

# Recovery and resolution planning for insurers

## Legal and practical issues in Romania

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# Recovery and resolution framework

- ▶ *1. Scope*
- ▶ *2. Recovery planning*
- ▶ *3. Resolution planning*
- ▶ *4. Early intervention - measures, appointment of temporary administrator*
- ▶ *5. Resolution - objectives, conditions for initiation, general principles, appointment of resolution administrator, resolution tools*
- ▶ *6. Role of the IGS in resolution of insurers*

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- ▶ Resolution authority → Financial Supervisory Authority (FSA)
- ▶ Consideration to the nature, extent and complexity of the activity carried out, the shareholding structure, the legal status, the risk profile, the size and the insurer's interconnection with other financial institutions or with the financial system in general
- ▶ Recovery and resolution applicable to insurers having a significant share in the national insurance system
- ▶ “significant share” - a). Value of gross technical reserves exceed 5% of the total value of gross technical reserves on the market
  - b). Has a market share of at least 5%



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- ▶ Insurers draft and maintain a recovery plan
- ▶ Recovery plans to be updated annually or at the request of FSA
- ▶ Recovery plans should not be reliant on public financial support
- ▶ Recovery plans to be submitted to the FSA
- ▶ FSA to assess recovery plans of insurers - consider correspondence between capital level/quality, solvency/liquidity to complexity and risk profile
- ▶ FSA may require revisions to recovery plans
- ▶ If insurer fails to properly revise recovery plans, FSA may require the insurer to take specific measures:
  - reduce risk profile
  - enable recapitalization
  - review strategy and operational structure
  - change administration and management structure



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- ▶ FSA drafts resolution plans for insurers

- ▶ Includes resolution measures



- ▶ FSA re-evaluates and updates the resolution plans on an annual basis and after any material change in the organizational structure of the insurer, its business or financial position

- ▶ FSA may determine whether the insurer should be liquidated under common insolvency proceedings or by applying resolution tools



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- ▶ Trigger → when an insurer infringes or is likely to infringe the requirements for maintaining the functioning authorization



- ▶ Early intervention measures →
  - management body to draft an action program
  - management body to convene meeting of shareholders
  - replacement of one or more members of the management body
  - restructuring of debts
  - changes to business strategy
  - changes to the operational structure

Replacement of the management body → deemed insufficient to remedy the situation



Appointment of temporary administrator  
To replace or work with management body temporarily



One year mandate → role and functions established by the FSA  
Acts subjected to the prior consent of FSA  
IGS may be appointed temporary administrator

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▶ Objectives → to protect insurance creditors

→ to minimize the impact on protection funds, to protect public funds by minimizing reliance on public financial support

→ to avoid significant adverse effects on the financial stability of the insurance market → avoid contagion → maintain market discipline

→ ensure continuity of critical functions

▶ Conditions → the insurer is failing or likely to fail in the near future

→ the resolution action is necessary in the public interest



## General principles of resolution

- ▶ Shareholders of the insurer bear first losses
- ▶ Creditors of the insurer bear losses after the shareholders
- ▶ Management body and senior management are replaced
- ▶ Natural and legal persons are made liable for their responsibility regarding the failure of the insurer
- ▶ Creditors of same class are treated in an equitable manner
- ▶ No creditor shall incur greater losses than under normal insolvency proceedings
- ▶ Assets admitted to cover technical reserves are protected in full

## Resolution administrator

- ▶ Appointed in compliance with the state aid framework
- ▶ To replace the management body of the insurer
- ▶ Has all the competences of the shareholders and of the management body → exercised under the control of the FSA
- ▶ Statutory duty to achieve resolution objectives
- ▶ 1 year mandate
- ▶ IGS may be appointed resolution administrator

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## ▶ Resolution tools

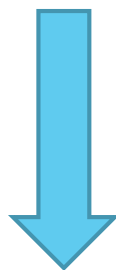
- 1. Sale of business and portfolio**
- 2. Bridge institution**
- 3. Assets separation**



# 1. Sale of business or portfolio



transfer to a purchaser  
(that is not a bridge institution)



shares or other instruments of ownership  
any category of assets, rights or liabilities,  
or all of them, including the transfer  
of the insurance portfolio

## 2. Bridge institution



transfer

shares or other instruments of ownership  
any category of assets, rights or liabilities

Bridge institution → legal person → supervised by the FSA

→ created for the purpose of receiving and holding shares or other instruments of ownership, assets, rights or liabilities

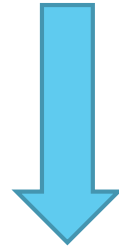
→ view to maintaining critical functions

IGS may operate and be authorized to exercise the powers of a bridge institution, as shareholder

## Operation of bridge institution

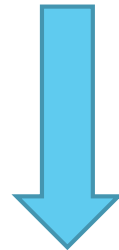
- ▶ Constitutional documents → approved by the FSA
- ▶ Management body → appointed or approved by the FSA
- ▶ Competencies and responsibilities → determined by the FSA
- ▶ Strategy and risk profile → approved by the FSA
- ▶ Registration in the Trade Registry
  
- ▶ Operated with a view to maintaining access to critical functions of the insurer, and sale of its assets, rights or liabilities to other insurers.

### 3. Assets separation



transfer from insurer under resolution  
or  
bridge institution

Assets, rights or liabilities of an insurer  
or a bridge institution



One or more asset management vehicle

- ▶ “asset management vehicle” → legal person
  - supervised by the FSA
  - created for the purpose of receiving assets, rights and liabilities
  - purpose of sale or orderly wind down
  - management body → appointed or approved by the FSA
  - strategy and risk profile → approved by the FSA
- ▶ Conditions for transfer → situation of the particular market
  - transfer necessary to ensure proper functioning
  - transfer necessary to maximize liquidation proceedings

## ▶ Write down of capital instruments

- ▶ Exercised → independently of a resolution action
  - in combination with a resolution action
- ▶ Conditions → FSA determined that all conditions for resolution are met
  - FSA determined that, unless the power is exercised in relation to the relevant capital instruments, the insurer will no longer be viable
- ▶ Insurer no longer viable if → failing or likely to fail
  - alternative private sector measures, supervisory actions cannot prevent failure, except write down or conversion of capital instruments
  - no reasonable prospect for the failure to be prevented in due time by any measures, except write down or conversion of capital instruments

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Administrator of  
Resolution Fund

Temporary  
administrator

**IGS**

Resolution  
Administrator

Shareholder of  
Bridge  
Institution



# IGS

## administrator of Resolution Fund

- ▶ Resolution Fund → used to finance resolution tools, by decision of FSA  
→ not to absorb directly the losses of an insurer
- ▶ Financial sources → contributions from all insurers authorized by Romanian law  
→ interest and penalties for late payment of contributions, as the case may be  
→ loans and bond loans by issuance of securities from the IGS
- ▶ Contributions calculated separately for life and non-life insurance.
- ▶ Percentage of contribution shall not exceed 1% of the gross premiums collected by insurer from direct insurance activity. Currently → 0.4% for non-life insurance; 0.25% for life insurance
- ▶ Funds invested in low risk assets.

# Practical case - Carpatica Asig S.A.

May 2014 - Carpatica Asig S.A. placed under financial recovery

November 2015 - Liquidity ratio under regulated levels → likely to fail

January 2016 - FSA decision to initiate recovery and resolution under resolution framework → IGS appointed as temporary administrator to work with the management body

March 2016 - IGS appointed as temporary administrator to replace management body

July 2016 - withdrawal of authorization and request for commencement of common insolvency proceedings

- ▶ Considering the interaction between the real economy and the financial system, it is important for a jurisdiction to have a solid framework not only for macro prudential supervision, but also for the implementation of financial stability policies.
- ▶ The effectiveness of a recovery and resolution framework is influenced by the efficiency of the mechanism in place for the protection of the policyholders.
- ▶ To this regard, the IGS has proven to be a stable and trustworthy entity, its activity in both the insolvency framework and resolution framework contributing to the enhancement of insurance consumer's trust, as well as to the stability of the financial market.

Thank you!