



Hammond Bogaru and Associates, Bucharest – Romania

Article: **“Aquisition of Brokerage Companies. A New Interest for Foreign Investors in Romania.”**

Language: English

Available Translations: RO, FR

Authors: Cristian Bogaru, Sorina Stoica

Published in: Juridice.ro, AvocatBiz.ro (Online)

Date: february 2011

Almost two years after the world economic crisis affected Romania, the economic conditions have transformed the insurance intermediation market into one of the successful areas of the financial industry in Romania. This is one of the activities which have succeeded to adapt and to obtain growth comparable to those obtained before the crisis.

More than one third of the insurance policies that were concluded in 2009 were attained with the help of over 500 insurance brokers that operate on the market. This trend was maintained in the first quarter of 2010. The share of the gross written premiums through brokerage companies represented 27% of the total insurance market.

In the first three months of 2010 the business of the Romanian brokers registered a growth of almost 15%, in volume of “mediated premiums”, reaching a total of 150 million Euros. The estimates for the present year regarding the extent of the brokerage market in the total insurance market indicates a growing percentage of almost 40%, which can be translated as an increase of the customers’ interest towards the insurance brokerage companies. And there where consumers’ interest for the insurance products is, there will implicitly be investors’ preoccupation for this segment.

In the past two year major changes in the insurances market have taken place. In a major French insurance company entered the Romanian market through two mergers and a takeover and the new company has become one of the most powerful insurance and finances international groups.

The legal framework in Romania regarding insurance is favorable to setting up brokerage companies as well as purchasing shares in established in this field.

Normally, the brokerage companies are set up as limited liability companies. For the purpose of this article we refer to the social parts of a limited liability company as shares. A major requirement is that a brokerage firm cannot have any other object of activity in order to obtain the CSA’s approval.

The method most used to obtain the shares in a limited liability company is through a transfer agreement which is normally referred to as a share assignment contract. The contractual parties are the assignor (the seller), who is either the sole or one of the current associate of the limited liability company that owns the shares that are shot be assigned and the assignee (the buyer), meaning the future associate who is either a physical or legal person that will take over the ownership of the shares.

Due to the legal requirements and the norms and regulations and rules of the Insurance Supervisory Commission in Romania (CSA) any modification regarding the shareholders, the capital or the transfer of shares is subject to analysis and verification by CSA. .

An assignee who becomes a significant shareholder has to fulfill the same conditions that the law required of the significant shareholder at the moment of setting up of the company or when the shares were themselves transferred to the assignor if it was not the original shareholder. The approval of CSA is needed prior to registering with the Trade Registry of any such transfer of shares.

An assignee who is a significant shareholder also has inter alia to fulfill certain special conditions:

- a) Not to be a shareholder or a direct or indirect associate of an insurer, reinsurer or insurance or reinsurance agent, and not to have as a direct shareholder or administrator an insurer, reinsurer, an insurance or reinsurance agent, a brokerage assistant or the leader of a brokerage assistant in the form of a legal person or the leader of an insurance agent in the form of a legal person.
- b) The associates or significant shareholders, the executives and administrators should not have a criminal record or be guilty of crimes contrary to the financial-fiscal legislation as well as tax offences; it should also not have been guilty of any offence relating to the mediation of insurance activities or have had any registration withdrawn.
- c) Administrators of an insurance brokerage firm cannot be employees of insurance and/or reinsurance companies during the period of their mandate period with the insurance and/or reinsurance broker.
- d) The executives should not hold management positions within another Romanian or foreign legal person.
- e) Any executives or administrators should have good reputation, should be honest and should prove moral probity.
- f) The executives should be graduates of higher education and have an experience of at least 3 years in an operative management position in the field of insurances or of at least 5 years in a management position in the financial-banking field and/or in the field of private pensions.

The term “operational management position” includes positions such as the head of a department/section whose activity is relevant to the specifics of the insurance or financial-banking field, as well as the position of agency or branch manager.

For each person nominated to an executive or administrative position the CSA will take into account actions which it considers relevant. Such actions were such as:

- a) The person in question is or was involved in a conflict with a supervisory authority in the field of insurance or financial-banking or private pensions in Romania or abroad; was penalized or his/her authorization or approval was rejected or retracted.
- b) If he fulfilled a function or was in a position that required approval and such approval had not been obtained.

- c) During the exercise of the position of administrator/manager of an insurer or insurances and/or reinsurances intermediary it did not comply with any mandatory requirements imposed by the relevant authority.
- d) The person in question was or is subject to penal proceedings.

At the request of CSA, if an assignee is a foreign legal person, then it has the obligation to present the documents (certificates, attestations, etc) issued by the state of it's residence if it is a loan institution, financial-banking institution, services and financial investments company, insurance/reinsurance company, or insurance broker.

Through the conditions imposed on the insurance brokers, the CSA as a supervisory body has the role to protect the insured persons and to ensure the correct evolution of a workable insurance system in Romania.

In accordance with the latest CSA report, the market open to insurance brokerage companies in Romania showed at the end of 2009 a potential market with a value of 725 million Euros in respect of insurance commissions. In the results of a financial analysis at December 31st 2009 which was sent by over 500 insurance brokers, showed that in 2009 there was an increase in commissions for the brokers 7.5% as compared to 2008. These figures indicate that the insurance brokerage market reached a level of 35% of the total gross premiums which were collected by the insurance market in Romania. As stated in the data presented by CSA at the International Insurance - Reinsurance Forum 2010 the total profit of the insurance brokerage market in 2009 was 145.3 million LEI. Compared to 2008, the brokerage market registered an increase of 77%, from 174 billion LEI to 310 billion LEI.

From this perspective, the field of insurance brokerage is and continues to be of major interest to the investors. The revival of the insurance market in Romania represents an important economic step as it is looked upon with optimism by the investors, suppliers and consumers within this sector.

A comparison of the dynamics of the insurance market, predicts that the investments in this market will continue in the following period and the focus will be on the market of selling insurance policies either direct or through brokers to natural persons; a market which will have beneficial effects in the future.