

INVESTING IN ROMANIA



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LEGAL BACKGROUND

The activities of insurance and reinsurance carried out on the Romanian territory are mainly regulated by the provisions of Law no. 136/1995 regarding insurance and reinsurance, as amended, as well as Law no. 32/2000 regarding companies for the insurance and monitoring of insurance, as amended and supplemented.

THE COMMISSION FOR THE MONITORING OF INSURANCE

The Commission for the Monitoring of Insurance ("CSA" or the "Commission") is an autonomous administrative authority with duties of supervision and control in the insurance field. In exercising its duties, the CSA authorizes the insurers, reinsurers and insurance/reinsurance brokers, it supervises their financial condition, it controls the compliance with prudential norms and it approves the insurer's significant shareholders and significant persons. The competence of the CSA also includes the approval of the split-offs or mergers of an insurance/reinsurance company or of an insurance/reinsurance broker authorized in Romania. The same approval is provided for the transfer of the portfolio of the insurance companies, including the branches of the Romanian companies located on the territory of other European Union member states, or for the local branches of the insurers the headquarters of which are located outside the community space. With regard to the authorization, suspension or withdrawal of the authorization of an insurer, the CSA issues decisions and releases official responses to



matters related to the insurance activity.

Law no. 32/2000 sets out CSA's competence to exercise an additional monitoring over the insurance companies that hold participations in at least one other insurance company, reinsurance company or insurance company located in a third party state, which have as a mother company an insurance holding, a joint venture insurance holding or an insurance/reinsurance company in a third party state. CSA Order no. 9/2008 regarding additional monitoring includes the aforementioned companies into a single category, namely that of the "insurance groups", and it regulates the method by which additional monitoring shall be performed with respect to such companies.

According to the provisions of the CSA Order, additional monitoring shall take into account the companies affiliated to, or participating in the insurance company, as well as the companies affiliated to a company that participates in an insurance company. The authorities of the member state in which the insurance company was granted an official authorization shall have the competence to provide such monitoring.

According to the relevant European regulations (Directive 2002/83/EC, Directive 2002/92/EC, as well as Directive 78/473/EEC), the management of life insurance and general insurance for authorized insurers with mixed activity (life and non-life) shall be organized separately, in accordance with the specific norms adopted by

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the Commission by means of an order. Furthermore, insurers undertaking mandatory motor insurance against accidents in Romania and abroad shall be obligated to establish and contribute to the Common "Green Card" Fund, as well as to the Fund for the Protection of Street Victims.

INSURANCE AND REINSURANCE COMPANIES AND AGENCIES

In Romania, the insurance activity may only be carried out by joint stock companies, mutual companies, subsidiaries or branches of foreign insurers established as Romanian legal entities and authorized by the CSA to this effect, or insurers authorized in member states, provided that the object of activity thereof is exclusively insurance-based.

The insurance agent is an individual or legal entity that is empowered, on the basis of an insurer's authorization, to conclude in the name and on behalf of the insurer, insurance contracts with third parties, according to the conditions stipulated in the concluded mandate contract, without having the capacity of insurer or insurance broker.

The insurance broker is a Romanian or foreign legal entity authorized under the law, which, on behalf of its individual or legal entity clients, insured or potential insured negotiates the conclusion of insurance or reinsurance contracts and provides assistance during the performance of the contracts or with respect to the regularization of damages, or a mediator from a member state that carries out mediation activities on the Romanian territory according to the right to settle and to the freedom to perform services (two material freedoms which, in fact, represent the basis for the operation of the European insurance system).

Companies that carry out insurance activities in Romania must maintain, cumulatively:

- the paid in share capital, or the safety fund or, in case of a mutual company, the paid in free reserve fund;
- the solvency margin, which represents the variation between the value of the assets and the value of the liabilities, and which must

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be higher than the value set under the law.

The calculation of the solvency margin shall be performed in accordance with the provisions included in CSA Order 3/2008 enforcing the Norms on the methods for the calculation of the solvency margin which the insurer underwriting general insurance policies applies, of the minimum solvency margin and of the insurance security fund, as amended by Order 12/2009. When setting out the solvency margin, one shall take into account the entire activity carried out within the European Union.

In the event that an insurance/reinsurance company faces any of the situations that imply the exercising of additional monitoring by the CSA, the adjusted solvency margin shall be calculated as well, on the basis of the norms issued by the Insurance Monitoring Commission and the adjusted solvency margin. When setting out such margin, one shall take into account the proportional quota held by the participating insurance company in its affiliated companies. CSA Order no. 3114 details three methods of calculation of the adjusted solvency margin: the method of deduction and aggregation, the method of mandatory deduction, the method of accounting consolidation.

According to the Norms regarding the minimum value of the registered and paid-up capital, respectively of the insurers' freely paid reserve fund, the registered and paid-up capital, or, in the case of a mutual company, the freely paid reserve fund shall be updated by the CSA by means of norms, and it cannot be lower than:

- RON 8,000,000 for the general insurance activity, with the exception of mandatory insurance;
- RON 12,000,000 for the general insurance activity;
- RON 12,000,000 for the life insurance activity;
- a sum of the values set forth under the previous letters, depending upon the insurance activities carried out.

The paid in share capital or the paid in free reserve fund, as the case may be, must be fully deposited in cash, both upon the establishment and upon the increase thereof.

The new norms issued by the Commission for the Monitoring of Insurance prohibit the legal entities registered in states the legislation of which does not provide for the obligation to organize and to keep accounting records and/or which allow for maintaining anonymity with respect to the identity of the shareholders and of the directors as being founders of the insurers.

INSURANCE ACTIVITY. REINSURANCE

In Romania, the insurance activity is carried out in the form of optional or mandatory life and general insurance, as well as in the form of reinsurance operations. According to the law, the third-party liability for damages caused by vehicle accidents and the third-party professional liability for medical doctors, pharmacists and other persons pertaining to

the medical assistance field are mandatory, and the conclusion of other types of insurance is optional. Several differences exist between mandatory insurance and optional insurance, from the point of view of the applicable legal regime.

As far as mandatory insurance is concerned, the relations between the insurer and the insured are set out by Law no. 136/1995, as amended and supplemented, while with respect to the optional insurance, the relations between the insured and the insurer, as well as each party's rights and obligations, are set out under the insurance contract. Mandatory insurance may solely be carried out by insurers that are authorized by the CSA to carry out such activity. Optional insurance may cover risks regarding goods, persons, credits and guarantees, prejudices caused by or to third parties.

Reinsurance represents the insurance of contractual liability arising from the direct insurance contract. Thus, through the reinsurance activity, part of the insured risk is assigned to another insurance company, following that the two companies should bear the risk either on a pro-rata basis or in accordance with the reinsurance contract.