

THE FINANCIAL RESTORATION OF INSURANCE COMPANIES

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Abstract

The entire legal regulation of the insurance market is focused on the protection of the insurance policies holders, on keeping their trust in the insurance system and on the maintenance of the financial market steadiness. Noticing and solving the problems prior to the occurrence of insurers' insolvency situation represents a fundamental aspect for the means of achieving such objective.

By this survey we will analyse the financial restoration procedure of the insurance companies, Romanian legal entities, through the perspective of the whole aggregate of legal issues involved by this extremely complex and sensitive process required by the special nature of the insurance companies and by the impact of the activities carried out by these companies for the economic and social life of a state.

Thus, there have been pointed out the particularities and the special nature of the insurance companies' financial restoration as compared to the reorganization of the regular trade companies, the insurers' means of avoiding the business failure, of avoiding the bankruptcy.

Keywords: *insolvency, financial restoration, insurers, financial restoration plan, special management, insurers' bankruptcy*

I. Introductory information

The insurance companies, just like the banks, might be subject to temporary or definitive business failure. A risk management lacking certain prudence may result in the speedy deterioration of the financial situation of the insurers. The classical example is the one of the aggressive market policies manifested by establishing insurance premiums that are too low associated with the increase in the subscriptions volume that can lead to major losses determined by the high volume of damages, which is likely to affect the available solvability margin of the insurer and, implicitly, its liquidity.

The entire legal regulation of the insurers' market is focused on the protection of the insurance policies holders, on keeping their trust in the insurance system and on the maintenance of the financial market steadiness. Noticing and solving the problems prior to the occurrence of insurers' insolvency situation represents a fundamental aspect for the means of achieving such objective.

The authorities supervising and controlling the insurance market have an essential role, too, in prematurely identifying the financial problems of the insurance companies and the „treatment” applied for the purpose of restoring the financial balance.

The competence of the supervision authorities from the origin member states grant them the opportunity of noticing both the risks of the insurers' activity that might result in the deterioration of their activity, as well as any difficulty the insurers might face.

The European and domestic laws establish very precise competences, directions and action procedures for the supervising authorities regarding the insurance companies in difficulty or in a financially inadequate situation, companies that will be immediately subjected to restoration of reorganization procedures.

In Romania, the Insurances Supervision Commission is the administrative authority that has exclusive competence in applying any actions or procedures of financial restoration of the Romanian insurance companies and of their branches located in member states or/and in third states.

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By this survey we will analyse the financial restoration procedure of the insurance companies, Romanian legal entities, through the perspective of the whole aggregate of legal issues involved by this extremely complex and sensitive process required by the special nature of the insurance companies and by the impact of the activities carried out by these companies for the economic and social life of a state.

We will point out the particularities and the special nature of the insurance companies' financial restoration as compared to the reorganization of the regular trade companies.

II. On the financial restoration of the insurers

In principle, the insurance companies facing a difficult or financially inadequate situation shall be subject to specific restoration and/or reorganization measures, for avoiding the insolvency of such companies, for avoiding the bankruptcy.

The financial restoration procedure represents the aggregate of administrative means and measures ordered by the Insurance Supervision Commission, as the competent authority, meant to maintain or restore the financial situation of an insurance company.

The recovery of the insurance companies' restoration is a specific procedure for redressing the insurers, and not a reorganization procedure as defined by the general regulations on insolvency or by the European laws.

According to the European laws, the insurance companies facing difficulties can be subject to distinct procedures: restoration or reorganization.

In all the cases, the insurers' restoration or reorganization is characterized by the absence of the insurers' insolvency. In the matter of special trade companies, the insolvency situation indicates the impossibility to financial restore and the bankruptcy procedure initiation for these companies.

The existing specific differences between the procedure of financial restoration of the insurance companies and the reorganization procedure of the regular trade companies consist in the differences between the reasons causing the procedures implementation, the features of the same and the purpose of each procedure.

Thus, the *financial restoration of the insurance companies excludes the insolvency state of the same*, while the judicial reorganization regulated by the Law no.85/2006¹ applies only to a company in insolvency.

The reorganization provided by the Law no.85/2006 has as main purpose the payment of the debtor's duties, while the *financial restoration procedure has the sole purpose the financial restoration of the insurer excluding any concern for the payment of its duties.*

Basically, this happens because the purpose of any legal procedure of insolvency is represented by the creditors' payment, *pari passu*, according to the equality of treatment of these creditors², in any of the ways provided by the law³.

According to the general regulation, the priority of the insolvency procedure consists in the best interest of the creditors, the payment of the debts of the debtor towards them, by any of the means used for achieving this purpose, "liabilities cover-up" representing, as rule, the full payment of the declared duties⁴.

¹Law no. 85 / 05.04.2006 regarding the insolvency procedure, published in the Off. M. Part I no. 359 on 21.04.2006, as further amended and completed.

² Roy Goode, *Principles of Corporate Insolvency Law: Student Edition*, London, Thompson-Sweet & Maxwell, 2005, p. 56.

³ I. Turcu, Falimentul. Actuala procedura (Bankruptcy. Current procedure), Editura Lumina Lex, Bucuresti, 2005, p.287; I.Schiau, Regimul juridic al insolventei comerciale (The legal regime of the commercial insolvency), Ed.All.Beck, Bucuresti, 2001, p.81.

⁴See also: Stanciu D.Carpenaru, Vasile Nemes, Mihai Adrian Hotca, Noua lege a Insolventei . Legea nr.85/2006. Comentarii pe articole (The new insolvency law. Law no. 85/2006. Commented articles), Ed.Hamangiu,

Last, but not least, *the financial restoration of the insurance companies is an administrative procedure, decided and applied by the Insurance Supervisory Commission* while the reorganization of the regular trade companies is always a judicial procedure falling under the exclusive competence of the courts of law.

On the other hand, *the financial restoration of the insurance companies cannot be qualified as a reorganization procedure specific for insurers either considering the criterion of differentiating between the judicial reorganization and financial restoration procedures*, criterion implicitly imposed under the Directive 2001/17/EC on the reorganization and winding-up of the insurance companies⁵.

According to the Directive 2001/17/EC, *the "reorganisation measures" means measures involving any intervention by administrative bodies or judicial authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims* (art.2 let. c) Directive 2001/17/EC).

The criterion of classifying a procedure applied to the insurance company as being a special reorganization procedure, is the one concerning the effects of such procedures: if by the measures adopted under this procedure the pre-existing rights of third parties are affected the procedure applied to the insurance company is itself a reorganisation procedure.

By the definition of reorganisation provided by the Directive 2001/17/EC it results that a reorganization procedure involves the suspension of enforcement measures related to the creditors' claims against the debtor imposed by the courts or by other competent authorities⁶.

Usually, the measures by which insurance company and its creditors reach an agreement in relation to the insurer's undertakings, does not determine the classification of a procedure as being a reorganisation measure, if such agreements are reached by other means than by the courts decisions or by the supervisory authorities decisions of suspending the enforcement of claims.

By the insurance companies restoration procedure regulated by the law no.503/2004 regarding the financial restoration and the bankruptcy of the insurance companies⁷ the pre-existing rights of third parties are not affected and, this procedure, is not a reorganization procedure specific for insurance company.

The Law no. 503/2004 provides - although quite inadequately by reference to the substance of the differentiation provided in the Directive 2001/17/EC - this characteristic of the restoration procedure of the insurance companies: *"The opening of the financial restoration procedure does not affect the rights in rem of the creditors and third parties regarding the corporal or incorporeal assets, movable or immovable assets- both determined assets, as well as aggregates of undetermined assets - belonging to the insurance company and which are situated on the territory of a different member state upon the procedure opening"* (art.9 para.7 of the Law no.503/2004).

2008, p.24-25; Gheorghe Piperea, "Despre evitarea procedurilor de insolvență și tratamentul extrajudiciar al crizelor financiare" ("On how to avoid the insolvency procedures and the extra-judicial treatment of the financial crises"), în Revista Româna de Drept Privat nr.3/2007, p.147; In the context of the Law no. 64/1995, which does not differ from the current regulation of the insolvency considering its purpose: Ion Turcu, Madalina Stan, "Compatibilitatea normelor codului de procedură civilă cu specificul procedurii insolvenței" ("The compatibility of the norms of the civil procedure code with the insolvency procedure specifics"), Revista de Drept Comercial nr.12/2005, p.12.

⁵Directive 2001/17/EC regarding the reorganization and winding-up of the insurance companies, published in the O.J. L 110/20.04.2001, p.28-39.

⁶Gabriel Moss QC, Bob Wessels, *EU Banking and Insurance Insolvency*, Oxford University Press, New York, 2006, p.113.

⁷Law no.503 on 17.11.2004 regarding the financial restoration and bankruptcy of the insurance companies, published in the Off. M. Part I no.1193/14.12.2004, as further amended and completed.

Except for this provision of the Law no.503/2004, from the entire regulation of the procedure it results that it does not affect the pre-existing rights of third persons.

III. The features of the financial restoration procedure.

By the specific differences between the financial restoration procedure of the insurance company as to any other form of special or general reorganization of a special or ordinary company, the characteristics of the financial restoration procedure of insurers is emphasized.

(i). The administrative nature

The measures of the insurance company restoration represent the intrinsic component of the permanent process of prudential supervision and control, implemented by the Insurance Supervision Commission.

It is a totally different conception as to the judicial nature of the general reorganization procedure of regular trade companies, such characteristic being deemed to have been imposed by the imperative norms governing the insolvency treatment considered to be a problem of general interest⁸.

As far as the matter of general insolvency procedures are concerned, there has been established that, only the court of law is able to impose restrictions or to suspend the debtor's right to manage its own business, to administer its assets⁹, and to limit the creditors' rights, in case of insolvency.

Thus, the Insurances Supervision Commission is the only competent authority to order restoration measures by the initiation of the financial restoration procedure by any of the means of enforcing such procedure: based on a plan or by means of special receivership applied to a Romanian insurance company, including its branches from other member states as well as to the branches and subsidiaries of insurance companies from other third parties, with the registered office in Romania (art.5 para.2 of the Law no.503/2004).

Therefore, the financial restoration procedure is *an administrative procedure and it excludes the intervention of the courts in applying, implementing and closing the procedure*¹⁰.

The Romanian law option for applying the methods and measures for financial restoration exclusively by the competent administrative authority responsible for the supervision and control of the insurance activity is based on the need of speedy adoption of the most adequate measures for the financial restoration of the insurer.

As in the banks' case, the insurance companies can function only if they keep the public's trust and any restoration of judicial reorganization would result in failure, due to the panic that would occur among the policies holders.

On the other hand, the European law regulates the possibility of "financial restoration" of the insurance companies as a distinct action from the reorganization of the same, through the competent authorities with the supervision of the insurance companies (art.37 and art.38 of the Directive 2002/83/EC).

⁸ Yves Guyon, *Droit des Affaires, Tome 2, Entreprises en difficultes. Redressement judiciaire- Faillite, 7e edition, Economica, Paris, 1999*, p.31; Boy, Guillaummond, Jemmaud, Jeantin, Pages et Piravano, *Droit des faillite et restruction du capital*, Presses Universite Grenoble, 1982.

⁹ The bankruptcy procedure "deprives a person of her or his right to manage her or his own assets", right provided by the European Convention on Human Rights, European Commission on Human Rights, December 10th, 1984, no.10259/1983, ANCA c/Belgique, C. Barsan, "*European Convention on Human Rights – Commented articles. Rights and freedoms*", Vol. I, Ed.All Beck, Bucharest, 2005, p.409.

¹⁰ See also: R.N.Catana, *Dreptul asigurarilor – Reglementarea activitatilor de asigurare. Teoria generala a contractului de asigurare* (The right of the insurances – The regulation of the insurance actions. The general theory of the insurance contract), Editura Sfera Juridica, Cluj Napoca, 2007, p.85.

(ii). The preventive nature

The fundamental objective of the supervision and of the control exercised by the competent authority on the insurers is to prevent them from becoming insolvable and for them to carry out an activity that is compliant with the operational and prudential requirements specific for the insurance market.

For this purpose, the Insurances Supervision Commission periodically checks all the essential aspects of the insurer's activity by means of controlling the financial statements, of periodic reporting and informing and by means of analysis, guidance and control actions exercised by the specialized departments of the same authority.

According to the law, the Insurances Supervision Commission has the right to intervene for preventing the insurance companies insolvency and for avoiding the initiation of the bankruptcy procedure in all the cases where there are noticed any irregularities and incompliance with the prudential requirements, especially financial difficulties (art.5 para.1 of the Law no.503/2004).

The preventive nature of the financial restoration presupposes the inexistence of the insurers' insolvency and the avoidance of the same.

The main purpose of the procedure is „the restoration of the financial situation of the insurance company” (art. 20 let. a) of the Law no.503/2004 and art.37 pct.2 of the Directive 2002/83/EC¹¹)

The preventive nature of the financial restoration procedure explains also the lack of involvement of the insurance company creditors in the procedure. They are simply notified on the content of the redress measures ordered by the Insurances Supervision Commission by the decision of implementing the financial restoration procedure.

(iii). The remedy nature

This characteristic of the restoration procedure is a natural consequence of its preventive nature.

By acting preventively, by speedy and special measures *the financial imbalance of the insurance company is settled.*

None of the actual measures to be ordered under the financial restoration methods shall not affect its remedy nature.

IV. Initiating and implementing the financial restoring procedure

The causes for applying the financial restoring procedure are common to both methods of implementing the procedure: based on a plan or by means of special receivership.

According to the law, the insurance company enters the financial restoring procedure when:

(i) the insurance company fails to present the Insurance Supervision Commission, in 48 hours term from its request, the financial statement and the minimum solvability margin and when there are ascertain failures in complying with any other legal provisions related to the insurance activity, thus endangering the compliance with the obligations undertaken in relation with the insurance creditors;

(ii) the value of the available solvability margin decreases bellow the minim limit provided by the regulations issued by the de Insurance Supervision Commission;

(iii) the value of the available solvability margin decreases below the minimum limit provided by the legal regulations for safety fund (art.7 of the Law no.503/2004).

¹¹ Directive 2002/83/EC of November 5th 2002 on the direct life insurance, published in the OJ L 345 on December 19th 2002.

All the causes for opening the restoring procedure indicate the insurance company positioning out of the prudential, operational requirements. Such company faces an insolvency risk.

Statistically, the insurance company can resist with an available solvability margin equal or lower than the legal safety fund value (however, the value of the available solvability margin should not go below half the minimum legal value of the safety fund) but, the activity carried out under these conditions is affected by a high risk of insolvency, risk that is unacceptable for the insurance market.

By way of exception, the insurer is presumed to be in a difficult financial situation when it fails to comply with the Insurance Supervision Commission request to present its financial statements indicating all the basic elements of its stability, the financial situation and the available solvency margin.

The right of the Insurance Supervision Commission to assess the financial situation of an insurance company beyond the classical elements used for such assessment (available solvency margin and safety fund) *is pointed out by the possibility of the same to decide the application of the restoration procedure in all the situations where the insurance company endangers its ability to honour its claims to the creditors, by the failure to comply with the applicable legal provisions.*

Therefore, the financial restoring procedure can be also initiated as a result of the failure to comply with the liquidities indicator, due to risky investment policies, due to the failure to comply with the requirements on the assets type that should be comprised in the safety fund, a.s.o.

Thus, the sphere of the causes determining the application of the financial restoring procedure of the insurance companies is much wider, the law offering the basic criteria for determining it¹².

The Insurance Supervision Commission orders the initiation of the financial restoring procedure by grounded decision, indicating the means of financial restoring measures applicable to the insurance company in difficulty: restoration based on redress plan or restoration by means of special receivership.

According to the law, regardless of the restoration means that has been opted for, the Supervision Commission can order the adoption of the main prudential measures, which will be the actual means for financial restoration of the insurance company, among which: the insurance portfolio immediate transfer by the insurance company, in whole or in part, within maximum 60 days as of the measure adoption, the insurance company director's obligation to summon an extraordinary general assembly, for proposing some actions of registered capital increase, assembly to take place within maximum 5 days as of the summoning date, and, the increase of the registered capital within maximum 30 business days as of the reception of the decision informing on the initiation of the financial restoring procedure, the interdiction to carry out certain investments, a.s.o. (art.8 para.2 of the Law no.503/2004).

We consider that these main measures for the insurer's restoration shall be ordered by the Insurance Supervision Commission, in principle, in case of opting for the financial restoration by means of special receivership. Our opinion is stated considering the „temporal” differences of the two forms of the financial restoring procedure but also the legal conception regarding the content and the means of adopting the financial restoration of each of these procedures.

In other words, the financial restoration based on a plan entails a more relaxed time-frame than the special receivership one and, additionally, the content of the („short term”) redress plan is left with the discretion of the board of directors or of the company supervisory board, subject to the measures ordered by the procedure opening decision and provided that such plan is approved by the Insurance Supervision Commission.

¹² See also: the Insurance Supervision Commission, the Decision no.1068/21.12.2001 on the opening of the financial restoration procedure based on a financial restoration plan of S.C. FORTE Asigurari - S.A., Published in OF. M., Part I, no.9 on 05.01.2012.

The Insurance Supervision Commission can endorse or dismiss such plan and, in the later case, it can force the company to adopt a speed-up financing program (art.15 let. a) of the Law no.503/2004).

The intervention of the Insurance Supervision Commission by „the prudential main measures”, indicates an alarming financial situation of the insurance company requiring an immediate and aggressive action, specific for the special receivership even if, the law does not establish an hierarchy for the redress measures based on the criterion of the gravity of the financial imbalance of the insurer.

Applying the financial restoring procedure is not confidential, the compliance with the publicity formalities being compulsory; however the failure to comply with this request does not prevent the application of the procedure.

The publicity of the opening decision of the financial restoring procedure of the insurance company is done by publishing it in the Official Monitor of Romania, Part I, as well as in two other national newspapers.

The Insurance Supervision Commission, as the competent authority, has the duty to immediately inform the supervision authorities in all the other member states on its decision to apply the financial restoring procedure for an insurance company, including also the effects of applying such procedure.

The financial restoring procedure does not affect the pre-existing rights of third persons and is effective within the entire European Union as of the moment of it becoming effective in Romania.

The effects of the financial restoring procedure are the ones provided by the Romanian law, without other formalities even if the laws of the member states do not provide such financial restoring measures or subordinate such measures enforcement to certain conditions that have not been fulfilled.

A) The redress based on financial restoration plan

The insurance company redress based on a plan is enforced by the insurance company by means of the board of directors or of the supervisory board. By this means of financial restoration, the Insurance Supervision Commission offers the insurer the means to choose and to propose the financial restoration measures that it considers to be the most adequate and speedy for restoring the financial balance, even if the insurer decides to appoint a person to supervise the drafting and implementation of the financial restoration plan.

The board of directors or, if the case, the insurer's supervisory board, drafts the financial restoration plan in maximum 20 days from the date of communicating the decision of opening the financial restoring procedure.

The plan must include the perspectives for financial restoration of the company and the actual means and terms for achieving such restoration as well as the terms for complying with the measures and provisions comprised in the procedure opening decision.

The approach of the financial situation of the insurance company must be carried out for a 3 year term considering the main coordinates of the financial aspects of the insurer; income and revenue budget, re-insurance programs, debts payment program, financial resources for covering the outstanding obligations a.s.o.

The Insurance Supervision Commission is the authority that decides the financial restoration plan feasibility of the insurer by approving, dismissing or completing it.

As of the date of communicating the decision on the approval of the financial restoration plan as proposed by the insurance company or as amended and/or completed by the Insurance Supervision Commission, the insurance company has the duty to comply with all its provisions and to

communicate to all known creditors, within 5 business days term as of the reception of such decision, the measures and provisions established by the Insurance Supervision Commission.

In case the financial restoration plan is dismissed, the Insurance Supervision Commission, by its decision shall order one of the following measures:

(i) to order the insurance company to adopt an immediate financing program, that must comply with the terms, conditions, and procedures provided by the law for drafting and presenting the financial restoration plan;

(ii) the financial restoration of the company by special receivership;

(iii) the cancellation of the insurance company operating permit.

The decision of the Insurance Supervision Commission of cancelling the operating permit entails the winding-up and the liquidation of the insurance company or, in case of ascertaining the insolvency state, the opening of the bankruptcy procedure upon the request of the Insurance Supervision Commission.

B) Special receivership restoration

The restoration of the insurance company by means of special receivership is carried out through the special receiver (director), appointed by the decision of the Insurance Supervision Commission. In such conditions, the special receiver (director) has the capacity of the Insurance Supervision Commission proxy without the possibility to transfer its attributions to a third person.

Its mandate is an agency mandate, the special receiver being the one representing and hiring the insurance company in its relations with the third parties¹³.

As of the date of appointing the special receiver, the insurance company is „temporarily discharged”, by suspending the powers of the major shareholders and of the important officers of the company, powers that fall with the special receiver during the financial restoring procedure.

The shareholders right to appoint and revoke the board of directors or the sole director and/or the supervisory board and the shareholders right to receive dividends shall be also suspended during the entire financial restoring procedure interval by means of special receivership.

The powers of the special receiver are established by the Norm approved by the I.S.C. Order no.3122/21.09.2005¹⁴.

In principle, the special receiver shall implement and shall take all the measures required for restoring the financial situation of the insurance company, by complying with the provisions, with the terms and conditions from the financial restoration decision.

V. Closing the financial restoring procedure

Acting as a remedy action, the financial restoring procedure is firstly closed when the purpose of such procedure has been reached and the financial situation of the insurance company is restored.

The closing of the financial restoring procedure shall also occur when, the measures applied within the financial restoring procedure have not been adequately complied with, within the terms and conditions established for such actions, or the application of the same failed to reach the pursued purpose and to eliminate the causes generating it.

The closing of the procedure is decided by the decision of the Insurance Supervision Commission.

¹³ For the powers of the special receiver, please see, Vasile Nemes, *Dreptul asigurarilor* (Insurance Law), Editura Hamangiu, 2009, Bucuresti, p.137.

¹⁴ The Order no.3122/21.09.2005 for approving the Norm on the rights, obligations and competences of the special receiver, Published in the Off. M., Part I no.866/25.09.2005.

By the decision of closing the financial restoring procedure the Insurance Supervision Commission shall order the revocation of the decision to open the procedure when the procedure closing is determined by the restoration of the financial situation of the insurer and, as the case may be, by the revocation of the special receiver.

The impossibility to restore the financial situation of the insurer by means of the financial restoring procedure leads to the adoption of the Insurance Supervision Commission decision ordering the closing of the procedure, the cancelation of the operating permit of the insurer and, if the case, the revocation of the special receiver.

If the insurance company has been subject to financial restoration by means of special receivership, the decision of the Insurance Supervision Commission regarding the procedure closing and the cancelation of the operating permit shall be grounded on the special receiver reports, ascertaining that there are no conditions for restoring or maintaining the financial situation of the insurance companies.

If the insolvency state of the insurance company is ascertained, by the decision for closing the financial restoring procedure is also decided the registration of the request to initiate the bankruptcy procedure.

If the insurance company is not insolvable, the decision to cancel the operating permit due to the impossibility to financially restore shall entail the company winding-up and deletion from the trade register.

The decision of the Insurance Supervision Commission regarding the closing of the financial restoring procedure and the ascertaining of the insolvability situation of the insurance company shall result in the registration of the request to initiate the bankruptcy procedure for the insurer and, as of the decision publication, shall also result in the creditor's right to ask for the payment of the due amounts payable from the Guarantee Fund.

To this end, in 10 days as from the publication of the decision for closing the financial restoring procedure, the insolvable insurance company must provide the director of the Guarantee Fund a complete record of all the damage compensation files, as well as the technical-operational records and the book-records related to such files, for publishing the list of potential creditors, beneficiaries of the amounts payable under the Guarantee Fund. The liability for the failure to comply or for the improper compliance with this obligation shall fall with the liable persons from the insurance company.

In practice, the financial restoration of the insurance companies based on a financial restoration plan and/or by special receivership manages to achieve the avoidance of the insurer's insolvability and there-launching of the same.

A good example on the Romanian insurance market is the one of S.C. ARDAF asigurari reasigurari- S.A. that underwent the financial restoring procedure based on a restoration plan in September 2005, due to the decrease of solvability margin indicators and of the liquidation ratio below the limit established by the regulations of the Insurance Supervision Commission.

The restoration plan has been reached by a capital increase and the financial restoring procedure has been closed.

Subsequently, in June 2006, due to the decrease of the financial indicators S.C. ARDAF asigurari reasigurari- S.A. has been subject to financial restoring procedure by special receivership. The solution for the company financial restoring has been, again, the increase of the registered capital up to the level established by the decision of the Insurance Supervision Commission for opening the financial restoring procedure; thus, in January 2007 there has been decided the closing of the financial restoring procedure¹⁵.

All the decisions of the Insurance Supervision Commission adopted in relation to the financial restoring procedure of the insurers, are administrative documents and they can be

¹⁵ Sursa: S.C.ARDARIRI REASIGURARI S.A., <http://www.ardaf.ro/ro/site/index.php>.

challenged by action lodged with the administrative court, i.e. with the Court of Appeal in Bucharest, in 10 days term from its communication (there is a time limitation for such action).

For the speediness of applying the financial restoration measures for the insurer the legislator granted that such decisions of the Insurance Supervision Commission shall be enforceable, its challenge with the courts of law not suspending their enforcement.

VI. Conclusions

The procedure for financial restoration, as regulated by the Romanian law, represents the only and the best method for restoring the financial imbalance of the insurance companies and, by its nature and causes, by its purpose and by the accomplishing means, it is significantly different from the judicial receivership provided under the Law no.85/2006.

Thus, the financial restoration procedure of the insurers is a special procedure, imposed naturally, by its special statute of the insurance companies.

As far as its application does not lead to the insurance company financial restoration, such company must be eliminated from the market in a manner as safer and as compliant as possible with the principle of policy holders protection.

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