

insurance - legal changes published in April 2019

Law no. 71/2019 on mutual insurance companies was published in the Official Gazette no. 323 of April 24, 2019 and applies from April 27, 2019. The Financial Supervisory Authority (FSA) is to elaborate the secondary legislation for the application of this law.

As a novelty for the Romanian insurance market, the Law regulates the possibility of establishing mutual insurance companies, their method of organization and the specific requirements for their authorization and operation.

A mutual insurance company is defined as a "non-profit legal person" with the purpose of "covering, by means of insurance contracts, the risks of its members and the payment of indemnities and insurance claims to them, the beneficiaries of the contracts and /or injured third parties. Mutual insurance companies only engage in business activities directly related to insurance activity for their members, on the basis of the principle of mutuality. By way of exception, mutual companies may conclude with their members who are legal entities or entities without legal personality group insurance contracts for their employees, without the latter ones becoming members, the obligation to pay the contributions provided for by this law, by the articles of association and by the contracts in question, shall belong to said members. "

Individuals, legal entities and/or entities without legal personality may become members of the mutual insurance company. The number of members shall be at least 5. Members contributing with at least 10% of the total amount shall be subject to the approval of the FSA. Each member is entitled to one vote. The general meetings of the members are regulated similarly with the provisions of Law 31/1990, republished, (the shareholders are referred to as members of the mutual insurance company), with the exceptions and modifications provided by the hereby law. References to "share capital" are considered to be made to the "contribution (reserve) fund", and references to "dividend distributions" are considered to be made to "use of the distributable surplus funds".

In order to obtain the operating authorization from the FSA, the paid-up contribution (reserve) fund shall represent at least 80% of the values stipulated in art. 95 par. (1) let. d) of Insurance Law no. 237/2015, as subsequently amended and supplemented, for the mutual companies supervised under the Solvency II regime, and from the safety fund provided under art. 173 par. (1) lit. a) of the same law, for the mutual companies supervised under the national regime.

The articles of association of a mutual insurance company may provide that, while the original contribution fund is not wholly or partly repaid to the founders' members, said members are entitled to receive interest.

The mutual companies organize their management in a similar way to the joint-stock companies, respectively in a unitary or dualistic system, applying the provisions of art. 137-158 of the Law no. 31/1990, republished, insofar as they do not breach the legal provisions and the hereby law. By way of derogation from the provisions of art. 143 para. (1) of the Law no. 31/1990, republished, the delegation of the executive management is carried out to at least two persons. Mutual companies will appoint persons with key positions or other critical positions according to the law.

The authorization process and the assessment of the fulfillment of the conditions for authorization by the FSA is carried out in two stages, as follows: a) prior approval for registration at the trade registry office b) issuance of the operating license.

Members of the mutual insurance companies conclude the insurance contract and acquire the capacity of insured after obtaining the operating license.

The insurance contract shall include provisions in respect to the members of the mutual insurance company, their rights and obligations as members, starting from the provisions of the articles of association. Also the insurance contracts shall include clauses regarding the additional contributions that may be required from the members.

Mutual insurance companies can change their legal form into a joint stock company with the object of carrying out the insurance activity with the prior approval of the FSA.