

## INFORMATION ON THE GENERAL GOOD PROVISIONS

The following information aims to provide the insurance undertakings from the EU Member States with an overview upon the legal framework that is needed to be aware of, in order to start and carry out insurance activity on the territory of Romania within the common market (through freedom to provide services and freedom of establishment).

The undertakings have to know that they are obliged to observe the binding legal provisions (regulations). This overview presents the legal provisions in force.

The addressees of the legal provisions shall ensure that their activities are carried out in compliance with the current legal framework.

The legal provisions that are mandatory are published in the Romanian Official Journal.

In the event of discrepancies in interpretation between this information, other official or private translated versions of the legal acts on one hand, and the texts of the legal acts published in the Romanian Official Journal on the other hand, the exclusive binding power is assigned to the latter.

This information refers to the legislation that applies directly to the insurance activity and aims at protecting the *general good*.

The authority empowered to supervise the application of the regulation in Romania is the Financial Supervisory Authority (hereinafter named FSA)

### ***Information regarding the regulation applicable directly to the insurance activity***

The applicable legislation consists of primary legislation and secondary legislation. The primary legislation, such as codes, laws and emergency ordinances, represents the general framework for carrying out insurance business on the Romanian territory.

The secondary legislation includes rules, orders and other types of regulations, which are enforced in the application of the laws, clarifying and explaining certain aspects that are not detailed in the primary legislation.

## *Insurance legislation*

The primary legislation is represented by the following acts:

- *Law no. 237/2015 on the authorisation and supervision of the insurance and reinsurance business;*
- *Law no. 132/2017 on the compulsory insurance against civil liability for damages to third parties caused by vehicle and tram accidents;*
- *Law no. 236/2018 on the distribution of insurance.*

### **Transpositions of EU Directives**

<b>Romanian Laws (primary legislation)</b>	<b>Directives</b>
<u>Law no. 237/2015</u> on the authorisation and supervision of the insurance and reinsurance business	Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
<u>Law no. 132/2017</u> on the compulsory insurance against civil liability for the damage to third parties caused by vehicle and tram accidents	Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability
<u>Law no. 236/2018</u> on the distribution of insurance	Directive 2016/97/EC on insurance distribution

## *Insurance contract*

The contractual terms and fees for non-life and life insurance and the information to potential contracting parties prior to the conclusion of the insurance contract are provided by articles 103 - 109 of the **Law no. 237/2015**.

As regards non-life insurance, the mentioned articles include provisions regarding:

1. the compliance with the specific legislation;
2. the law applicable to the contract;
3. information on the insurance undertaking;
4. information on the way the complaints are handled;
5. information on the representative, where the contract is concluded on the right of establishment or the freedom to provide services

As regards life insurance, the articles include provisions regarding:

1. information on the insurance undertaking;
2. the language in which the information should be presented;
3. information on the insurance contract (definitions, exclusions, validity, rights of the parties, payments methods, procedures to resolve potential disputes, suspension or termination methods etc.);
4. information on the premiums related to each benefit, both main and additional;
5. the calculation and distribution methods of bonuses and amounts representing the profit-sharing;
6. the total surrender value, the decreased insured amounts;
7. information on the nature of assets, definition of the units to which benefits for life insurance are linked and investment fund annuities, simulation on the evolution of the value of the policyholder's account;
8. information on the way the complaints are handled;
9. the law applicable to the contract and the right to take legal proceedings.

The provisions of the Law no. 237/2015 and Law no. 236/2018 are supplemented by the provisions of **Rule no.22/2021 on the distribution of insurance.**

### *Right of establishment (FOE)*

#### **1. Insurance undertakings**

According to ***Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)***,

**1. insurance undertakings authorised by competent authorities** of the Member States shall be entitled to carry out insurance business in Romania under the right of establishment (through a

branch), subsequent to a notification procedure, where the competent authorities notify FSA;

2. **the notification** includes the address of the branch, information about the mandated person, the organisational chart, the business plan for the branch, the confirmation that SCR and MCR are complied with and the proof that the undertaking is a member of the national bureau (BAAR).

3. **FSA cooperates with the competent authorities of the other Member States through exchanges of information regarding the notified insurance undertakings.**

The requirements regarding the professional qualification of the Romanian insurance intermediaries and their continuous professional training are detailed in art. 3-5 of [\*\*Rule no.23/2021\*\*](#) *regarding the professional training of the persons involved in the distribution activity*.

*This regulation also applies to foreign insurance undertakings pursuing activity in Romania **when they collaborate with local insurance intermediaries and insurance ancillary intermediaries**, who are to be registered or are already registered as secondary intermediaries in the RIS – Romanian Registry of Secondary Intermediaries (referred to art.6 of the [\*\*Rule no. 22/2021\*\*](#) on the distribution of insurance).*

**Similar to the Romanian insurance undertakings, during the collaboration with locals, insurance intermediaries and ancillary insurance intermediaries**, the notified undertakings are responsible for their distribution activities and verify the compliance of all conditions of registration **including those regarding the professional training (qualification and/or continuous training).**

The secondary intermediaries' registrations conditions are stipulated in the art. 14-16 of the Rule no. 22/2021 on the distribution of insurance.

According to art. 46 of Rule no. 22/2021, the insurance undertakings operating under FOE in RO shall send periodical reports on insurance distribution activities: number of employees involved directly in distribution, number of insurance contracts distributed by these employees, number of insurance contracts commercialised through electronic means (if any), number of local collaborators involved in insurance distribution and the insurance contracts distributed by them.

## Financial reports

In accordance with Rule no. [41/2015](#) approving the accounting regulations concerning the separate and consolidated annual financial statements of the entities pursuing the insurance and/or reinsurance business, the branches have the obligation to report annually to ASF accounting information.

**[Regulation no.13/2019](#) on the establishment of measures to prevent and fight against money laundering and terrorist financing through financial sectors supervised by the FSA** provides for standard, simplified and supplementary customer due diligence measures as regards high risk clients, record keeping and reporting requirements, and sanctions for not complying the legal provisions.

## Petitions received by FSA

According to Rule [No. 18/ 2017](#) **on the procedure for the settlement of petitions regarding the activity of insurance and reinsurance companies and insurance brokers**, FSA receives complaints irrespective of whether the complaints involve national insurance undertakings, Intermediaries, Ancillary Intermediaries or insurance undertakings, Intermediaries or Ancillary Intermediaries from different Member States who have notified their insurance distribution activities on the Romanian territory.

ASF cooperates with other national competent authorities from the Home Member States of those reported entities in order to communicate a response to the claimants.

## 2. Insurance intermediaries and ancillary insurance intermediaries

According to the provisions of *Directive 2016/97/EC on insurance distribution (IDD)*, **any insurance intermediary or ancillary insurance intermediary** that has been registered by a competent authority of an EU Member State shall be entitled to carry out insurance distribution business on the territory of Romania under the right of establishment, after the competent authority notifies FSA.

Chapter VI of the **Law no. 236/2018** stipulates the conditions that shall be fulfilled by local insurance intermediaries or ancillary insurance intermediaries who intends to carry on business within the territory of another Member State (art. 21, art. 23(2)), also by foreign entities who intends to carry on business within the Romanian territory (art. 22, art. 23 (1) and (3)) and the methods of notification and communication of information between notified entities and the authorities of Home and Host Member States.

The notification of a local insurance intermediary or ancillary insurance intermediary to FSA contains:

- name/address of the intermediary or ancillary intermediary and, if applicable, the registration number;
- the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;
- the relevant classes of insurance, if applicable;
- the address in RO from which documents may be obtained and the name of any person responsible for the management of the branch or permanent presence;
- any other information, if FSA considers necessary, for reasons of consumer protection.

**The above information is also mandatory to be sent to the competent authority of Home Member State by any insurance intermediary or ancillary insurance intermediary registered in another Member State who intends to carry out insurance distribution business on the territory of Romania under the right of establishment.**

The detailed information to be provided by the competent authority of the Home Member State of the notified intermediary to FSA are stipulated in the art.48 and art. 51 of [Rule no 22/2021](#) on the distribution of insurance.

The requirements regarding the professional qualification of the Romanian insurance intermediaries and their continuous professional training are described in art. 4-6 of [Rule no.23/2021](#) *regarding the professional training of the persons involved in the distribution activity* .

**This regulation applies to foreign insurance brokers pursuing activity in Romania, when they collaborate with local insurance intermediaries and/or ancillary insurance intermediaries** registered or are to be registered as secondary intermediaries in RIS – Romanian

Registry of Secondary Intermediaries (referred to in art.6 of the [Rule no. 22/2021](#) on the distribution of insurance).

**Similar to the Romanian insurance brokers, during the collaboration with locals, the notified brokers** are responsible for the activity of the secondary intermediaries and verify the compliance of all conditions of registration **including those regarding the professional training (qualification and/or continuous training).**

The registration conditions for secondary intermediaries are stipulated in the art. 14-16 of Rule no 22/2021 on the distribution of insurance.

According to *art. 26 (9) of Rule no. 22/2021* the insurance brokers operating under FOE in RO shall send periodical reports on insurance distribution activities: the identities of the collaborators: local and foreign insurance undertaking, the insurance classes related to the insurance contracts distributed, the value of the insurance premium, including those premium from the co-manufacturing, where applicable.

**Regulation no.13/2019 on the establishment of measures to prevent and fight against money laundering and terrorist financing through financial sectors supervised by the FSA** provides for standard, simplified and supplementary customer due diligence measures as regards high risk clients, record keeping and reporting requirements, and sanctions for not complying the legal provisions.

### **Petitions received by ASF**

According to [Rule no. 18/ 2017](#) **on the procedure for the settlement of petitions regarding the activity of insurance and reinsurance companies and insurance brokers**, FSA receives complaints irrespective of whether the complaints involve national insurance undertakings, Intermediaries, Ancillary Intermediaries or insurance undertakings, Intermediaries or Ancillary Intermediaries from different Member States who have notified their insurance distribution activities on the Romanian territory.

FSA cooperates with other national competent authorities from the Home Member States of those reported entities in order to communicate a response to the claimants.

## Financial reports

The insurance brokers from EU Member State carrying out insurance distribution through FOE on the Romanian territory shall comply with the [Rule no. 36/2015](#) approving the accounting regulations concerning the separate and consolidated annual financial statements of the insurance and/or reinsurance brokers.

## Common provisions for insurance undertakings and intermediaries

The conditions regarding the presentation, contents and security that must be met **by electronic means used for trading insurance contracts** are stipulated in art. 42 – 43 and Annex no.16 of Rule no. 22/2021 on the distribution of insurance.

The provisions in the articles mentioned below also provide **the obligation of insurance undertakings and insurance intermediaries** to distinctly organize into two separate sections, with secure access, the developed and implemented electronic means. The personnel that distribute insurance contracts by electronic means are required to fulfil all the conditions for the registration including the professional training.

The rule envisages also requirements with respect to the correct and transparent information to policyholders and/or prospective policyholders regarding the insurance distributor identity and the insurance products.

### *Freedom to provide services (FOS)*

#### 1. Insurance undertakings

According to the provisions of *Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)*,

1. **insurance undertakings authorised by competent authorities** of the Member States shall be entitled to carry out directly insurance business in Romania under the right to provide services, subsequent to a notification procedure, where the competent authorities notify F.S.A.;

2. **the notification includes** the insurance classes the undertakings are authorised to underwrite, the risks to underwrite and the commitments to assume, and the proof that the requirements concerning SCR and MCR are fulfilled, any third parties they are intend to collaborate within the Romanian territory (egg: *management agent* as referred to art. 2(1) point 4 in Rule no 22/2021 on the distribution of insurance);



3. the conditions under which the undertakings underwrite risks from class 10;
4. **F.S.A. cooperates with the competent authorities from the other Member States** in order to get more information on the notified entities,
5. **FSA may require from the management agent**, information and data necessary for the supervisory process (referred to art. 49 (4) of *Rule no 22/2021 on the distribution of insurance*).

### **Petitions received by FSA**

According to **Rule no. 18/ 2017 on the procedure for the settlement of petitions regarding the activity of insurance and reinsurance companies and insurance brokers**, FSA receives complaints irrespective of whether the complaints involve national insurance undertakings, Intermediaries, Ancillary Intermediaries or insurance undertakings, Intermediaries or Ancillary Intermediaries from different Member States who have notified their insurance distribution activities on the Romanian territory.

FSA cooperates with other national competent authorities from the Home Member States of those reported entities in order to communicate a response to the claimants.

## **2. Insurance intermediaries and ancillary insurance intermediaries**

According to the provisions of *Directive 2016/97/EC on insurance distribution (IDD)*, **any insurance intermediary or ancillary insurance intermediary** that has been registered by a competent authority of an EU Member State shall be entitled to carry out insurance distribution business on the territory of Romania under the right of establishment, after the competent authority notifies FSA.

Chapter VI of the **Law no. 236/2018** stipulates the conditions that shall be fulfilled by the local insurance intermediaries or ancillary insurance intermediaries who intends to carry on business within the territory of another Member State (art. 19, art. 23(2)), and also by foreign entities who intends to carry on business within Romanian territory (art. 20, art. 23(1) and (3)) and the methods of notification and communication of information between notified entities and the authorities of Home and Host Member States.

The notification to FSA contains:

- name/address of the intermediary or ancillary intermediary and, if applicable, the registration number;
- the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;
- the relevant classes of insurance, if applicable;
- any other information, if FSA considers necessary, for reasons of consumer protection.

**Supplementary to the standard notification**, according to art. 7(2), FSA **may** require to notified entities that operate in Romania, **necessary information and documents** for the protection of policyholders, and also to verify the compliance of the applicable national legislation by the entities.

**The above information is also mandatory to be sent to the competent authority of Home Member State by any insurance intermediary or ancillary insurance intermediary registered in another Member State who intends to carry out insurance distribution business on the territory of Romania under the freedom to provide service.**

The data to be provided by the competent authority of the Home Member State of the notified intermediary to FSA. are stipulated in the art. 46-47 and 51 of Rule no.22/2021.

### **Petitions received by FSA**

According to [\*\*Rule no. 18/ 2017\*\*](#) on the procedure for the settlement of petitions regarding the **activity of insurance and reinsurance companies and insurance brokers**, FSA receives complaints irrespective of whether the complaints involve national insurance undertakings, Intermediaries, Ancillary Intermediaries or insurance undertakings, Intermediaries or Ancillary Intermediaries from different Member States who have notified their insurance distribution activities on the Romanian territory.

FSA cooperates with other national competent authorities from the Home Member States of those reported entities in order to communicate a response to the claimants.

### *Motor Third Party Liability*

In case an insurance undertaking intends to directly cover or to cover through a branch, MTPL risks of Class 10, FSA shall require that insurance undertaking to submit also the name and the of

the claims representative appointed on the Romanian territory, as referred to in Art. 21(1) g) of the Law no. 237/2015 and the declaration that confirms it has become a member of BAAR (Romanian Motor Insurers' Bureau). It is also informed about the financial contribution that should be paid to BAAR, calculated based on the gross premiums earned or number of risks covered within the territory of Romania.

Provisions regarding the compulsory MTPL insurance are also included in the [Law no.132/2017](#). It regulates the MTPL insurance and the operation of BAAR and it provides the territorial limits of the MTPL insurance, the obligation to have such insurance, terms of the insurance contracts, covered risks, exceptions from the payment of claims, the amount of compensation, the establishment of the premium tariffs, settlement of claims, claims representatives, direct compensation etc.

The [Rule no. 20/2017](#) on motor insurance in Romania provides the conditions for pursuing MTPL insurance in Romania, the insurance contract terms, the covered risks and exclusions, the claims and the payment of claims, bonus-malus system.

The [Rule no.22/2017](#) on the reference tariffs for MTPL regulates the methodology of calculation of reference tariffs for the compulsory motor third party liability insurance for third-party damage caused by vehicle and tram accidents.

The BAAR Procedure, approved through ASF Decision, regarding the handling by the Romanian Motor` Insurers Bureau of the MTPL high-risk insureds. The Procedure establishes a common and effective framework for the activities performed by BAAR towards allocating the high-risk MTPL insureds to an MTPL insurance company.

### *Suretyship*

The [Rule no. 32/2021](#) regarding suretyship insurance governs:

a) the general framework regarding the categories of suretyship insurance whose object is to guarantee the fulfilment by the insurance undertaking of his obligations towards a beneficiary, arising from a basic obligatory report in the form of a contract concluded between them or regulated by law, and reparation, within the limit of the insured amount, of the damages suffered by the beneficiary as

a result of the insured's non-fulfilment of the respective obligations;

b) minimum requirements for underwriting the risks related to suretyship insurance.

(Romanian version)

### *Complementary legislation*

Besides the specific legislation for the insurance sector, there are other legal acts including provisions with impact on the activity performed on the Romanian insurance market.

### *Consumer protection*

**Law no. 363/2007** (*Romanian version*) on fighting against unfair practices of traders and compliance with EU Regulations on consumer protection provides principles related to unfair and misleading commercial practices and potential sanctions for the providers.

**Government Ordinance no. 85/2004** concerning consumers protection in relation to the conclusion and performance of distance financial services contracts provides the conditions that should be observed in case of concluding distance contracts for financial services, including insurance contracts. These include the information to be communicated to the potential consumer related to the provided services, prices and other expenses, clauses, cancelation of the contracts and litigations. (*Romanian version*)

### *Civil Code*

**Law no. 287 of 2009** regarding the Civil Code (*Romanian version*)

Civil rights and freedoms of natural and legal persons are protected and guaranteed by law.

Title IV – Legal body of the Civil Code includes six chapters that covers aspects related to setting-up, registration, functioning, dissolution and liquidation of the legal entities.

Chapter XVI – Insurance contract describes the elements of an insurance contract (parties, subject of the contract, covered risks, validity of the contract, insurance premiums, insured sum). Also, this chapter provides a short description of the main category of insurance, such as property, credits and guarantees, civil liability, personal insurance and reinsurance.

### *Labor Code*

**Law no. 53 of 2003** regarding the Labour Code (*Romanian version*)

The Labour Code regulates the regime of working contracts for Romanian or foreign citizens hired on the Romanian market with a working contract, stipulating the normal duration of working time, the minimum gross income, working conflicts management and any other aspects related to working reports.

### *Registry of Commerce*

**Law no. 31 of 1990** on companies

**Law no. 26 of 1990** on trade register

<https://www.onrc.ro/index.php/en/legislation/national-legislation#Legi>

Law no.31/1990 stipulates the main categories of companies operating on the Romanian market, describing their way of setting-up, registration and functioning.

Law no.26/1990 includes provisions related to the categories of natural and legal persons that have the obligation to be registered in the Registry of Commerce and the necessary documents and information in order to do that.

Article 37 stipulates that “*The name of a Romanian branch of a foreign company should include also the mention of the foreign headquarter.*”

### *Tax Regulations*

**Law no. 227 of 2015** regarding the Fiscal Code

The core principles of tax system in Romania is presented in the Law no. 227/2015 regarding the Fiscal Code (Romanian version). Title VI contains provisions regarding the taxes on revenues obtained in Romania by non-residents and taxes on offices of foreign companies in Romania.

### *Publicity, communications and property*

**Law no. 504 of 2002** on the audio visual **and**

**Decision no. 220/ 2011** regarding the Regulatory Code of the Audiovisual Content

**Law no.56/2003** ratifying the European Convention regarding cross border television and The Protocol for its amendment

**Law no. 8 of 1996** on copyright and other related rights

The mentioned legislation regulates the obligations of TV and radio stations licensed in Romania, in terms of editorial content - correct information, protection of human dignity, protection of minors and publicity regime compliance.