

## Chapter 17

### Insurance

#### 1. General

Upon accession to the European Union, the insurance market in Romania was substantially amended so as to comply with the legal requirements of European law.

A major actor in the development of insurance activity in Romania after December 1998, was the Insurance Supervisory Commission, the supervisory and controlling body of the Romanian insurance market. Beginning in April 2013, according to Government Emergency Ordinance no. 93/2012, all the duties and prerogatives of the Insurance Supervisory Commission were taken over by the National Supervisory Authority.

On the Romanian insurance market, the implementation of a homeowners' insurance system against calamity risk became more and more necessary, as Romania is exposed to major risks such as earthquakes, floods etc. Thus, although already in force, Law No. 260/2008 on the mandatory insurance of dwellings against earthquakes, floods and earth slides, was implemented only in August 2011, due to the fact that adequate technical infrastructure to make it feasible was finalized only then.

#### 2. Main regulations

- The New Civil Code, entered into force as of 1 October 2011;
- Law no. 237/2015 on the authorization and supervision of insurance and reinsurance activities ("**Law No. 237/2015**");
- Law No. 136/1995 on insurance and reinsurance activities in Romania ("**Law No. 136/1995**"), as further amended and completed;
- Law No. 32/2000 regarding the activity and supervision of insurance and reinsurance intermediaries, as further amended and completed ("**Law No. 32/2000**");
- Government Decision No. 1194/2000 on certain measures related to compulsory third party liability insurance for motor-vehicle accidents ("**GD No. 1194/2000**");
- Norm No. 9/2015 on the authorization and operation of insurance and/or reinsurance brokers;
- Norm No. 29/2015 on the registry of insurers-reinsurers and on the registry of insurance-reinsurers brokers;
- Order of the Insurance Supervisory Commission No. 13/2008 for the amendment of Guidelines on the Protection of Street Victims Fund;
- Norm No. 28/2015 on the operation of supervised insurers in accordance with the national regime;
- Norm No. 20/2016 regarding the authorization and monitoring of insurance and reinsurance companies;

- Law No. 260/2008 on the mandatory insurance of dwellings against earthquakes, floods and land slides, as further amended completed and republished.
- Government Emergency Ordinance No. 93/2012 regarding the establishment, organization and functioning of the Financial Supervisory Authority (“**GEO No. 93/2012**”).

### **3. Insurance contract**

By means of an insurance contract, an insured person or insurance contractor undertakes to pay an insurance premium to the insurer, and the insurer undertakes that upon occurrence of a certain defined risk it will pay to the insured, to the beneficiary or to a third damaged party, an indemnification, under the limits and terms agreed by the parties thereto.

For the purposes of evidence, an insurance contract must be concluded in writing. The conclusion of an insurance contract is ascertained by the insurance policy or the insurance certificate, issued and signed by an insurer or by a coverage note issued and signed by an insurance broker.

An insurance policy must include at least:

- (i) name or corporate name, domicile or registered office of the contracting parties, as well as the name of the beneficiary if they are not a party to the contract;
- (ii) object of insurance;
- (iii) the insured risks;
- (iv) time frame of the insurance contract;
- (v) insurance premiums;
- (vi) the insured amount.

Other elements that must be included in an insurance policy may be established by a decision of the competent authority.

In the absence of a written document, witnesses may not be used to prove an insurance contract. In force majeure cases and in fortuitous cases when insurance documents disappeared and no duplicate may be obtained, the existence and content of the insurance contract may be proved by any legal means.

Within the limits of the paid allowance, the insurer generally subrogates all the rights of the insured or of the insurance beneficiary against the persons responsible for damages (except for personal insurance).

## **4. Main insurance types provided by insurance companies**

### **4.1. Assets insurance**

#### **4.1.1. General considerations**

Under assets insurance, the insurer commits to pay indemnification to the insured, to an appointed beneficiary or to other entitled persons upon occurrence of the insured risk.

The insured must have an interest with regard to the insured asset, keep the insured asset in good condition and in accordance with the legal provisions, and take any and all necessary steps to prevent the occurrence of the insured risk.

An insurer is entitled to verify whether the insured asset is properly used or maintained. In cases set forth by an insurance contract, upon risk occurrence, an insured person is compelled to take measures on behalf of the insurer to mitigate the losses. The insured person is bound to declare the existence of other insurance contracts for the same asset, both upon entering into an insurance contract and during its performance.

Unless otherwise agreed under the insurance contract, transfer of ownership over an insured asset does not trigger the termination of an insurance contract. The insurance contract continues to produce its effects between the insurer and the purchaser. An insured person who does not notify to the insurer of the transfer, remains obliged to pay the insurance premiums due after the date of transfer.

#### **4.1.2. Indemnification**

Indemnification may not exceed (i) the value of the asset upon occurrence of the insured risk, (ii) the value of the loss, or (iii) the insured amount. The foregoing shall be applicable inclusively when more insurance policies are concluded for the same asset, in which case each insurer shall pay compensation pro rata with the insured amount.

An insurance contract may contain a clause providing the insured person will be its *own insurer*, for a so-called franchise that will not be compensated by the insurer.

In case an insurance contract is concluded for an amount lower than the asset' actual value, the indemnification will be proportionally reduced, unless otherwise agreed in the contract.

#### **4.1.3. Mandatory insurance of dwellings against earthquakes, floods and earth slides**

According to Law No. 260/2008, all individual and entities which own constructions used as a dwelling, and that are registered with local tax authorities, must conclude insurance against earthquakes, floods and landslides, with insurers specially authorized for such a purpose and under conditions strictly provided for by law.

Non-observance of the above obligation is sanctioned with an administrative fine.

### **4.2. Personal insurance**

#### **4.2.1. General considerations**

In personal insurance contracts, the insurer undertakes to pay the insured amount upon the occurrence of various insured risks related to the personal status of the insured person, such as reaching a certain age, invalidity or death, as these may be defined under the insurance contract.

A different person from the one concluding the insurance contract may be insured only with the written consent of such a person.

In the case of an individual life insurance contract, the insured person may unilaterally terminate the agreement, without prior notice, within 20 days as of its execution, except for when the duration of the agreement is of maximum 6 months.

**4.2.2. Indemnification**

Indemnification is paid to the insured person or to the insurance beneficiary appointed by the insurance contracting party. In case of the insured person's death, the indemnification is paid to his legal heirs, unless another beneficiary was expressly appointed in the insurance contract.

The indemnification is due, irrespective of the amounts that the insured or the beneficiary may be entitled to obtain as social security rights, or damages received from liable persons or the amounts received from other insurers pursuant to other insurance contracts.

The insurer does not owe the indemnification if the insured risk occurs as result of (i) the insured committing suicide within 2 years as of the execution of the insurance contract or (ii) the insured deliberately producing the insured risk.

In case one of the beneficiaries deliberately caused the death of the insured, the indemnification is paid to the latter's other appointed beneficiaries or legal heirs.

**4.2.3. Insurance beneficiary**

A beneficiary may be appointed either at the time of entering the contract, or during its term of validity, by means of a written declaration to the insurer from the insured, or by the contracting party, or by will. Such a beneficiary may be substituted or revoked any time during the validity of the contract in the same manner.

Unless the insured person specified otherwise, any further beneficiaries appointed have equal rights to benefit from the indemnification.

The insured's creditors are not entitled to pursue indemnification insurance due to a beneficiary or to the legal heir, as the case may be.

**4.3. Liability insurance****4.3.1. General considerations**

Under liability insurance contracts, the insurer commits to pay an indemnity for damages the insured may be legally held responsible for by a third party, as well as for any expenses paid by the insured in the related civil lawsuit.

The insurance contract may also cover the liability of other persons than the executor of the contract.

The rights of the injured person are exercised against the persons responsible for causing the damage.

The insurer is liable for damages only within the limits of the incumbent obligations under the insurance contract.

**4.3.2. Indemnification**

Indemnification is awarded based on (i) an agreement concluded between the insured, the injured person and the insurer or, in case of a disagreement between the parties (ii) a court decision.

The insurer pays the indemnification directly to the injured person to the extent they were not already compensated by the insured person; the insured's creditors may not claim such indemnification.

The indemnification is paid to the insured person if they prove they have compensated the injured person.

#### **4.3.3. Compulsory liability insurance**

A particular insurance category is compulsory liability insurance for motor-vehicle accidents.

##### **a) Field of Application**

Individuals or legal entities owning motor-vehicles registered in Romania are bound to be insured for third party liability resulting out of the damages caused by motor-vehicles accidents occurring within the coverage territorial limits (the territory of Romania, of the EU Member States and of the states connecting to EU Member States). The execution of a civil liability insurance contract for damages caused by motor-vehicle accidents is proved with an insurance policy/Green Card document.

Persons entering Romanian territory with motor-vehicles registered abroad are considered to be insured, if they comply with one of the following conditions:

- (i) they have international insurance documents, valid in Romania;
- (ii) their registration number certifies the existence of the insurance, according to the law of the state where the motor-vehicle is registered or to international insurance agreements valid in Romania.

Otherwise, such persons are required to pay insurance premiums, according to the Romanian legal provisions mentioned above.

##### **b) The insured event**

An insurer will pay indemnification for damages the insured is liable for towards third parties, according to the law, as a result of car accidents, irrespective of the place where the motor-vehicle accidents took place (in motion and while stationary), as well as for all expenses incurred by the insured during the civil lawsuit.

The indemnification also covers damages caused by the existence or operation of any equipment attached to the motor-vehicle, as well as for damage caused by trailers or sidecars.

In case of physical damage or death, indemnification is granted for persons both outside and inside the vehicle causing the accident, but not for the driver of the respective motor-vehicle.

For the damage or destruction of goods, indemnification is granted for any goods outside the vehicle causing the accident, and for the goods inside the vehicle, only if transported outside the scope of an existing contractual relation with the owner or the user of said vehicle, as well as for the situation in which the goods do not belong to the owner, user or driver responsible for the accident.

In case of physical damage, the death of a person or the damage or deterioration of goods, compensation is granted if the motor-vehicle causing the accident is identified and insured, even if the actual author of the accident remains unidentified.

##### **c) Settlement and payment of indemnification**

An indemnification is settled on the basis of (i) the insurance valid at the moment the accident occurred or (ii) a court decision.

Indemnification is paid even if the damaged persons are not domiciled, resident, or with their headquarters in Romania.

The rights of persons prejudiced by accidents occurring in Romania by motor-vehicles owned by persons insured abroad are enforced against the insurer by the indemnification representative offices (units created in each EU member state by the Romanian insurers, in charge with the administration and settlement of indemnification requests), or by the Romanian Motor-Vehicles Insurers Bureau (a professional body composed of insurers authorized to perform compulsory liability insurance in Romania).

#### **d) Action in regress**

An insurer recovers the indemnification from the liable person in the following situations:

- (i) the accident was deliberately caused;
- (ii) the accident was caused (i) while intentionally committing crimes against the circulation on the public roads regime, even if such crimes were not committed on such roads or (ii) while committing other intentional crimes;
- (iii) the accident was caused while the author of an intentionally committed crime attempts to escape criminal pursuit;
- (iv) the person liable for the damage drove the motor-vehicle without the permission of the insured person.

#### **4.4. Credits and guarantee, financial loss and other insurance**

Credits and guarantee insurance cover risks relating to general insolvency, export credit, sales with the price paid by installments, mortgage and agricultural loans, direct or indirect guarantees, as well as other such risks, in accordance with the norms issued by the competent authority.

Unless otherwise agreed under the insurance agreement, the compensation for financial loss insurance comprises both prejudice and loss of profit, as well as general expenses and expenses directly or indirectly deriving from the occurrence of the insured risk.

### **5. Insurance companies and insurance brokerage companies**

#### **5.1. Insurance companies**

##### **5.1.1. Entities allowed to perform insurance/reinsurance activities:**

- (i) Romanian legal entities, incorporated as joint stock companies, in accordance with the provisions of Law no. 31/1990 on companies, republished, as subsequently amended and supplemented;
- (ii) Mutual Companies;

- (iii) European companies, as defined by the provisions of the Council Regulation no. (EC) no. 2157/2001 of 8 October 2001 on the Statute for an European Company (SE); and
- (iv) European Cooperative Society, as defined by the provisions of the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).
- (v) Insurance and reinsurance Companies authorized in EU member states, performing insurance and reinsurance activities in Romania based upon the right of establishment and the freedom of provision of services;
- (vi) Branches of companies governed by third states' laws, authorized by the competent authority (i.e. Financial Supervisory Authority);
- (vii) Subsidiaries of third states insurance and reinsurance companies, authorized by the competent authority (i.e., Financial Supervisory Authority);

### 5.1.2. Minimum paid-in capital and similar subsequent requirements

Beginning from 1 January 2016, most of the provisions of Law No. 32/2000 have been repealed by the provisions of Law no. 237/2015 on the authorization and supervision of insurance and reinsurance activities, which regulates *inter alia*, insurance activity and the surveillance of insurance operations.

According to the new enactment, there are 2 (two) types of insurance companies, namely (i) companies applying the Solvency II surveillance regime and (ii) companies applying the national surveillance regime.

Therefore, companies applying the Solvency II surveillance regime are bound to hold throughout their activity a basic eligible fund (in Romanian language, "*fonduri proprii de baza eligibile*") in order to cover their minimum capital requirement ("MCR"):

The MCR must reach an absolute threshold of:

- a. the RON equivalent of EUR 2,500,000, for non-life insurers, including captive insurers;
- b. the RON equivalent of EUR 3,700,000 for non-life insurers, including captive insurers covering also, in full or in part, risks related to motor vehicle liability, ships and/or aircrafts liability, general insurance or risks related to loans and/or guarantees;
- c. the RON equivalent of EUR 3,700,000 for life insurers, including captive insurers for life insurance;
- d. the RON equivalent of EUR 6,200,000 for composite insurers;
- e. the RON equivalent of EUR 7,400,000 for composite insurers covering also, in full or in part, risks related to motor vehicle liability, ships and/or aircrafts liability, general insurance or risks related to loans and/or guarantees;
- f. the RON equivalent of EUR 3,600,000 for reinsurers;
- g. the RON equivalent of 1,200,000 for captive reinsurers.

The minimum paid capital of companies applying the Solvency II surveillance regime represents at least 80% of the value of the MCR, as described above.

On the other hand, companies applying the national surveillance regime must subscribe and pay at incorporation a minimum capital amounting to the RON equivalent of EUR 2,000,000.

Romanian insurers applying the national surveillance regime must also maintain, throughout their activity, an available solvency margin which is at least equal to the minimum solvency margin as computed for non-life and life insurance activity.

The minimum solvency margin is calculated according to the provisions of the norms issued by the Financial Supervisory Authority, depending on the insurance categories, based on specific methods, as the difference between assets and liabilities, each adjusted with certain elements.

The security fund of Romanian insurer companies applying the national surveillance regime is the third part of the minimum solvency margin. The minimum value of the security fund is the RON equivalent of EUR 2,5 million for non-life insurance, and EUR 3,7 million for life insurance.

### **5.1.3. Authorization of the Financial Supervisory Authority**

Insurance companies are registered with the Trade Registry only with the prior approval of the Financial Supervisory Authority.

Once a year, the Financial Supervisory Authority publishes an factual report regarding the insurance field..

## **5.2. Special legal requirements for the operation of insurance companies**

### **5.2.1. Performance of an exclusive insurance category**

Insurers may perform only life insurance or only general insurance activities.

### **5.2.2. Technical reserves**

Any company exercising general insurance activities, or respectively life insurance activities is bound to set up and maintain the following technical reserves:

- (i) premium reserve – is computed monthly by summing up the gross subscribed premiums for the ongoing insurance contracts, so that the balance between the volume of gross subscribed premiums and this reserve reflect the gross premiums allocated to the part of the risks expired on the computation date;
- (ii) approved damage reserve – is allocated and updated monthly, based on the estimations of the damage notifications received by the company, so that the fund created is sufficient to cover the payment of such damages;
- (iii) contingent damage reserve – is allocated and adjusted at least at the end of the fiscal year, unless otherwise provided for by the internal regulations of the company, based on its estimates, using statistical data and actuarial computation for a representative period so the contingent damage reserve is sufficient to cover the damages that will be notified in the following financial years;

- (iv) non-expired risks reserve – is calculated based on an estimate of damage that may occur after the end of the fiscal year, related to insurance contracts concluded prior to that date, to the extent that their estimated value exceeds the premium reserves minus the deferred acquisitions costs;
- (v) reserve for bonuses and discounts – is applicable for insurance contracts which provide a premium discount, in case of their renewal, and reimbursement of the premium, in case the contractors participate in the company's profits.

In addition, companies exercising general insurance activities which have ongoing contracts covering calamity risks must bind up a calamity reserve. Such a calamity reserve is created by applying a monthly percentage of no less than 5 per cent upon the gross subscribed premiums, related to contracts that cover calamity risks, until the reserve funds reaches at least the level of its own retained amount or 10 per cent of the accumulation of liabilities undertaken by the contracts covering calamity risks. This reserve is meant to cover compensation related to calamity damages.

Furthermore, in addition to the types of reserves provided at point (i) – (v) above, companies exercising life insurance activities must set the following types of reserves:

- a. mathematical reserve - which is determined on a net value or through the Zillmer method; any negative mathematical reserves are reported and highlighted as being equal to zero;
- b. an additional technical reserve – which is computed if the present or foreseeable yield of the company's assets related to the activity of life insurance is insufficient to fulfill the commitments towards the contractors with respect to the interest rates;
- c. additional reserves for general risks which are not individualized;
- d. unallocated prime reserve - set for life insurance and annuities related to investment funds, which is formed on the gross subscribed premiums, but unallocated to a contractor.

### **5.3. Protection Funds**

#### **5.3.1. Policyholder Guarantee Fund**

In order to protect insured persons, insurance beneficiaries and/or damaged third persons, insurers contribute to the set-up of the Policyholder Guarantee Fund, aimed to cover compensation arising from optional and compulsory insurance contracts, in case of the bankruptcy of any insurance company.

The Policyholder Guarantee Fund is set up and managed by the Financial Supervisory Authority, which sets a percentage of maximum 10 per cent to be applied upon the volume of gross premiums collected by the insurance companies from direct insurance activity. The investment strategy of these funds is drafted by the Policyholder Guarantee Fund and subject to final approved by the Financial Supervisory Authority.

The Warranty Fund liquidities are either deposited in an interest-bearing account, deposited with credit institutions or placed in monetary market instruments, state or local administration bonds or in other placements.

### 5.3.2. The Fund for Protection of Street Victims

The Street Victims Fund was created in order to protect victims of motor-vehicle or tram accidents (i) causing body injuries or death, when the author remains unidentified or (ii) causing damages, destruction, injuries or death when a motor-vehicle or the tram is not insured. The Street Victim Fund is constituted, managed and used under regulations issued by the Financial Supervisory Authority.

The Street Victims Fund provides compensation for damages caused by motor-vehicle accidents occurring (i) on Romanian territory by unidentified authors or uninsured motor-vehicles usually standing in Romania, (ii) on Romanian territory by uninsured motor-vehicles from states other than those applying the Multilateral Accord, (iii) on any Economic European Area member state territory, by uninsured motor-vehicles, brought from one of those states and which are supposed to be registered in Romania, (iv) on the territory of any state member of the European Economic Area, by uninsured motor-vehicles standing in Romania, (v) on the territory of any state of which the National Bureau adhered to the Green Card System.

Persons entitled to benefit from compensation from the above mentioned Fund are Romanian individuals and legal entities, Romania's or European Economic Area states' residents pursuant to the cases previously described.

The Fund liquidities are created by the contribution of compulsory liability insurers through the application of a percentage of no more than 5 per cent upon the gross subscribed premiums paid for compulsory liability insurance.

### 5.4. Insurance brokers

Insurance brokers are legal entities which negotiate for their clients insurance or re-insurance contracts and render professional assistance prior to and during the execution of insurance contracts.

Insurance brokers may be set up and registered only with the prior authorization of the Financial Supervisory Authority.

Insurance brokers should meet *inter alia*, the following conditions:

- (i) to be a Romanian legal entity, whose denomination shall comprise the mention "insurance broker", "re-insurance broker" or "insurance and re-insurance broker";
- (ii) to have registered capital paid up in cash of minimum RON 150,000;
- (iii) to have a liability insurance contract valid in EU Member States, with a minimum coverage limit amounting to EUR 1,125,000/event and EUR 1,850,000/year;
- (iv) to have the activity of insurance and/or re-insurance broker as the sole object of activity;
- (v) to have a permanent and authorised office exclusively designed for conducting the business, including correspondence activities from and to the insurer broker;
- (vi) not to be a direct/indirect shareholder or director of an insurer/reinsurer or insurance/re-insurance agent and not to have an insurer/reinsurer or insurance/re-insurance agent as direct/indirect shareholder or director;

- (vii) its shareholder(s) and/or the significant management' members should not have a criminal record containing crimes against the patrimony or fiscal-accountancy crimes;
- (viii) chief executive officers thereof should be graduated in superior education and have a minimum 2 years' experience in an executive management position in insurance activity, or at least 4 years' experience in the same position in the financial-banking system;
- (ix) directors must not be employees of insurance/re-insurance companies during their tenure at an insurance/re-insurance broker;
- (x) chief executive officers should have a good reputation, honesty and moral probity;
- (xi) chief executive officers thereof should not hold the same position in other Romanian or foreign legal entities after the operational authorization has been granted;
- (xii) the chief executive officers and the directors are to be properly hired (e.g. management agreement or employment contract) by the insurance brokers;
- (xiii) to pay an authorization tax in the amount of 5,000 RON.

#### **5.5. Insurers/Re-insurers Register and Insurance Brokers Register**

Insurance and reinsurance companies, headquartered on the Romanian territory should be registered with the Insurers/Re-Insurers Register.

Separately, insurance and/or re-insurance brokers authorised to conduct business within the territory of Romania according to the provisions of the Law No. 32/2000, should be registered in the Insurance and/or Re-insurance Brokers Register.

The Financial Supervisory Authority keeps and updates the above mentioned registers and the data contained in the above mentioned registers is permanently accessible to the public.

### **6. Foreign insurers in Romania**

Currently, foreign insurers may perform insurance activities in Romania either (i) by incorporating a subsidiary in Romania or (ii) by establishing branches in Romania.

As regards EU insurers, the Romanian legislation provides for the *EU passport principle* according to which EU based insurers may provide insurance services in Romania via a branch or directly, based on the free provision of services principle.

#### **6.1. Companies conducting insurance activities via a branch**

Beginning with 1 January 2016, according to the provisions of the Law No. 237/2015, any insurer headquartered outside Romanian territory, irrespective of its nationality (whether incorporated in EU Member States or in non EU Member States) willing to set up an insurance agency or a branch in Romania must request an official authorization from the Financial Supervisory Authority.

The Financial Supervisory Authority will authorize the branch only in case the insurer fulfills the following conditions (i) it is authorised to perform insurance activities according to its national law, (ii) it undertakes to open specific insurance accounts and to record all transactions, (iii) it holds in Romania assets with a certain

value established by Romanian law, (iv) it appoints a general representative authorised by the Financial Supervisory Authority, (v) it presents a business plan according to Romanian legal requirements in this respect, (vi) it fulfills the governance requirements as provided by Romanian legislation; (vii) it attests that it complies with the solvency capital requirements and minimum capital requirements and (viii) it communicates the name and address of the claim representative appointed in other Member States (for certain risks).

If the Financial Supervisory Authority is notified by a surveillance authority from a Member State of origin about the intention of an insurer authorised in that Member State to set a branch according to Romanian legislation, the Financial Supervisory Authority must provide within 2 months to said surveillance authority with the legislation regarding the protection of the public interest to be followed in conducting insurance activities in Romanian territory.

In case the Financial Supervisory Authority observes that an insurer carrying on insurance activity in Romania, through a branch or under the freedom to provide services, does not comply with the legal requirements, it requests said insurer to remedy those deficiencies, otherwise it informs the relevant surveillance authority from the Member State of origin about the non-fulfilment of said legal obligations.

When the measures adopted by the relevant surveillance authority from the Member State of origin prove inefficient, or when said authority does not adopt any measures, the Financial Surveillance Authority, after informing the surveillance authority from the Member State of origin, is entitled to impose:

- a. preventive, corrective or sanctioning measures;
- b. prohibition on pursuing new insurance/re-insurance contracts on Romanian territory;
- c. administrative measures over the properties and operation units of said insurer held in Romania.

In case the Financial Supervisory Authority is notified with respect to the withdrawal of authorization granted to an insurer established in another Member State, which conducts business on the Romanian territory, it takes all the appropriate measures to ensure that said insurer does not pursue new contracts within Romanian territory.

Furthermore, the Financial Supervisory Authority is entitled to ask the relevant surveillance authority from the Member State of origin to provide certain information (*e.g.*, the amount of the premiums, the amount of the claims and commissions) regarding the business conducted in Romania by insurers authorised in other member states.

Insurers headquartered in third states, whose branches are situated in Member States, can request the Financial Surveillance Authority to grant them advantages in relation to solvency capital requirements, required deposits, or assets to be held for covering the MCR, to be set in one of those Member States in which the insurers conduct business.

Their application duly justifies the appointment of the Financial Surveillance Authority as the supervisor in charge with monitoring the solvency of all branches established in the Member States. The Financial Surveillance Authority cooperates with the supervisors of the Member States to reach an agreement in relation to granting the above mentioned advantage. In case the Financial Surveillance Authority is appointed as

supervisor in charge with the activity of all branches of an insurer, it informs any other concerned supervisors about the appointment, and the advantages granted to the insurer take effect from that moment.

## **7. The Financial Supervisory Authority**

The Financial Supervisory Authority (“FSA”) is the independent administrative authority, which exercises its powers in accordance with GEO No. 93/2012, by taking over the prerogatives of the Insurance Supervisory Commission, the National Securities Commission and the Private Pensions System Oversight Commission.

The FSA has a 9 member board out of which one is president, one prime vice-chairman and 3 vice-chairmen.

Parliament appoints the members of the FSA Board, during a common session of the two Chambers (the Senate and the Chamber of Deputies), at the joint proposal of the Commission for budget, finance and banks, capital markets, and of the Commission for economy, industry and services, and respectively, of the Commission for economic policy, reform and privatization within the Chamber of Deputies.

Parliament has the power to revoke one or all members of the FSA Board, following a procedure similar to the appointment proceedings.

The tenure of an FSA Board’s member is of 5 years. Each member may be re-appointed. During their tenure, the members of the FSA are jointly liable for their activity, except for the case when they voted against a decision and noted their separate opinion in the minutes of the meeting.

The FSA has the following main powers:

- (i) issuing or withdrawing approvals, authorizations or exemptions, in the regulated areas, in accordance with the law;
- (ii) drafting or endorsing bills of enactments on insurance or which have implications in this area;
- (iii) supervising the regulated area, including insurers;
- (iv) applying measures and sanctions in the regulated area, including insurers;
- (v) promoting the stability of insurance activities and protecting the rights of the insured.

The FSA also approves rules for the enforcement of legal provisions and issues decisions whereby:

- imposes restrictions, grants, suspends or withdraws authorizations;
- amends or waives conditions, requirements or terms imposed in its acts;
- approves split-up or merger of insurers;
- approves transfers of insurance portfolios;
- approves the insurer’s significant shareholders and officers.

## **8. Fiscal regime**

Expenditures on insurance premiums for professional risk insurance are considered as expenditures performed in order to obtain income, and are fiscally deductible when computing profit tax.

Expenditures on insurance premiums performed for:

- (i) tangible or intangible assets from the business patrimony as well as those that are not related to the object of activity of the taxpayer;
- (ii) assets serving as bank guarantees for credit used in order to perform the activity the taxpayer is authorized for;
- (iii) insurance premiums for professional risk insurance;
- (iv) can be fiscally deducted upon the computation of the profit tax or individual income tax.