- (4) The volume of technical reserves, set aside and maintained as per paragraphs (1) and (3) may not be lower than the amount arrived at in the calculation of such reserves, according to the methodology laid down by rules.
- (5) Amounts transferred into the technical reserve fund, set aside and maintained subject to this article, shall be deemed liabilities and shall be deducted from the insurer's revenues for profit determination purposes.
- (6) Where the insurance contract provides for the payment of premiums and claims in foreign currency, the relevant technical reserves may be set aside and maintained in foreign currency.
- (7) Other categories of technical reserves may be prescribed by rules, and the provisions of this article shall also cover them.

Article 22

The categories of assets admitted to represent as the insurer's technical reserves, the investment dispersion rules, as well as the liquidity ratio shall be prescribed by rules, which shall be developed by reference to the categories and classes of insurance provided.

Article 23

- (1) An insurer may perform, under a relevant agreement, an insurance portfolio transfer, whereby a portion or all of its insurance activity passes on to a different insurer.
- (2) The transfer shall include the transfer of debts, rights, obligations or ownership.
- (3) The transfer shall not be valid without approval from the Insurance Supervision Commission.

Article 24

The insurer shall be liable to submit to the Insurance Supervision Commission, within 4 months of closure of the financial year, the balance sheet and the profit and loss account, accompanied by the internal auditors' (censors) report, as well as the financial statements whose layout, content, information, details and certifications shall be prescribed by rules.

Article 25

- (1) Insurers may associate in professional unions representing their collective interests with the public authorities, examining common issues, promoting co-operation, informing the

association members and the public, and organising services of common interest; likewise, they may join professional international unions, while bound to observe the obligations arising from the articles and memorandum of association thereof.

(2) Insurers may enter into co-insurance and pooling arrangements and other specific forms of co-operation, for the purpose of insuring or reinsuring certain risks.

(3) Insurers issuing the international insurance documents Green Card shall establish the Green Card Romanian Bureau, in pursuance of the Green Card International Convention, with approval from the Insurance Supervision Commission.

CHAPTER V

The Life Insurance Activity

Article 26

Insurers engaged in the life insurance activity shall be liable to:

- a) maintain separate accounts for life insurance;
- b) record all life insurance-related incomes and expenses in separate accounts, which should set aside and pertain to a separate insurance fund, referred to herein as the life insurance fund;
- c) ensure the maintenance of account books for the life insurance fund, for the operative identification of assets and liabilities related thereto.

Article 27

(1) Management of life insurance and the associated life insurance fund, including the investment and evaluation of assets, the calculation of mathematical reserves shall be done in pursuance of rules prescribed by rules.

(2) Insurers engaged in the life insurance activity shall be bound to:

- a) initiate an examination into the life insurance activity, consisting in the calculation, according to the fundamental and generally accepted principles of actuarial calculation, of obligations deriving from the life insurance fund and the requisite mathematical reserves, as well as an assessment of the correlation between the life insurance fund and the related assets; the examination shall take place every 12 months or at shorter intervals, if the Insurance Supervision Commission deems it necessary, by persons proposed by the insurer, and having the necessary qualifications therefore, and approved to this effect by the Insurance Supervision Commission;
- b) draft a report on the outcome of examinations laid down under (a), referred to herein as life insurance report, whose layout, content of information, documents and additional details, as well as certification shall be prescribed by rules;
- c) to submit to the Insurance Supervision Commission a copy of the life insurance report within 4 months of the examination being conducted or in a longer interval, if such time-limit is approved in writing by the Insurance Supervision Commission, following a written and solidly argued application received from the insurer;
- d) to supply the additional information, documents and details, in such form as the Insurance Supervision Commission deems appropriate, for the evaluation of the life insurance fund and the financial status thereof, following lodgement of the life insurance report to the Insurance Supervision Commission.

Article 28

- (1) Under article 32, the assets pertaining to the life insurance fund shall guarantee the full safety of the insured subject to life insurance contracts, and shall be used only in relation to the liabilities associated to the life insurance fund.
- (2) It shall be forbidden to create charges - pledge or mortgage - upon any asset pertaining to the life insurance fund, to the extent that such charge is in breach of paragraph (1).
- (3) The insurer may, at reasonable market prices, trade off certain assets pertaining to the life insurance fund for other assets in its ownership, as well as to use the assets pertaining to the life insurance fund for other purposes than prescribed under paragraph (1), if it provides written proof to the Insurance Supervision Commission that the value of assets used is in excess of the overall value of life insurance fund liabilities.

CHAPTER VI

Recovery, Reorganisation and Winding-up of Insurers

Article 29

Where, following examination of an insurer's financial statements and checks to its place of business, the Insurance Supervision Commission finds that, as a result of non-compliance with this law, the said insurer jeopardises the fulfilment of commitments to the insured, the commission shall require the insurer's board of directors to prepare and implement a financial recovery plan mainly through:

- a) limiting the volume of gross or net premiums written for a certain period, to ensure that the relevant amounts do not exceed certain levels;
- b) banning the sale or renewal of certain kinds of insurance contracts;
- c) banning certain investments;
- d) increasing the paid-up share capital or the freely paid-up reserve fund;
- e) providing for any such measures as may be deemed necessary for recovery purposes.

Article 30

- (1) Should it establish that the measures set out under Article 29 were without result, the Insurance Supervision Commission may, in order to preclude an insurer from becoming insolvent, apply to the Bucharest Court of Appeal for the appointment of a special administrator for the relevant insurer.
- (2) Should the Court of Appeal find that the insurer is in no position to meet its payment obligations or that its activity fails to be conducted in accordance with specific prudential rules, the Court may order that the insurer's affairs and assets be managed by a special administrator.
- (3) The Bucharest Court of Appeal shall be bound to give its ruling within at most 7 days of taking in the application.
- (4) The ruling of the Bucharest Court of Appeal shall be final, and it shall not be compulsory to subpoena the parties.

(5) The tasks, responsibilities and scope of the administrator's power of attorney and his salary, as well as any other issues directly or indirectly related to the provisions of this article shall be prescribed by rules.

(6) Subsequent to appointing a special administrator, pursuant to this law:

- a) all legal duties of the insurer's significant shareholders and persons shall be suspended and transferred to the special administrator for the period of his appointment;
- b) the duties, obligations and responsibilities of the significant shareholders and persons, following implementation of the provisions under (a), shall be prescribed by rules.

(7) For the period of the special administrator's mandate, the voting right shall be suspended on the appointment and revocation of the administrators and the shareholders' entitlement to dividends, the activity of the board of directors and the internal auditors, as well as the remuneration of the board of directors and the internal auditors.

(8) The Insurance Supervision Commission shall call upon the Bucharest Court of Appeal to revoke the instruction given subject to paragraph (2), and the Court may revoke the instruction, should it determine that the measure is no longer required.

Article 31

(1) An insurer goes into liquidation subsequent to a court ruling passed under the Romanian bankruptcy law.

(2) The Insurance Supervision Commission shall notify the court by where the insurer's insolvency is established. The insurer's insolvency shall be determined subject to the rules and regulations of the Insurance Supervision Commission.

Article 32

(1) Where, following a court ruling, an insurer commences the winding-up procedure, his insured shall enjoy priority in the distribution of the insurer's assets, and shall take precedence over all the other creditors of the insurers, immediately after payment of the liquidation expenditures, and subject to paragraph (2).

(2) In case of winding-up of an insurer who, prior to the liquidation, was authorised to carry on life insurance activity, the assets forming the life insurance fund shall be used only for the coverage of debts to the life insurance policyholders.

CHAPTER VII

Insurance Intermediaries

Article 33

(1) For the purposes of this law, insurance intermediaries shall be the *insurance agents* and the *insurance brokers*.

(2) Insurers may not exercise insurance activities through unlicensed brokers.

Article 34

- (1) A person may carry on the activity of an insurance agent provided that he/she holds a valid written licence from an insurer, referred to herein as agency agreement, in order to act on behalf of the insurer.
- (2) Individual insurance agents shall be entitled to register themselves at the labour control office covering their area of residence, in order to have their seniority benefits assessed and to pay such taxes as may be required for the creation of pension and social security funds.
- (3) An insurance agent shall not intermediate the same classes of insurance to more than one insurer.
- (4) Where an insurer has concluded an insurance policy through an insurance agent, the insurer in whose name the agent acts shall be liable to the insured for all acts or omissions of this insurance agent.

Article 35

- (1) A legal person may carry on the activity of an insurance broker based on an operating licence from the Insurance Supervision Commission.
- (2) To obtain the operating licence, the applicant shall submit to the Insurance Supervision Commission documents indicating his compliance with the provisions of paragraph (5), (a) to (d).
- (3) The Insurance Supervision Commission shall decide on whether to issue the operating licence within at most 30 days of receipt of documents indicating the applicant's compliance with the provisions of paragraph (5), (a) to (d).
- (4) Insurance brokers may not register at the Trade Register unless they hold the operating licence issued by the Insurance Supervision Commission, as per this law.
- (5) Any insurance broker must satisfy the following requirements:
 - a) to be a legal person;
 - b) to possess no less than Lei 150 million in paid-up share capital in cash form; the said amount shall be subject to adjustment by rules of the Insurance Supervision Commission;
 - c) to be under an effective civil liability insurance contract, in accordance with the requirements laid down by rules;
 - d) to have as sole object the activity of insurance broker;
 - e) to retain and make available to the Insurance Supervision Commission, upon request, the books of accounts and first entries evidencing and explaining the transactions carried out in the course of business, including information on the insurance contracts in place and the arrangements with the insurers;
 - f) to respond to requests by the Insurance Supervision Commission with respect to filings, and the activities conducted, as prescribed by rules.
- (6) The Insurance Supervision Commission shall disallow an operating licence application for an insurance broker, should it determine that:
 - a) the applicant's significant shareholder or person has a police record;

- b) the executive manager fails to meet professional training and experience requirements for the relevant position, as per the regulations developed by the Insurance Supervision Commission;
- c) the applicant's name is misleading to the public;
- d) the applicant does not meet the conditions under paragraph (5).

(7) The Insurance Supervision Commission may withdraw the operating licence issued to an insurance broker if it establishes that:

- a) the insurance broker is in one of the situations stated at paragraph (6);
- b) the broker has failed to pay the insurance broker taxes stated under article 36.

(8) The Insurance Supervision Commission shall publish, at least once a year in Romania's Official Journal, as well as in a wide circulation publication, the updated list of licensed insurance brokers, and such other information as it may deem necessary for the application of this law.

(9) Insurance brokers may not act as significant shareholders or persons in an insurance enterprise. Insurers may not act as shareholders or administrators of an insurance broker.

(10) Insurance brokers, provided that duly empowered by the insurers, shall be entitled to collect premiums on their behalf, and to issue insurance documents.

(11) Insurance brokers may associate in professional unions and may join relevant international unions, in compliance with the obligations arising from this union memorandum and articles of association.

Article 36

(1) An insurance broker applying for licensing as per art. 35 shall remit, on lodgement of the licensing application, a Lei 30,000,000 licensing fee; the amount of licensing fees shall be subject to periodic adjustment by decision of the Insurance Supervision Commission, in relation to the price index communicated by the National Commission for Statistics.

(2) In case of rejection of the licensing application, the licensing fee shall not be refunded.

(3) Insurance brokers shall be liable, at the time of being granted the operating licence and for the duration of the licence, for an operating fee, set annually by the Insurance Supervision Commission, such fee accounting for at most 0.3% of the commissions cashed over the period in which they were owed.

(4) Insurance brokers shall pay the operating fee at such time as is prescribed by rules.

(5) Failure to make timely payment of the operating fee laid down in paragraph (3) shall entail late payment penalties, pursuant to the effective regulations concerning delinquent amounts to the state budget.

CHAPTER VIII

Liability and Sanctions

Article 37

No deed or omission by the insurer or agent thereof, consisting in the infringement of any provision herein, the law on insurance contracts, insurance conditions and premiums, or of other elements relating to the conclusion of the insurance contract may not be invoked by the insurer in order to cancel an insurance contract.

Article 38

(1) Advertising services may not be used by, or in the name of an insurer or insurance intermediary if, directly or indirectly, such are or may be misleading to the insured and potential policyholders, or conceal or distort the truth about the insurer's assets, organisation, financial standing, years in activity, position on the insurance market, the insurance terms or any relevant aspect.

(2) The Insurance Supervision Commission shall demand the insurer to stop using such practices, on pain of having its licence suspended.

Article 39

(1) Breach of the provisions herein and the regulations passed for enforcement thereof shall be established by the Insurance Supervision Commission and sanctioned by the Insurance Supervision Commission.

(2) There shall be in violation of the law the breach of the following provisions, unless, as committed, such qualify as offences under criminal law:

- a) retention of assets in Romania, as per Article 18;
- b) management of the business, as per Article 20;
- c) the prior approval of the insurer's significant shareholders and persons, as per the provisions of Article 5, (e);
- d) the maintenance of records and furnishing of reports by the insurers and insurance brokers, subject to the law or the rules for enforcement thereof;
- e) maintenance of the minimum share capital and the solvency ratio, as per Articles 16 and 35;
- f) the setting aside and maintenance of technical reserves, as per Article 21;
- g) coverage of technical reserves with the allowable classes of assets, as per Article 22;
- h) the portfolio transfer, as per Article 23;
- i) the life insurance fund and management thereof, as per Articles 26 and 27;
- j) protection of life insurance policyholders, as per Article 28;
- k) the activity of insurance agents, according to Article 34 (3);
- l) the activity of insurance brokers, according to Article 35 (5), (d), (e), (f) and (9);
- m) the advertising laid down under Article 38 (1).

(3) The intentional or reckless perpetration, whether by an act or failure to act, of any of the deeds laid down at (2) shall carry:

- a) written admonition;
- b) restriction of operation;
- c) application of fines: insurers shall be liable to between Lei 5,000,000 and Lei 50,000,000; insurance brokers to between Lei 1,000,000 and Lei 5,000,000; the administrators, directors, executive managers or internal auditors shall be liable to between 1 and 6 average company salaries in the previous month, as at the time of establishing the deed;

- d) temporary or final ban on the insurer's activity in one or more categories of insurance, and for insurance brokers, temporary or final ban on the activity defined under Article 2, point 6;
- e) withdrawal of licence.

(4) Fines may be imposed along with any of the sanctions prescribed under (3), (d) and (e).

(5) The sanctioning decision shall be signed by the president of the Insurance Supervision Commission, and shall take effect as from being notified to the sanctioned person.

(6) In prescribing sanctions on a case-by-case basis, regard shall be had to the personal and actual circumstances in which the relevant deed was committed, and to the offender's conduct.

(7) Where two or more violations are ascertained, there shall apply the fine provided for the more serious violation.

(8) There shall be an offence punishable by imprisonment from 3 months to 3 years or fines from between Lei 50,000,000 and Lei 100,000,000 the conduct of insurance activity in and from Romania, as per the provisions of Article 2, point 1, without licence from the Insurance Supervision Commission.

(9) The amount of fines prescribed herein shall be periodically adjusted by decisions of the Insurance Supervision Commission, in relation to the price index communicated by the National Commission for Statistics.

(10) The fines laid down herein and applied by the Insurance Supervision Commission shall be deemed state budget revenues.

(11) The provisions herein shall be supplemented by the provisions of Law no. 32/1968 establishing and sanctioning violations of the law, to the extent that such do not run against this law.

Article 40

(1) A complaint may be filed with the Court of Appeal against the decisions passed by the Insurance Supervision Commission, in conformity with art. 8, paragraph (2), within 30 days of such decision being notified, as per the law.

(2) The complaint submitted to the Court shall not suspend, during the settlement period, the measures prescribed by the Insurance Supervision Commission.

(3) The complaint shall be resolved as a matter of priority and urgency.

Article 41

The Insurance Supervision Commission may, at any time, decide to change or revoke any of its measures, should it establish that they are no longer required.

CHAPTER IX

Final and Transitional Provisions

Article 42

- (1) All matters concerning the legislation of the insurance and reinsurance activity shall be covered by the provisions herein.
- (2) The Insurance Supervision Commission shall ensure compliance with any provisions regarding insurance and reinsurance, laid down by special laws.
- (3) Where the provisions herein conflict with other legislation, the provisions of this law shall apply.
- (4) In respect of cases not regulated herein, this law shall be complemented by the trade, civil, and foreign investment laws and the law on minor offences, as appropriate.

Article 43

- (1) There shall qualify for exemption from taxes:
 - a) insurance and reinsurance premiums, as well as the related commissions;
 - b) damages, amounts insured and any other entitlements accruing to the insured, beneficiaries or third parties sustaining loss, from coverage of any kind;
 - c) the transfer of investment values and the transfer of insurance portfolios between insurers, from the assignor to the assignee, including as a result of division, merger, liquidation or any other forms of internal reorganisation of the insurance enterprise;
 - d) the dues paid by insurers and the insurance brokers to the professional unions.
- (2) Insurance and reinsurance premiums shall be tax-deductible expenses.

Article 44

- (1) Insurers or insurance brokers who, as at the effective date of this law, were licensed to carry out insurance activity, subject to legislation repealed hereunder, shall be authorised to pursue their activities for the following 12 months, ensuring compliance with the provisions herein during this time-limit.
- (2) Insurers ceasing activity as a result of application of this law and who have failed to perform the portfolio transfer, according to Article 23 shall remain liable to the obligations undertaken.
- (3) Within 12 months of this law taking effect, the mutual companies carrying out insurance activity as at the effective date of this law shall be bound to apply for, and obtain the relevant licence from the Insurance Supervision Commission, in pursuance of Article 12.
- (4) The provisions of Article 13 and 36 shall apply as from the effective date of this law.
- (5) Until approval of the new table of accounts relevant to the insurance activity, the premiums effectively collected shall be taken into account in determining the insurer's incomes.

(6) Within at most 6 months of entry into force of this law the Insurance Supervision Commission, with approval from the Finance Ministry, shall develop the new table of accounts and the accounting methodology relevant to the insurance activity.

(7) The Insurance Supervision Commission shall use, in its first year of existence, by way of repayable loan, for coverage of maintenance, equipment and operating expenses, the available monies of the Protection Fund, set aside, under Article 60 of Law no. 136/1995 regarding insurance and reinsurance in Romania; the loan shall be repaid as sources of finance, created in pursuance of this law, are obtained.

Article 45

(1) On the effective law, there shall be established the Insurance Supervision Commission.

(2) The members of the Insurance Supervision Commission board shall be appointed within 60 days of this law being published in Romania's Official Journal, Part I.

(3) On the appointment of the Insurance Supervision Commission board, the Insurance and Reinsurance Supervision Office under the Finance Ministry, set up under Governmental Decision no. 574/1991, published in Romania's Official Journal, Part I, no. 182 of September 11, 1991.

(4) The duties of the Insurance and Reinsurance Supervision Office under the Finance Ministry, the legal powers of the Finance Ministry and of the Romanian Government, as provided, on the effective date of this law, under art. 5, 7, 53, 60, 65 and 67 of Law no. 136/1995, shall pass to the Insurance Supervision Commission.

(5) The staff of the Insurance and Reinsurance Supervision Office under the Finance Ministry shall be transferred to the Insurance Supervision Commission on similar position.

Article 46

On the effective date of this law the following shall be repealed:

Law no. 47/1991 regarding the incorporation, organisation and operation of insurance companies, published in Romania's Official Journal, Part I, no. 151 of July 19, 1991; point V of Governmental Ordinance no. 23/1992 amending certain sanctions for minor offences, published in Romania's Official Journal, Part I, no. 213 of August 28, 1992; Governmental Ordinance no. 27/1997, completing Law no. 136/1995 regarding insurance and reinsurance in Romania, published in Romania's Official Journal, Part I, no. 208 of August 26, 1997; Law no. 48/1998 endorsing Governmental Ordinance no. 27/1997 completing Law no. 136/1995 regarding insurance and reinsurance in Romania, published in Romania's Official Journal, Part I, no. 102 of March 4, 1998; Governmental Decision no. 574/1991 regarding the duties of the Insurance and Reinsurance Supervision Office, published in Romania's Official Journal, Part I, no. 182 of September 11, 1991; Article 1 of Governmental Decision no. 789/1993, amending and completing 574/1991 regarding the duties of the Insurance and Reinsurance Supervision Office and Governmental Decision no. 788/1992 regarding the organisation and operation of the Finance Ministry, published in Romania's Official Journal, Part I, no. 33 of February 3, 1994, as well as any other provisions contrary to this law.

Article 47

The Insurance Supervision Commission shall pass and issue:

1. within 3 months of appointment of the Insurance Supervision Commission, the rules on:
 - a) the classes of insurance that can be provided;
 - b) the information and documentation required by the licensing procedure;
 - c) the minimum limit of the solvency ratio, as well as the calculation methodology thereof;
 - d) the insurer's insolvency;
 - e) the requirements for management of the life insurance fund, investments and asset evaluation, the calculation of mathematical reserves as well as any other aspects concerning actuarial norms;
 - f) the categories of assets admitted to cover of the insurer's technical reserves, as well as the investment dispersion rules;
 - g) the development of computation and recording methodology for the general insurance minimum technical reserves, pursuant to this law.

2. within 6 months of appointment of the Insurance Supervision Commission board, the regulations regarding:
 - a) adjustment of minimum limits for:
 - the paid-up share capital of insurance, insurance-reinsurance and reinsurance companies;
 - the share capital paid up by insurance brokers;
 - the freely paid-up reserve fund of insurers incorporated as mutual companies;
 - b) adjustment of the licensing fees and scheduling of payment dates for the operating fees prescribed herein;
 - c) the information, documents and certificates required for the preparation of reports prescribed herein;
 - d) the form and content of financial statements, including the life insurance report;
 - e) other categories of technical reserves than laid down under Article 21 (1);
 - f) the information due to be provided by the reports of insurance brokers, aspects concerning the conduct thereof and the management of their affairs, the minimum limit of professional civil liability insurance, as well as the operations which may be carried on;
 - g) the organisation, operation and the duties of the Insurance Practitioners' Association;
 - h) the categories of insurance excepted from the provisions of this law, subject to the conditions and terms prescribed by the Insurance Supervision Commission;
 - i) the responsibilities, powers, conditions and any such other aspects regarding the special administrator, as well as the duties of the insurer's significant shareholders and persons following the administrator's appointment;
 - j) the criteria governing the preliminary approval of significant shareholders and persons;
 - k) application of the law in the field of compulsory insurance;
 - l) the confidentiality of information;
 - m) the portfolio transfer.

This law was adopted by the Senate in the meeting of 6 March 2000 in observance of the provisions of Article 74 (1) of the Romanian Constitution.

FOR THE SENATE,
THE PRESIDENT,
MIRCES IONESCU-QUINTUS

This law was adopted by the Deputy Chamber in the meeting of 7 March 2000 in observance of the provisions of Article 74 (1) of the Romanian Constitution

FOR THE DEPUTY CHAMBER,
FOR THE PRESIDENT,
MIRON TUDOR MITREA