

Republic of Serbia

LAW ON ALTERNATIVE INVESTMENT FUNDS

(Republic of Serbia Official Gazette, No 73/2019)

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The original Serbian text of the Law is binding in all respects.

Comments are more than welcome and can be addressed at office@sec.gov.rs.

ALTERNATIVE INVESTMENT FUNDS LAW

(RS Official Gazette, No 73/2019)

I GENERAL PROVISIONS

Scope and application

Article 1

This Law shall regulate:

- 1) the establishment and management of alternative investment funds;
- 2) the establishment, activities, and operations of management companies of alternative investment funds;
- 3) the marketing, issue, and redemption of shares of alternative investment funds;
- 4) the activities and duties of depositaries in the context of this Law;
- 5) the powers of the Securities Commission (the Commission);
- 6) other issues relevant for the field of alternative investment funds and management companies of alternative investment funds.

This Law shall apply to:

- 1) Management companies of alternative investment funds with a registered office in the Republic of Serbia, managing one or more alternative investment funds;
- 2) Management companies of alternative investment funds with a registered office in an EU Member State, managing one or more alternative investment funds;
- 3) Management companies of alternative investment funds with a registered office in third country, managing one or more alternative investment funds.

Definitions of Terms

Article 2

The following definitions shall apply for the purposes of this Law:

1) ‘Member State’ means a member state of the European Union (‘the Union’) and the European Economic Area (EEA);

2) ‘third country’ means a state that is not a Member State in the context of Point 1 of this Paragraph;

3) ‘Alternative Investment Fund’ (AIF) means an investment fund established pursuant to this law that raises capital from investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors, which does not require authorisation pursuant to the law governing the establishment and operation of open-ended investment funds subject to public offering;

4) ‘Management company of Alternative Investment Funds’ (AIFM) means a legal person having its registered office in the Republic of Serbia (‘Serbia’) whose regular business is managing one or more AIFs pursuant to authorisation issued by the Commission, pursuant to this law;

5) ‘open-ended AIF’ means a separate set of assets that does not have legal personality and is set up and managed by an AIFM in its own name and on behalf of the AIF members, pursuant to this law, operating rules, and/or prospectus of such AIF, where one is required to be published. Investment units of an open-ended AIF may be redeemed at the request of its members, either directly or indirectly, from assets of the open-ended AIF as envisaged in the operating rules and/or prospectus of the AIF, where one is required to be published, prior to the completion of the winding-up procedure or termination of the AIF;

6) ‘closed-ended AIF’ means:

(1) closed-ended AIF without legal personality: a separate set of assets without legal personality and is set up and managed by an AIFM on its own behalf and for the joint account of members of the AIF, the investment units of which may not be redeemed from assets of the AIF. A closed-ended AIF without legal personality shall always be managed by an AIFM,

(2) closed-ended AIF with legal personality: a legal person incorporated as a joint-stock company or limited liability company, established and managed by an AIFM on its own behalf and for its account, pursuant to the provisions of this Law, operating rules, and/or prospectus of the AIF, where one is required to be published, the shares or shares of stock of which may not be redeemed from the assets of the AIF at the request of the members,

(3) internally-managed closed-ended AIF with legal personality: a closed-ended AIF with legal personality which manages its assets internally rather than through an AIFM, which is at the same time also an AIFM;

7) 'Member State AIFM' means a legal person having its registered office in a Member State whose regular business is managing one or more AIFs pursuant to authorisation issued by a competent authority of that Member State;

8) 'third-country AIFM' means a legal person having its registered office in a third country whose regular business is managing one or more AIFs pursuant to authorisation issued by a competent authority of that third country;

9) 'AIFM branch' means a place of business which is a part of an AIFM, which has no legal personality and which provides the services for which the AIFM has been authorised by the Commission. All the places of business established in a Member State by an AIFM with its registered office in Serbia shall be regarded as a single branch;

10) 'Member State AIFM branch' or 'third-country AIFM branch' means all places of business established in any of the Member States by an AIFM with its registered office in a Member State or third country, which shall be regarded as a single branch for the purposes of this Law;

11) 'carried interest' means a share in the profits of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF;

12) 'competent authority' means a national authority of a Member State or third country that is empowered by law or regulation of that state or country to authorise the establishment or operation of, or supervise AIFMs and AIFs;

13) 'depository competent authority' means a national authority of a Member State or third country that is empowered by law or regulation of that state or country to authorise the establishment or operation of, or supervise depositaries;

14) 'Member State AIF' means:

(1) an AIF authorised to operate or registered in a Member State, pursuant to law or regulation of that Member State,

(2) an AIF not authorised to operate or registered in a Member State, but having its registered office and/or place of effective management in the Member State;

15) 'investment management' means at least portfolio management and risk management;

16) 'master AIF' means an AIF in which another AIF invests or has exposure in, pursuant to Point 17 of this Paragraph;

17) 'feeder AIF' means an AIF which, through investment into a master AIF, follows its investment policy and strategy by:

(1) investing at least 85% of its assets in shares of in AIF of the master AIF;

(2) investing at least 85% of its assets in more than one master AIF, if such master AIFs have identical investment strategies,

(3) has otherwise an exposure of at least 85% of its assets to such a master AIF;

18) 'holding company' has the meaning as provided for in the law governing companies;

19) 'home Member State of the AIF' means:

(1) the Member State in which the AIF is authorised or registered under applicable national law, or in case of multiple authorisations or registrations, the Member State in which the AIF has been authorised or registered for the first time,

(2) if the AIF is neither authorised nor registered in a Member State, the Member State in which the AIF has its registered office and/or place of effective management;

20) 'home Member State of the AIFM' means the Member State in which the AIFM has its registered office. For third country AIFMs, all references to 'home Member State of the AIFM' in this law shall be read as the 'Member State of reference';

21) 'Member State of reference' means the Member State designated pursuant to Article 73[1] of this Law;

22) 'host Member State of the AIFM' means:

(1) a Member State, other than the home Member State, in which an EU AIFM manages EU AIFs,

(2) a Member State, other than the home Member State, in which an EU AIFM markets shares of an EU AIF,

(3) a Member State, other than the home Member State, in which an EU AIFM markets shares of a third country AIF,

(4) a Member State, other than the Member State of reference, in which a third country AIFM manages EU AIFs,

(5) a Member State, other than the Member State of reference, in which a third country AIFM markets shares of an EU AIF,

(6) a Member State, other than the Member State of reference, in which a third country AIFM markets shares of a third country AIF;

23) 'European passport' means the right of an AIFM to operate in the territory of other Member States pursuant to authorisation by the Commission or a competent authority of the home Member State;

24) 'issuer' means a legal person as provided for by legislation governing the capital market, the securities or other financial instruments of which are traded in a regulated market, as provided for by legislation governing the capital market;

25) 'legal representative' means a natural person domiciled in the Republic or a legal person with its registered office in the Republic, and which, expressly designated by a third country AIFM, acts on behalf of such third country AIFM vis-à-vis the Commission, authorities, investors, bodies and counterparties to the third-country AIFM in Serbia with regard to the third-country AIFM's obligations under this Law;

26) 'leverage' means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;

27) 'managing AIFs' means performing at least investment management functions for one or more AIFs;

28) 'marketing' means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of shares of an AIF it manages to or with investors;

29) 'non-listed company' means a company having its registered office in the Republic the shares of which are not traded in a regulated market, as provided for by the law governing the capital market;

30) 'non-listed Member State company' means a company having its registered office in a Member State the shares of which are not traded in a regulated market, as provided for by the law governing the capital market;

31) 'prime broker' means an investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

32) 'professional investor' means an investor meeting the professional client requirements, as provided for by the law governing the capital market;

33) 'retail investor' means an investor who is not a professional investor;

34) 'semi-professional investor' means a retail investor who:

(1) has undertaken to make a one-off subscription of 50,000 euros or more, or an equivalent amount in other currency, to be invested into shares of an AIF, pursuant to the operating rules and/or prospectus of such AIF, where one is required to be published,

(2) has been identified by the AIFM as having sufficient experience in the capital market and professional knowledge to understand investment risks, as well as that investment in the AIF meets their investment objectives;

35) 'qualifying holding' means a direct or indirect holding in an AIFM which represents 10% or more of the capital or of the voting rights, or which makes it possible to exercise a significant influence to be exerted on the management of the AIFM. For the purposes of this provision, the relevant provisions of the law governing the capital market shall apply to the determination of voting rights;

36) 'securitisation special purpose entity' means a legal person established with the sole purpose of carrying on securitisation, as provided for by law;

37) 'UCITS' means an undertaking for collective investment in transferable securities authorised in accordance with the law governing open-ended investment funds subject to public offering;

38) 'depository' means a credit institution providing depository services defined in Article 158 of this Law;

39) 'member' or 'shareholder' of an AIF means a natural or legal person – the lawful holder of shares of an AIF in whose name and on whose behalf the shares (equity interests) and shares of stock of the AIF are registered, or on whose behalf investment units are registered in the AIF investment unit register;

40) 'investment unit' means a freely transferable, dematerialized financial instruments financial instrument that represents a calculated proportionate share in the total net assets of the AIF, or a closed-ended AIF without legal personality;

41) 'share in an AIF' means a share (equity interest) i.e. share of stock in an closed-ended AIF with legal personality, or an investment unit in an open-ended AIF, or a closed-ended AIF without legal personality;

42) 'prospectus' means the basic document of an AIF which provides complete and clear information to prospective investors for making an informed decision to invest in the AIF;

43) ‘key investor information’ means a document of an AIF containing appropriate information about the essential characteristics of the AIF concerned, clearly indicated as key information, such as the types of investments and possible risks, that permits investors to make an informed decision about the proposed investment, to which provisions of the law governing open-ended investment funds subject to public offering shall accordingly apply;

44) ‘member of the management’ means a chief officer, member of the board of directors, executive director or a member of supervisory board, in the context of the law governing companies;

45) ‘AIF portfolio’ means the assets into which AIF invests in accordance with the provisions of this Law;

46) ‘European Venture Capital Fund’ (EuVECA) means a designation that may be used by an AIFM for an eligible venture capital fund as defined in the EU Regulation on European venture capital funds;

47) ‘European Social Entrepreneurship Fund’ (EuSEF) means a designation that may be used by an AIFM for an eligible venture capital fund as defined in the Regulation on European social entrepreneurship funds;

48) ‘public offer’ means any offer made in any form and by any means to all prospective investors that contains sufficient information concerning the conditions of such offer and the shares in the AIF offered, based on which an investor may decide whether to invest in the AIF;

49) ‘private placement’ means any conditional offer (due to e.g. the minimum investment required, target group of investors, or number of investors) made to professional and/or semi-professional investors in any form and by any means that contains sufficient information concerning the conditions of such offer and the shares in the AIF offered to allow an investor to decide whether to invest in the AIF;

50) ‘relevant person’ in relation to an AIFM means:

(1) a senior manager of the AIFM, member or shareholder of the AIFM, member of the supervisory board, or holder of power of attorney of AIFM,

(2) a senior manager, member of the supervisory board or holder of the power of attorney in a closed-ended AIF with legal personality,

(3) a senior manager of a legal person providing services to the AIFM under a delegation arrangement, a senior manager or a member of the company authorized for the offering or placement of shares in the AIF;

(4) an employee of the AIFM, an employee of a legal person providing services to the AIFM under a delegation arrangement, or an employee of a legal person authorised for the offering or placement of shares in the AIF that is involved in the activities performed by the AIFM,

(5) any other natural person providing services for the AIFM, or person engaged by the AIFM involved in the activities performed by the AIFM;

51) ‘personal transaction’ means a transaction in financial instruments performed by a relevant person or performed in the name and/or on behalf of a relevant person, if at least one of the following criteria is met:

(1) a relevant person is acting beyond the scope of activities it performs as a relevant person;

(2) the transaction is executed on behalf of one of the following persons:

– a relevant person;

– a person with whom the relevant person has close links in the context of the law governing capital market;

– a person with whom the relevant person has a family relationship or has shared the same household for at least one year, on the date of the personal transaction concerned, or

– a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade;

52) ‘durable medium’ means any instrument which enables permanent storage of information in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

The terms: ‘Regulated market’, ‘multilateral trading facility (MTF)’, ‘OTC market’, ‘clearing’, ‘settlement’, ‘inside information’, ‘close links’, ‘control’, ‘financial instrument’, ‘transferable securities’, ‘credit institution’, ‘parent undertaking’, ‘subsidiary’, and ‘statutory disqualifications’ have the meanings as provided for in the law governing the capital market.

Exemptions

Article 3

This Law shall not apply to:

1) holding companies;

- 2) voluntary pension fund management companies and voluntary pension funds;
- 3) insurance and reinsurance undertakings;
- 4) supra-national institutions such as: the European Central Bank, the European Investment Bank, the European Investment Fund, European development-oriented financial institutions and bilateral development banks; the World Bank; the International Monetary Fund; other supra-national institutions, and similar international organisations where such institutions manage AIFs and to the extent that such AIFs act in the public interest;
- 5) national central banks;
- 6) national, regional, and local governments and authorities or other institutions that manage funds supporting pension and social security systems;
- 7) employee participation or savings schemes;
- 8) securitisation special purpose entities.

This Law shall not apply to AIFMs in so far as they manage one or more AIFs whose only members or shareholders are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those members or shareholders is itself an AIF.

Article 4

Shares of an AIF shall be offered pursuant to this Law.

Notwithstanding the immediately preceding Paragraph, shares of a closed-ended AIF with legal personality that is incorporated as a joint stock company shall be offered pursuant to this Law and the law governing the capital market.

Any type of AIF may be offered to professional and semi-professional investors.

Only AIFs that meet the requirements of this Law may be offered to retail investors.

Register of AIFMs and AIFs

Article 5

AIFMs authorised by the Commission and the AIFs they manage shall be recorded in the public register of AIFMs and AIFs maintained by the Commission.

All up-to-date information as provided for in the enactment referred to in Para. [6] of this Article shall be recorded in the register referred to in Para. [1] of this Article.

Personal information handled must be appropriate, relevant and limited to only those required relevant to the purpose of such data handling.

The purpose of handling of data contained in the registers referred to in Para. 1 of this Article shall be the carrying out of regulatory and supervisory competencies of the Commission.

The information contained in the registers referred to in Para. 1 of this Article shall be published on the Commission's website, as provided for in the enactment referred to in Para. 6 of this Article, however, if personal data must be published then only name and surname of the natural person shall be published.

The Commission shall enact detailed regulations governing the content and maintenance arrangements for the registers referred to in Para. [1] of this Article, as well as the manner in which the information from that register may be disclosed.

Article 6

The Commission shall publish on its website an up-to-date list of all Member State and third-country AIFMs and their subsidiaries operating in the Republic, as well as a list of Member State and third-country AIFs marketed in in the Republic.

The Commission shall also publish a list of Member State AIFMs marketing eligible EuVECA and EuSEF AIFs in the Republic, as well as a list of such AIFs.

Prohibition against Use of Phrase ‘Alternative Investment Fund’ or ‘AIF’

Article 7

No legal person or sole trader may use the phrase ‘Alternative Investment Fund’ or ‘AIF’, or a phrase derived or abbreviated from that phrase as part of their legal or trading name, or the name of a product or service, except as provided for in this Law.

II. MANAGEMENT COMPANIES OF ALTERNATIVE INVESTMENT FUNDS

1. Form of Incorporation and Activity of AIFMs

Form of Incorporation

Article 8

AIFMs shall be incorporated as limited liability companies or joint-stock companies that are not a public company within the meaning of the law governing the capital market.

Notwithstanding Para. [1] of this Article, a large AIFM may be incorporated exclusively as a two-tier joint-stock company.

AIFMs shall be subject to the law governing corporations and the law governing the capital market, except unless otherwise provided for by this Law.

AIFMs may not be offeree companies within the meaning of the law governing takeovers of joint-stock companies.

Each AIF shall be managed by one AIFM which shall be responsible for its compliance with the provisions of this Law.

When an AIFM, which is not a closed-ended AIF and which has a legal personality and internal management structure, is unable to ensure compliance with the provisions of this Law, for which the AIF itself is responsible, it shall immediately notify the Commission thereof, and where relevant – the competent authority of the AIF in another Member State.

After the Commission receives the notification referred to in paragraph 6 of this Article, it shall impose the relevant measures in order to restore compliance with the provisions of this Law.

If, notwithstanding the imposed measures, the non-compliance still persists, the Commission shall withdraw the authorisation from the AIFM to manage the AIF, and the AIF shares shall no longer be marketed.

The legal name of an AIFM must include the phrase ‘društvo za upravljanje investicionim fondovima’ [‘investment fund management company’].

A legal person not authorised pursuant to this Law may not use the phrase ‘društvo za upravljanje investicionim fondovima’ [‘investment fund management company’], a similar phrase or a phrase derived or abbreviated from that phrase as part of its legal or trading name or in any business transactions.

Activities of AIFMs

Article 9

AIFMs shall perform the following activities:

- 1) core activity: management of AIFs;

2) ancillary activities:

(1) portfolio management on a discretionary and client-by-client basis pursuant to the law governing the capital market,

(2) ancillary services:

- provision of investment advice pursuant to the law governing the capital market,

- reception and transmission of orders in relation to financial instruments,

- safe-keeping and administration in relation to shares, shares of stock and investment units of collective investment undertakings.

Management of AIFs shall comprise:

1) establishment or organization of AIFs;

2) management of AIF portfolios;

3) risk management;

4) Administrative duties, including legal and accounting services in connection with the management of AIFs, asset valuation, valuation of shares in AIFs, compliance monitoring pursuant to Article 42 of this Law; payment of dividends or profits; issue and redemption of shares in AIFs, meeting contractual arrangements, including the provision of certificates and replying to investors' requests, maintenance of records and registers of shares in AIFs, and disclosure of information to investors;

5) Marketing of shares in AIFs;

6) Activities related to the assets of AIFs.

Services referred to in Para. [2]6) of this Article shall comprise services required for the performance of duties of AIFMs, facility management, property management, provision of advice to businesses as to equity structures, business strategies, and related matters, and services pertaining to mergers and acquisitions and other services related to AIF management.

In addition to complying with the provisions of this Law, in providing a service referred to in Para. [1]2) of this Article, an AIFM shall also comply with the law governing the capital market and statutory instruments regulating capital thresholds, organisational requirements, operating conditions, consumer protection, compliance with orders issued by competent

authorities, rules of professional behaviour vis-à-vis clients in the provision of such investment services, and investor protection and supervision of investment services.

In addition to services referred to in Para. 1 of this Article, an AIFM may also manage UCITSs if appropriately authorised pursuant to the law governing open-ended investment funds subject to public offering, and may manage voluntary pension fund portfolios if authorised, on a discretionary and client-by-client basis.

AIFMs may not provide any service other than those referred to in Paras. [1] and [5] of this Article.

An internally-managed closed-ended AIF with legal personality may not provide any service other than the management of that AIF.

AIFMs may manage one or more AIFs.

AIFMs may manage AIFs and UCITSs supervised by the competent authorities of other Member States or AIFs and open-ended investment funds subject to public offering subject to supervision by the competent authorities of third countries, provided they are duly authorised to do so by the Commission.

Article 10

The services of an AIFM may be performed by:

- 1) an AIFM authorised pursuant to this Law;
- 2) a management company previously authorised pursuant to the law governing open-ended investment funds subject to public offering, and pursuant to this Law;
- 3) a Member State AIFM that, pursuant to the provisions of this Law, establishes a subsidiary in the Republic or is able to operate as an AIFM directly in the Republic pursuant to an approval from a competent authority of the home Member State of the AIFM;
- 4) a third-country AIFM that, pursuant to the provisions of this Law, establishes a subsidiary in the Republic or is able to operate as an AIFM directly in the Republic pursuant to an approval from a competent authority of the Member State of reference of the AIFM and the approval of the Commission.

Restrictions on Operation of and Services Provided by AIFMs

Article 11

AIFMs may not hold equity interests or participate in the management of other legal persons, unless an exemption is available under this law.

Article 12

AIFMs may provide services referred to in Article 9 of this Law it has been authorised for, provided that they meet all the requirements envisaged by this Law and statutory instruments enacted by the Commission that regulate the authorisation of AIFMs.

AIFMs may provide services they have been authorised for in the Republic under the conditions set out in this Law.

Investment firms authorised pursuant to the law governing the capital market need not be authorised pursuant to this Law in order to provide investment services such as management of individual portfolios of clients investing in AIFs.

AIFMs which are not authorised to perform investment management activities, in the context of Article 2[1]15) of this Law shall not be authorised to perform the remaining activities listed in Article 9 of this Law.

AIFMs may not be authorised only to provide the ancillary services referred to in Article 9[1]2) of this Law.

AIFMs that have not been authorised to provide services referred to in Article 9[1]2)(1) of this Law may not be authorised to provide services referred to in Article 9[1]2)(2) of this Law.

The Commission shall adopt a regulation governing the content of applications for authorisation for all AIFMs and shall prescribe the required documentation to accompany such applications.

2. Categories of AIFMs and Changes to Categories

Categories of AIFMs

Article 13

AIFMs may be large and small, depending on their total AIF assets under management and the categories of investors that AIFs are offered to.

The total value of assets under management shall be determined pursuant to the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, as well as pursuant to the enactment of the Commission referred to in paragraph 4 of this Article.

Where the aggregate AIF assets under management of an AIMF exceed a suitable threshold, the AIMF shall comply with the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, as well as pursuant to the enactment of the Commission referred to in Article 4, unless otherwise provided for by this Law.

The Commission shall stipulate which items are included in and/or excluded from the calculation of total AIF assets under management of an AIFM.

Large AIFMs

Article 14

A large AIMF is an AIMF that either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manages a portfolio of AIFs whose assets under management exceed the threshold of:

1) 25 million euros, including any assets acquired through use of leverage,

2) 75 million euros, if the AIFs it manages:

(1) are unleveraged,

(2) have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

An AIMF managing an AIF offered to retail investors shall always be deemed a large AIMF, irrespective of the amount of its AIF assets under management.

Small AIFMs

Article 15

A small AIFM is an AIFM intending to offer shares in AIFs it manages to professional or semi-professional investors and that either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manages a portfolio of AIFs whose assets under management do not exceed the threshold referred to in Article 14, paragraph 1 of this Law.

A small AIFM shall be exempt from the following provisions of this Law:

1) Article 22, which governs supplementary capital;

- 2) Article 32[2], which governs the minimum size of the members of management of the AIFM;
- 3) Articles 42 to 45, which govern: compliance management, internal audit, risk management, and liquidity management;
- 4) Articles 47 and 48, which govern remuneration policy and remuneration committee;
- 5) Articles 63 to 65, which govern cross-border provision of services by AIFMs from the Republic vis-à-vis Member State AIFMs;
- 6) Articles 69 to 71, which govern AIFMs from the Republic marketing shares of third-country AIFs in the Republic or a Member State and marketing shares of AIFs from the Republic in a third country;
- 7) Article 158[1]1), Article 159, and Article 169, which govern the due diligence duties of depositaries and compliance audit for depositaries.

Notwithstanding Article 9[6] of this Law, a small AIFM may also provide other services without requiring prior authorisation from the Commission, provided that such services are not provided as its principal activity and do not constitute conflict of interest with services envisaged for a small AIFM pursuant to this Law.

Article 16

A small AIFM may have one management member who shall direct the operations and represent the AIFM.

A small AIFM may delegate management functions over an AIF to another AIFM without approval from the Commission, but must notify the Commission thereof.

Small AIFMs may substitute a depositary without prior approval from the Commission, but must notify the Commission thereof.

Small AIFMs may not market shares of AIFs on a cross-border basis or manage AIFs in a Member State, nor market shares of third-country AIFs they manage in the Republic and/or a Member State.

Small AIFMs shall be subject to EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight.

In the course of its operations and in all materials intended for investors, a small AIFM shall clearly indicate that it is not required to apply the provisions of this Law in their entirety, as well as to represent the risks to investors.

Small AIFMs shall notify the Commission:

- 1) of the main instruments in which they trade, principal exposures, and most important concentrations of the AIFs that they manage in order to enable the Commission to monitor systemic risk effectively;
- 2) promptly, in the event they no longer meet any of the conditions referred to in Article 15, paragraph 1 of this Law;
- 3) of any other matters relevant for execution of orders of the Commission when required by the Commission to do so.

Changes to Categories of AIFMs

Article 17

Where the total AIF assets under management by a small AIFM exceeds the threshold referred to in Article 14[1] of this Law, and the small AIFM assesses the threshold has been exceeded permanently, the small AIFM shall apply for authorisation with the Commission to operate as a large AIFM within 30 days.

Notwithstanding any thresholds provided for in this Law, a small AIFM may apply for authorisation with the Commission to operate as a large AIFM.

Article 18

Where a large AIFM has ceased to meet the criteria referred to in Article 14[1] of this Law, such AIFM shall promptly notify thereof the Commission and its shareholders and the members of the AIFs under its management.

In the event that a large AIFM no longer intends to operate as a large AIFM, such AIFM shall promptly notify thereof the Commission and its shareholders and the members of AIFs under its management, at the application of such AIFM, the Commission shall enact a procedural decision terminating its authorisation and shall issue authorisation to operate as a small AIFM.

Within five working days after it has received the procedural decision of the Commission referred to in Para. [2] of this Article, the AIFM shall notify all members or shareholders of AIFs under its management of the change in the category of the AIFM, whereby it must

indicate it is no longer required to apply the provisions of this Law in their entirety, as well as to represent the risks thereof to members or shareholders of AIFs under its management.

Article 19

Where an AIFM manages a European venture capital fund or a European social entrepreneurship fund designated as an EuVECA or EuSEF, it may market shares of such funds only to investors that meet the requirements of EU regulations governing these types of funds.

3. Capital Requirements

Initial Capital of AIFMs

Article 20

The cash portion of initial capital of an AIFM shall depend on the category of the AIFM as referred to in Article 13 of this Law, and shall amount to at least:

1) for large AIFMs:

(1) the dinar equivalent of 125,000 euros at the middle exchange rate of the National Bank of Serbia as of date the contribution is made;

(2) dinar equivalent of 300,000 euros at the middle exchange rate of the National Bank of Serbia as of date the contribution is made for internally-managed closed-ended AIFs with legal personality;

2) for small AIFMs:

(1) the dinar equivalent of 70,000 euros at the middle exchange rate of the National Bank of Serbia as of date the contribution is made;

(2) dinar equivalent of 150,000 euros at the middle exchange rate of the National Bank of Serbia as of date the contribution is made for internally-managed closed-ended AIFs with legal personality.

The cash portion of the initial capital shall be contributed in full, before the AIFM is registered with the business registry, by being paid into an interim bank account.

Capital of AIFMs

Article 21

The capital of an AIFM shall consist of its initial capital and own funds, less deductibles, pursuant to this Law and the statutory instrument of the Commission referred to in Para. [4] of this Article.

The capital of an AIFM, including own funds referred to in Article 22[5] 1) of this Law, must be invested in liquid assets or assets readily convertible to cash in the short term and it shall not be used in speculative trading.

Capital is deemed to be invested in liquid assets if it is held in securities with maturity of up to one year issued by the Republic or the National Bank of Serbia, or if it is held in the form of a time or sight cash deposit with a bank that is available at first demand, in accordance with the law.

The Commission shall enact detailed regulations governing the calculation of capital, features of initial capital and own funds, and features of their constituent items, deductibles, and capital restrictions referred to in Para. [1] of this Article.

Own funds of AIFMs

Article 22

Where the value of AIF portfolios managed by the AIFM exceeds the dinar equivalent of 250 million euros at the middle exchange rate of the National Bank of Serbia, the AIFM shall provide an additional amount of own funds equal to 0.02% of the amount by which the value of the portfolios of the AIFM exceeds the above amount, but the required total of the initial capital and own funds shall not, however, exceed the dinar equivalent of 10 million euros at the middle exchange rate of the National Bank of Serbia.

The AIF portfolios referred to in Para. [1] of this Article shall be deemed to include AIF portfolios for which the AIFM has delegated asset management functions to a third party pursuant to this Law, but shall not include AIF portfolios that the AIFM is managing under delegation.

At the application of an AIFM, the Commission may enact a procedural decision pursuant to the statutory instrument referred to in Para. [7] of this Article to provide up to 50% of the additional amount of own funds referred to in Para. [1] of this Article, provided that the AIFM benefits from a guarantee of the same amount given by a bank that has its registered office in the Republic.

The Commission may waive the requirement referred to in Para. [3] of this Article with respect of an AIFM provided that the AIFM benefits from a guarantee of the same amount given by a bank or insurance undertaking that has its registered office in a Member State, or a

third country, where third-country institutions are subject to prudential rules equivalent to those laid down in Serbian or EU law.

To cover potential professional liability risks resulting from activities AIFMs may carry out, AIFMs and internally managed closed-ended AIFs with legal personality must:

- 1) have additional own funds appropriate to cover potential liability risks arising from professional negligence, or
- 2) hold professional indemnity insurance against liability arising from professional negligence appropriate to the risks covered.

In fulfilling the conditions referred to in Para. [5] of this Article, an AIFM shall comply with the EU regulations governing in greater detail, in relation to AIFs - exemptions, general operating conditions, depositaries, leverage, transparency, and oversight.

The Commission shall regulate in detail the reporting methods referred to in Para. 1 and 5 of this Article.

The Commission shall regulate in detail the additional capital requirements for AIFMs which in addition to managing AIFs manage UCITS.

Minimum Capital of AIFMs

Article 23

The minimum capital of an AIFM shall depend on the category of that AIFM.

The capital of an AIFM must at all times be greater than or equal to the greater of:

- 1) minimum initial capital referred to in Article 20[1] of this Law, or, where additional own funds are required, the total of initial capital and additional own funds referred to in Article 22[1] of this Law, or
- 2) one-quarter of the fixed general costs incurred by the AIFM in the course of the preceding financial year.

Where the capital of an AIFM falls below the minimum threshold referred to in Para. [2] of this Article the Commission may set a period of time for the AIFM to remedy such deficiency or take an enforcement action referred to in this Law.

Where less than one year has elapsed since the commencement of operations of the AIFM, the capital of that AIFM must be greater than or equal to the greater of:

- 1) amount referred to in Para. [2]1) of this Article, or
- 2) one-quarter of the flat fixed costs envisaged in the business plan of the AIFM, except where the Commission requests adjustments to be made to such plan.

The Commission shall determine the composition of the flat fixed costs referred to in Para. [2]2) of this Article, as well as the schedule for reporting capital calculations to the Commission.

4. Authorisation

Requirements for and Procedure of Authorisation

Article 24

The Commission shall authorise an AIFM by a procedural decision.

A person intending to establish an AIFM shall apply for authorisation with the Commission. An application for authorisation may also be made by an existing joint-stock company or limited liability company.

AIFMs must be authorised prior to registration of establishment or taking up of activities as AIFM with the business registry.

Any Serbian or foreign natural or legal person may establish an AIFM. One Serbian and one foreign natural or legal person and persons with close links to these persons may not have a qualifying holding in more than one AIFM.

AIFMs must neither exercise control nor have a qualified holding in an investment firm, financial institution, insurance undertaking, or other financial institution, except where such exercise of control is the consequence of an investment by AIFs managed by that AIFM.

AIFMs must not acquire shares of stock issued by the depositary.

AIFMs must not acquire shares (equity interests) in or shares of stock of a legal person to which the depositary has delegated functions referred to in Article 163 of this Law.

Application for authorisation

Article 25

An application for authorisation shall cover the services of management of AIFs referred to in Article 9[1]1) of this Law.

Where an AIFM intends to provide any of the ancillary services referred to in Article 9[1]2) of this Law, it shall accompany the application referred to in Para. [1] of this Article by an application for the provision of those services.

Article 26

An application for authorisation shall be accompanied by:

- 1) memorandum and articles of association of the AIFM, where the AIFM is incorporated as a joint-stock company;
- 2) proof of payment of initial capital into an interim bank account;
- 3) evidence of origin of the initial capital;
- 4) list and information on proposed members of management;
- 5) list of members or shareholders of the AIFM, or an excerpt from the business register for shareholders or members that are legal persons, or duly certified translation of an excerpt from the relevant foreign business register for foreign legal persons, including information on persons who have direct or indirect qualifying holdings and on the amounts of those holdings and any close links;
- 6) a programme of planned activities including the organisational structure of the AIFM and a declaration by the AIFM as to how it intends to comply with its obligations under this Law;
- 7) evidence of organizational, human resource and technical capacity;
- 8) information on the remuneration policies pursuant to Article 47 of this Law, provided there is a requirement to establish remuneration policies;
- 9) information on arrangements made for delegation of functions of the AIFM to third parties.

The lists referred to in paragraph 1, points 4) and 5) of this Article shall contain the following information:

- 1) company name, address, registered office, registration number, and the tax number of the legal person or sole proprietor;
- 2) name and surname, permanent or temporary residence, citizen's unique personal identification number (CUPIN) for natural persons.

The Commission shall regulate the content of the application for authorisation and the content of documentation.

Authorisation

Article 27

The Commission shall authorise an AIFM once it has determined requirements have been met with regard to:

- 1) form of incorporation, shares, shares of stock and initial capital;
- 2) persons with qualifying holdings,
- 3) effective exercise of supervisory functions over the AIFM not being prevented by close links between the AIFM and any persons;
- 4) members of management;
- 5) staffing capacity;
- 6) organisational requirements.

The Commission shall enact a decision authorising the AIFM within 90 days of the complete application being made, once it has determined the requirements of this Law have been met.

The time limit referred to in Para. [2] of this Law may be extended by an additional 90 days where the Commission deems it warranted by special circumstances and once it has notified the AIFM thereof.

Where the Commission has denied an application for authorisation, it shall serve the applicant with a procedural decision denying the application for authorisation which shall contain a written explanation.

The Commission shall deny an application for authorisation where regulations of a third country that apply to one or more natural or legal persons with close links to the AIFM, or the application or enforcement of such regulations, prevent or hinder supervision over the AIFM.

The Commission may consult the relevant competent authorities of the other Member States involved before granting authorisation to the following AIFMs:

- 1) a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another state;

2) a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another state; or

3) a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance undertaking authorised in another state.

Change in Conditions under which Authorisation was Granted

Article 28

AIFMs shall comply with the conditions of the authorisation granted to them by the Commission at all times.

AIFMs shall notify the Commission of any material changes to information and conditions under which they were granted authorisation, and especially of any material changes to information submitted with the application for authorisation, within 8 days of the occurrence of such changes in information and in conditions under which they were granted authorisation.

Within 30 days of receiving the notice referred to in Para. [2] of this Article, the Commission shall assess the materiality of the changes and shall, as required, inform the AIFM of any restrictions to the scope of such changes or additional requirements of the AIFM with regard to such changes, or may contest the proposed changes. This period may be extended by an additional 30 days for justified reasons, of which the AIFM shall be notified.

Where the Commission does not act as set out in Para. [3] of this Article, it shall be deemed to have approved the proposed changes.

The Commission shall regulate the conditions for notification of changes referred to in Para. [2] of this Article by the AIFM.

Acquisition of Qualifying Holding

Article 29

Where a new person intends to acquire a qualifying holding in an AIFM, it shall provide prior notification to the Commission, which shall perform the assessment of eligibility and reliability of persons acquiring qualifying holdings and grant approval.

Provisions of the law governing the capital market shall accordingly apply to the acquisition of qualifying holdings in AIFMs.

A person that acquires a qualifying holding, contrary to the provisions of this Law, or without the approval of the Commission, shall lose the voting rights conferred by equity interests or shares acquired by such means.

The Commission shall regulate in detail the criteria referred to in paragraph 1 of this Article.

Extension of Scope of Authorisation

Article 30

Where, in addition to the service it has been authorised to provide pursuant to Article 25 of this Law, an AIFM intends to provide the ancillary services pursuant to Article 9[1]2) of this Law that it has not been authorised to provide, such AIFM shall make a prior application for extension of the scope of its authorisation with the Commission.

Decision-making on an application for extension of the scope of authorisation shall be subject to provisions of this Law that govern authorisation, as appropriate.

The Commission shall enact detailed regulations governing the content of the application and substantiating documentation to accompany an application for extension of the scope of authorisation.

Withdrawal of Authorisation

Article 31

The Commission shall enact a procedural decision withdrawing the authorisation of an AIFM to provide all or some services where the AIFM:

- 1) does not make an application for registration, pursuant to the law governing the registration of companies, within 30 days of being granted authorisation;
- 2) does not make use of the authorisation within 12 months of obtaining the authorization pursuant to this Law, expressly renounces the authorisation or has ceased the activity covered by the authorisation for more than six months;
- 3) no longer meets the conditions under which authorisation was granted pursuant to this Law and, where applicable, the law governing the capital market, and the law governing open-ended investment funds subject to public offering;
- 4) seriously infringes the provisions of this Law, the law governing the capital market, the law governing open-ended investment funds subject to public offering and the law governing prevention of money laundering and terrorism financing;

5) fails to comply with a procedural decision by which the Commission imposes measures to remedy non-compliance referred to in Article 230, paragraph 1 of this Law or the Commission decision imposing special supervisory measures referred to in Article 232 of this Law;

6) notifies the Commission of its intent to cease activity and applies for striking off the register of AIFMs;

7) enters insolvency or liquidation procedure.

The Commission may enact a procedural decision withdrawing the authorisation of an AIFM to provide all or some services where:

1) the Commission determines that the AIFM obtained the authorisation by providing or making false, inaccurate, or misleading information or statements or by any other irregular means;

2) the Commission determines that the AIFM does not operate to a required standard of due care and good business practices;

3) the AIFM has infringed the provisions governing timely and accurate reporting to the Commission on more than two occasions within a three-year period or has otherwise prevented the exercise of supervisory functions of its operations by the Commission;

4) the AIFM has operated so as to jeopardise or compromise its liquidity or solvency or the liquidity of AIFs it manages; or

5) the AIFM has failed to structure its operations or has failed to keep its books of account or the books of account of AIFs it manages, or administrative or other operating documentation, such that compliance by the AIFM with risk management regulations and rules, and its compliance with the provisions of this Law that govern the management of AIFs, can be assessed at all times.

In cases referred to in Para. [1] 3)-7) and Para. [2] of this Article, the Commission may withdraw the authorisation of an AIFM for establishing and managing any AIFs or a particular AIF.

The Commission shall promptly notify the depositaries of AIFs managed by an AIFM of any withdrawal of authorisation.

5. Bodies of an AIFM

Article 32

Bodies of AIFMs shall be subject, as appropriate, to provisions of the law governing companies, unless otherwise provided for by this Law.

The management of an AIFM shall be composed of at least two members who shall conduct the business of and represent the AIFM.

The members of management of the AIFM shall conduct the business of and represent the AIFM jointly, except unless otherwise provided for by the memorandum or articles of association of the AIFM.

The members of management of the AIFM shall conduct the business of the AIFM whilst located in the Republic.

Conditions for Appointment as Member of Management

Article 33

A fit and proper person who meets the conditions below may be appointed member of management of an AIFM:

- 1) possessing the requisite professional qualifications, ability, and experience needed to conduct the business of an AIFM;
- 2) not having served as a director or member of management or other executive officer of a company at the time that it entered insolvency procedure, was subjected to compulsory liquidation, or had its authorisation withdrawn, except where the Commission determines that the person in question did not contribute to such course of events by their negligence or incompetence;
- 3) having a good reputation;
- 4) not being subject to statutory disqualifications;
- 5) having a history of conduct which supports a reasonable conclusion that the person will manage the AIFM honestly and conscientiously;
- 6) meeting requirements for appointment as member of management provided for by the law governing companies;
- 7) not being a member of management or employee of another AIFM, another fund management company authorised pursuant to the law governing investment funds, or depositary, or having close links with those persons, or an official, appointed or designated person, or a civil servant.

No person may serve as member of management of an AIFM where such person has been denied approval for appointment as member of management by the Commission, where such denial was made less than one year previously.

Directors and executive directors must be permanent full-time employees of the AIFM.

At least one member of management of the AIFM must speak the Serbian language.

The Commission shall regulate in detail the additional requirements for members of management of AIFMs and documentation to accompany the application.

Approval for Appointment of Members of Management

Article 34

The Commission shall grant prior approval for the appointment of members of management of an AIFM to a term of office determined pursuant to the law governing corporations that may not exceed 5 years.

Applicants for approval referred to in Para. [1] of this Article shall supply proof of meeting the requirements of Article 33 of this Law.

Before granting approval for the appointment of members of management of an AIFM, the Commission may require a prospective member of management to present a programme of activity of the AIFM during their term of office.

The Commission shall govern the key elements of the AIFM programme of activity.

Rejection of Appointment of Members of Management

Article 35

The Commission shall deny approval for the appointment of prospective members of management where it finds that:

- 1) a prospective member does not meet the requirements of Article 33 of this Law;
- 2) there are objective and provable grounds to presume that activities or affairs a person engages in or has engaged in would jeopardise the management of the AIFM pursuant to rules governing organisational requirements of Arts. 39 to 52 of this Law;
- 3) the application for approval contains false, inaccurate, or misleading information.

Withdrawal of Approval for Appointment of Members of Management of an AIFM

Article 36

The Commission shall withdraw approval for the appointment of a member of management of an AIFM where it finds that:

- 1) the person in question is not appointed or does not take up their duties within 6 months of the approval being granted;
- 2) the person in question ceases to perform the function to which the approval pertains or ceases to be employed by the AIFM, as of the date the function or employment has ceased;
- 3) the member of management no longer meets the conditions under which the approval was granted;
- 4) approval was obtained by providing or making false, inaccurate, or misleading information or statements or by any other irregular means;
- 5) the member of management has violated the prohibition of trading or executing transactions, or issuing orders for trading, based on inside information or in a manner likely to constitute market manipulation within the meaning of the law governing the capital market;
- 6) the member of management has seriously or repeatedly infringed provisions of this Law or other laws, in particular where such conduct has jeopardised the liquidity or capital requirements of the AIFM, or has repeated the infringement twice over a period of 3 years;
- 7) the member of management is subject to the legal consequences of conviction (statutory disqualifications);
- 8) the member of management has been deprived of contractual capacity by a final procedural decision.

The Commission may withdraw its approval to a member of management of an AIFM if:

- 1) the member of management has failed to ensure compliance or comply with an enforcement action ordered by the Commission;
- 2) the member of management has failed to put into place the appropriate organisational requirements referred to in Arts. 39 to 52 of this Law;
- 3) a conflict of interest exists with respect to the member of management due to which the member of management is unable to perform their own functions and duties;

4) the member of management does not regularly establish and evaluate the effectiveness of policies, measures, or internal procedures of the AIFM and the AIFs the AIFM manages with regard to their compliance with the provisions of this Law, or take appropriate measures to remedy deficiencies or faults in the operation of the AIFM.

A member of management shall cease to perform all functions in an AIFM as of the date the procedural decision withdrawing approval for the appointment of the member of management is served.

The management of the AIFM shall nominate a new member of management at the latest within 30 days from being served the procedural decision referred to in Para. 3 of this Article.

Duties and Responsibilities of AIFMs and AIFM employees

Article 37

AIFMs and members of management, members of supervisory board, holders of power of attorney and employees of AIFMs shall:

- 1) act conscientiously and honestly and pursuant to professional standards when performing their functions;
- 2) act with due professional care when performing their functions;
- 3) act in the best interests of AIFs and members or shareholders of AIFs they manage, and uphold the integrity of the capital market;
- 4) establish and efficiently employ means and processes required for the uninterrupted provision of AIFM services;
- 5) take all reasonable efforts to avoid conflicts of interest, and, where conflicts of interest cannot be avoided, identify, manage, monitor, and disclose such conflicts of interest, where so required by law, to prevent them from adversely affecting the interests of AIFs and members or shareholders of AIFs and ensure AIFs and their members or shareholders are treated equitably;
- 6) comply with the provisions of this Law and statutory instruments enacted pursuant to this Law so as to promote the best interests of AIFs and members or shareholders of AIFs managed by the AIFM, and uphold the integrity of the capital market;
- 7) provide equal treatment to all members or shareholders of AIFs.

No members or shareholders of AIFs shall have a favourable position, unless such position is determined in the AIF rules or prospectus where applicable.

In performing its duties envisaged under Paras. [1] to [2] of this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Confidentiality

Article 38

Members of management of AIFMs, members of supervisory board of AIFMs, employees of AIFMs, and affiliates of AIFMs shall maintain the confidentiality of, and may not disclose:

- 1) potentially misleading information about the performance of AIFs or the AIFM;
- 2) information about future activities and business plans of the AIFM, except where envisaged by law;
- 3) balance of and turnover in accounts of AIFs and members or shareholders of AIFs;
- 4) other information relevant for the operation of AIFs they learn about whilst performing AIFM functions.

Notwithstanding Para. [1] of this Article, information may be disclosed and made available to third parties only in the course of a compliance audit, pursuant to the order of a court or competent authority, or pursuant to law.

6. Organisational requirements

General organisational requirements

Article 39

Having regard to the nature, scale, and complexity of its operations, and the nature of AIFs it manages, an AIFM shall establish and regularly assess the appropriate:

- 1) decision-making procedures and organisational structure that governs lines of responsibility and decision-making;
- 2) measures that ensure relevant persons of the company are aware of procedures they must comply with so as to appropriately discharge their duties and responsibilities;

- 3) measures that ensure relevant persons involved in managing AIF portfolios have the requisite professional qualifications and knowledge, having regard to the nature of the AIFs;
- 4) administrative and accounting procedures;
- 5) control and safeguard arrangements for information systems and electronic data processing;
- 6) internal control mechanisms;
- 7) procedures and rules for reporting and control of personal transactions by relevant persons and for the holding or management of investments in financial instruments on its own account;
- 8) procedures to ensure that each transaction executed on behalf of the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected;
- 9) procedures to ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF operating rules, AIF prospectus, where one is required to be issued, and the provisions of laws and statutory instruments in force;
- 10) internal reporting and notification procedures at all levels of the AIFM and efficient information flows with all third parties involved;
- 11) records of its own operations and internal organisation;
- 12) records of all internal enactments and their amendments;
- 13) measures and procedures to maintain the security, integrity, and confidentiality of information.

Having regard to the nature, scale, and complexity of its operations (investment strategy and type of members or shareholders), and the nature and complexity of the services it provides to AIFs, an AIFM shall establish the following internal control functions:

- 1) risk management;
- 2) compliance monitoring;
- 3) internal audit;

In performing its duties envisaged under this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Conflicts of Interest

Article 40

Having regard to the nature, scale, and complexity of operations, an AIFM shall:

1) structure its operations so as to minimise the risk of conflicts of interests, as well as to take all steps to prevent the interests of AIFs and members or shareholders of AIFs being jeopardised in the performance of the business activities of the AIFM;

2) implement and regularly update and assess the effectiveness of risk management policy;

3) take all reasonable measures to identify conflicts of interest that arise in the course of managing AIFs between:

(1) the AIFM, including its members of management, managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the members or shareholders of that AIF,

(2) the AIF or the members or shareholders of that AIF, and another AIF or the members or shareholders of that AIF,

(3) the AIF or the members or shareholders of that AIF, and another client of the AIFM,

(4) the AIF or the members or shareholders of that AIF, and a UCITS managed by the AIFM or the members or shareholders of that UCITS, or

(5) two clients of the AIFM.

AIFMs shall establish, maintain, and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their members or shareholders.

AIFMs shall segregate, within their own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. AIFMs shall assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the members i.e. shareholders of the AIFs.

Where arrangements to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of members or shareholders of AIFs managed by the AIFM will be prevented, the AIFM shall clearly disclose to the members or shareholders of AIFs the general nature or sources of conflicts of interest before undertaking business on their behalf, and develop appropriate policies and procedures.

Where AIFMs on behalf of an AIF use the services of a prime broker, AIFMs shall exercise due professional care when selecting and appointing such prime broker.

AIFMs shall enter into written contracts with prime brokers whose services they intend to use. Where such contract provides for any possibility of transfer and reuse of AIF assets, the contract with the prime broker must specifically provide for each possibility of such transfer and reuse of AIF assets, pursuant to the operating rules of the AIF and the prospectus of the AIF, where one is required to be published. Such contract shall provide for the obligation to notify the depositary of the contract.

In performing its duties envisaged under this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Article 41

AIFMs that provide the ancillary service of portfolio management referred to in Article 9[1]2)(1) of this Law may not invest all or part of the portfolio they manage in AIFs it manages, except unless they have received prior authorisation to do so from the members or shareholders of AIFs.

AIFMs that provide portfolio management services referred to in Article 9[1]2)(1) of this Law shall comply with provisions on investor protection arrangements as set out in the law governing the capital market.

Compliance Monitoring

Article 42

Having regard to the nature, scale, and complexity of its operations, and the activity it carries out, an AIFM shall establish, maintain, and operate effective compliance procedures and arrangements so as to identify risks of non-compliance and related risks, and to apply such procedures and arrangements to minimise such risks.

AIFMs shall establish, maintain, operate, assess, and oversee policies and procedures so as to ensure compliance with this Law and other applicable laws, as well as to ensure that their members of management and other relevant persons comply with this Law and AIFM rules that govern personal transactions.

In performing its duties envisaged under this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Internal Audit

Article 43

Where appropriate and applicable to the nature, scale, and complexity of its operations, an AIFM shall establish a separate internal audit function and ensure its independence from other functions and services of the AIFM.

Internal audit shall impartially and objectively assess the adequacy and effectiveness of AIFM's systems and processes, internal control and corporate governance system, and shall provide independent and impartial expert opinions and advice for improving the operations of the AIFM.

In performing its duties envisaged under this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Risk management

Article 44

Having regard to the nature, scale, and complexity of its operations, an AIFM shall establish an efficient risk management system in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which the AIFM and each AIF it manages is or may be exposed.

As part of its risk management arrangements, and having regard to the nature, scale, and complexity of its operations, the AIFM shall establish a comprehensive and effective process to assess the creditworthiness of issuers in which it invests or intends to invest its assets or the assets of AIFs.

In assessing the creditworthiness of AIF and AIFM assets, the AIFM may not automatically or exclusively rely on credit ratings assigned by credit rating agencies.

AIFMs shall introduce, implement, maintain, and operate an appropriate, effective, and comprehensive risk management policy in order to identify all risks in connection with the operations of the AIFM and the AIFs it manages.

As part of its risk management arrangements, AIFMs shall determine the risk profiles of AIFs they manage and the contribution of individual risks to the overall risk profile of a particular AIF, as well as to determine the acceptable level of risk.

AIFMs shall review risk management arrangements at least annually and adjust them where necessary.

AIFMs shall functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of asset management, except where they are able to demonstrate that:

- 1) these activities are not proportional to the nature, scale, and complexity of operations of the AIFM;
- 2) specific safeguards against conflicts of interest have been put in place that allow for the orderly and independent performance of risk management activities;
- 3) that the risk management arrangements meet the requirements of this Article and are effective.

AIFMs shall:

- 1) establish and implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;
- 2) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
- 3) ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the operating rules of the AIF and the prospectus of the AIF, where one is required to be published.

AIFMs shall set a maximum level of leverage which they may employ on behalf of each AIF it manages as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia:

- 1) the type of the AIF;
- 2) the investment strategy of the AIF;
- 3) the sources of leverage of the AIF;

- 4) any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;
- 5) the need to limit the exposure to any single counterparty;
- 6) the extent to which the leverage is collateralised;
- 7) the asset-liability ratio;
- 8) the scale, nature and extent of the activity of the AIFM on the markets concerned.

In performing its duties envisaged under this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Liquidity Management

Article 45

AIFMs shall, for each AIF that they manage which is not an unleveraged closed-ended AIF:

- 1) employ a comprehensive and efficient appropriate liquidity management system and adopt policies and procedures which enable them to monitor the liquidity risk of the AIF;
- 2) ensure that the liquidity of each investment of the AIF complies with its underlying obligations.

AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess and monitor the liquidity risk of the AIFs.

AIFMs shall ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent.

In performing its duties envisaged under this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Business Continuity Arrangements

Article 46

AIFMs shall employ appropriate systems, means, and procedures, in proportion to the nature, scale, and complexity of its operations, in order to take all appropriate actions to ensure the continuity of regular business operations.

Remuneration Policy

Article 47

AIFMs shall be required to establish and operate remuneration policy and practice that is consistent with and promotes effective risk management and prevents risk-taking which is inconsistent with the risk profiles, operating rules, or prospectuses of the AIFs it manages.

The remuneration policy shall apply to the following categories of persons:

- 1) management members;
- 2) risk-takers;
- 3) staff engaged in control functions;
- 4) any employee receiving total remuneration that takes them into the same remuneration bracket as management members and risk takers, whose professional activities have a material impact on the risk profiles of the AIFM and/or of AIFs it manages.

The remuneration policy shall also apply to staff of third parties performing delegated functions of the AIFM pursuant to Article 55 of this Law whose professional activities have material impact on the risk profiles of the AIFs that the AIFM manages.

Remuneration policy requirements need not apply to the third parties referred to in Para. [3] of this Article where such third parties are subject to equally effective regulatory requirements with respect to remuneration policy.

The Commission shall govern remuneration policy requirements and the method and measures for its implementation.

Remuneration Committee

Article 48

AIFMs that are significant in terms of their size, internal organisation and the nature, the scope and complexity of their activities, or the size of the AIFs it manages, shall establish a remuneration committee.

The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be tasked with providing support and advice to members of management in connection with remuneration policy principles. The remuneration committee shall at all times be guided by the long-term interests of members or shareholders, other stakeholders, and the general public.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.

Procedures, Records, and Books of Account of AIFMs

Article 49

AIFMs must have in place clear and transparent document management procedures and must maintain a record of all documents that pertain to the operation of AIFMs and the AIFs they manage, pursuant to this Law and the laws governing accounting and auditing.

AIFMs shall maintain and keep records and books of account with regard to all activities and transactions they have performed in a manner that allows oversight of AIFMs, especially in connection with the discharge of its duties towards members or shareholders of AIFs it manages.

AIFMs shall structure their operations and maintain up-to-date books of account and other administrative and business records in a manner that at all times allows verification of transactions they have performed on their own account, on the account of an AIF, or on the account of members or shareholders.

AIFMs shall maintain documentation pertaining to transactions involving the assets of AIFs separately from documentation of AIFMs and other investment funds they manage.

AIFMs shall prevent any unauthorised access to the entire business documentation, ensure business documentation is stored on a durable medium, and prevent any potential loss of business documentation.

AIFMs shall be required to maintain all documentation and data on all transactions they have entered into that involved financial instruments for at least 10 years following the expiry of the calendar year in which a transaction was entered into, or for a longer period of time where so required by the investment strategy of the AIF in question.

Grievance Redress for Members or Shareholders of AIFs

Article 50

AIFMs shall establish appropriate and effective grievance redress procedures with regard members or shareholders of AIFs managed by the AIFM in order that no restrictions be placed on the exercise of rights of members or shareholders.

AIFMs shall permit members or shareholders of AIFs to file grievances in the Serbian language or a language in official use in the state in which shares of the AIF are marketed.

AIFMs shall establish appropriate procedures that ensure information on grievance redress arrangements for members or shareholders are also available to investors.

AIFMs shall maintain documentation regarding all grievances and measures taken in response to them in the manner and for periods of time provided for by this Law.

Disputes between AIFMs and Members or Shareholders

Article 51

Disputes between AIFMs and members or shareholders of AIFs it manages shall be resolved in court or out of court.

Publishing information on AIFM website

Article 52

AIFMs managing AIFs subject to public offering shall have up-to-date websites on which they shall publish the following information:

- 1) general information about the AIFM (legal name, form of incorporation, registered office, number of authorisation issued by the Commission, date of incorporation and registration with the company register, information on initial capital, owners, and members or shareholders);
- 2) general information about members of management of the AIFM (names and short resumes);
- 3) list of services the AIFM is authorised to provide;
- 4) annual financial statements of the AIFM;
- 5) annual financial statements of AIFs subject to public offering the AIFM manages;

- 6) general information about the depositary of the AIF;
- 7) list of AIFs subject to public offering managed by the AIFM, indicating the types of AIFs;
- 8) prospectus, summary prospectus, and operating rules of AIFs subject to public offering and key investor information;
- 9) list of delegated functions indicating the third parties to which these functions have been delegated;
- 10) summary table of risks related to the AIFM and the AIF subject to public offering, indicating the impact of each risk on the AIFM and AIF;
- 11) price of each share in the AIF subject to public offering;
- 12) all notices in connection with the AIFM and AIF subject to public offering and other information as provided for by this Law.

Wherever feasible and appropriate, AIFMs shall disclose every legal or business event in connection with the AIFMs and the AIFs subject to public offering they manage, where such event could affect the operations of the AIF subject to public offering.

AIFMs shall promptly notify the Commission of any legal or business event referred to in Paragraph [2] of this Article.

The information referred to in Paragraph [2] of this Article on closed-ended AIFs with legal personality incorporated as joint-stock companies and whose shares are admitted to trading on a regulated market shall also be subject, as appropriate, to provisions of the law governing the capital market.

As part of its oversight function, the Commission may order an AIFM to disclose particular information online.

7. Reporting by AIFMs

Reports of AIFMs

Article 53

The keeping of books of accounts and producing and auditing financial statements of an AIFM and AIF shall be in compliance with the laws governing accounting and auditing and the statutory instruments enacted by the Commission.

AIFMs shall produce financial statements for each individual AIF they manage separately from their own financial statements.

AIFMs shall store documents and data referred to in paragraphs 1 and 2 of this Article that pertain to members or shareholders of AIFs on a durable medium and in compliance with laws governing accounting and auditing.

The Commission shall govern the content of external audit reports, charts of accounts, and financial statements of AIFMs and AIFs, and shall develop a schedule of audit firms permitted to engage in the auditing referred to in Paragraph [1] of this Article and criteria to be met by such audit firms.

Provisions of this Article shall also apply, mutatis mutandis, to Member State AIFMs or third country AIFMs operating in the Republic via a subsidiary.

Reporting by AIFMs

Article 54

AIFMs shall ensure that AIFs they manage and AIFs in which they market shares disclose regular annual financial statements for each financial year by 30 April of the current year for the previous year, as well as that they submit them to the Commission.

AIFMs shall make prospectuses, operating rules, and latest annual financial statements available to fund members or shareholders free of charge at their request.

Where necessary, AIFMs shall make regular annual financial statements available to the competent authorities of the home Member State of AIFMs, as well as to home Member States of AIFs.

AIFMs shall report the total remuneration paid by AIFMs for each financial year to the Commission.

The Commission govern the content of the statements referred to in this Article, and may also require submission of other reports.

8. Delegation of AIFM Functions

Delegation

Article 55

AIFMs shall notify the Commission before delegating functions to delegates.

Notwithstanding Para. [1] of this Article, where an AIFM manages an AIF the shares of which are offered publicly, the AIFM shall obtain prior approval from the Commission before delegating functions referred to in Article 9[2]2),3) of this Law and functions referred to in Article 39[2] of this Law.

The AIFM and the delegate shall enter into a written contract on the delegation of functions referred to in Paras. [1] and [2] of this Article. This contract must require the delegate to permit the Commission to oversee the delegated functions.

Requirements for Delegation

Article 56

Delegation of functions to delegates shall be allowed only provided that the following conditions are met:

- 1) the AIFM must be able to justify its entire delegation structure on objective reasons;
- 2) the delegate must dispose of sufficient resources to perform the delegated functions appropriately, reliably, and effectively;
- 3) the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced and qualified to perform the delegated functions;
- 4) the AIFM must continuously supervise the delegate in the performance of the delegated functions;
- 5) the AIFM must not delegate functions to third parties to such an extent that it can no longer be considered an AIFM (so becoming a 'letter-box' entity);
- 6) the interests of the thirdparty/delegate must not be in conflict with those of the AIFM, AIFs, or their members or shareholders;
- 7) the delegation must not prevent the effectiveness of supervision of the AIFM and AIFs;
- 8) the delegation must not jeopardise the interests of the members or shareholders and AIFs;
- 9) where applicable, the AIF prospectus must indicate the list of functions delegated to a third party and the relevant delegate or delegates.

The AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect.

In the event of delegation, the AIFM shall remain fully liable to the AIF and its investors for the performance of the delegated functions.

Where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision.

Where the delegation concerns portfolio management or risk management and is conferred on a third-country undertaking, in addition to the requirements referred to in Para. [2] of this Article, co-operation between the Commission and the supervisory authority of the undertaking must be ensured to permit efficient exchange of information on which the Commission may base its supervision.

Article 57

No delegation of portfolio management or risk management shall be conferred on:

- 1) the depositary or a delegate of the depositary;
- 2) any other entity whose interests may conflict with those of the AIFM or the members or shareholders of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the members or shareholders of the AIF.

No sub-delegation of portfolio management or risk management shall be conferred on an entity referred to in Paragraph [1] of this Article.

Article 58

A delegate (third party) may sub-delegate delegated functions only provided that:

- 1) the AIFM has given prior approval for the sub-delegation;
- 2) the AIFM obtained prior approval from the Commission for such sub-delegation;
- 3) the conditions listed in Article 56 of this Law have been met.

A delegate of the AIFM shall continuously supervise the sub-delegate in the performance of the sub-delegated functions.

Article 59

When delegating functions to third parties, using external services, and undertaking other operations relevant to the AIFM and the AIFs it manages, the AIFM shall act with due professional care and in the best interests of the members or shareholders and the AIFs it manages.

AIFMs shall establish and implement internal policies and procedures in order to ensure compliance with Paragraph [1] of this Article, the provisions of this Law, operating rules of the AIF, and prospectus of the AIF, where one is required to be published, objectives of the AIF, investment strategy, and risk management strategy and policy, including risk mitigation arrangements.

In delegating functions to third parties, an AIFM shall comply with the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

9. Transfer of AIF Management Rights

Voluntary and Compulsory Transfer of AIF Management Rights

Article 60

Voluntary and compulsory transfer of management rights in an open-ended AIF subject to public offering shall be subject, as appropriate, to provisions regulating transfer of management rights of the law governing the establishment and operation of open-ended investment funds subject to public offering.

An AIFM may enter into a written contract to transfer management rights in a closed-ended AIF subject to public offering that does not have legal personality to another AIFM, with the prior approval of the Commission.

A closed-ended AIF with legal personality and an AIFM may terminate a management contract by mutual agreement.

The termination of a contract by mutual agreement referred to in Paragraph [3] of this Article shall become effective as of the day the Commission approves the management contract entered into with the new AIFM.

Voluntary transfer of management rights in an AIF subject to private placement that does not have legal personality shall be subject, as appropriate, to provisions regulating voluntary transfer of management rights in an UCITS to another fund management company of the law governing the establishment and operation of open-ended investment funds subject to public offering.

Where so envisaged by the operating rules of the AIF referred to in Paragraph [5] of this Article, the decision to transfer management rights in that AIF may be made by the AIFM and the members or shareholders of the AIF.

Grounds for compulsory transfer of management rights in AIFs, procedure for compulsory transfer of management rights, and rights and obligations of depositaries in connection with compulsory transfer of management rights shall be subject, as appropriate, to provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering, except where otherwise provided for by the operating rules of the AIF.

Except where otherwise provided for by the operating rules of the AIF, in the event of compulsory transfer of management rights in a closed-ended AIF with legal personality, the supervisory board of the AIF shall perform the functions of depositary. Where there is no supervisory board, the depositary shall perform these functions.

The Commission shall govern the conditions for and the manner of transferring management rights in AIFs, the rights and obligations of the transferor, transferee, members or shareholders, and depositary.

Liquidation and Dissolution of AIFs where No Compulsory Transfer of Management Rights is Possible

Article 61

Unless otherwise provided for in the operating rules of the AIF and prospectus of the AIF, where one is required to be published, the depositary shall liquidate or dissolve the AIF:

- 1) where no AIFM meeting the requirements for management of the AIF responds to a solicitation of bids in the event of a compulsory transfer of management rights in the AIF;
- 2) where the transferee AIFM does not apply for approval to assume management of the AIF within 3 days of entering into a contract with the depositary or supervisory board of the AIF;
- 3) where the Commission rejects or refuses to admit the application of the transferee AIFM for approval to assume management of the AIF;
- 4) where the supervisory board of the AIF decides to transfer management rights and selects the transferee AIFM and the general meeting of the transferee AIFM rejects such decision;
- 5) where the supervisory board and general meeting of the AIF both fail to make decisions in due time.

Voluntary Termination

Article 62

An AIFM may cease to provide its registered services where it adopts a decision to cease providing services, and shall notify thereof the depositary, management bodies, and supervisory boards of the AIFs it manages, and the Commission within 5 days of the adoption of such decision.

Within 60 days of providing the notice referred to in Para. [1] of this Article, the AIFM shall enter into a contract on the voluntary transfer of management rights in the AIFs it manages to another AIFM, where the transferee AIFM shall apply with the Commission for approval to assume management, pursuant to the operating rules of the AIFs and prospectuses, where these are required to be published, and pursuant to Articles 60 and 61 of this Law.

Where an AIFM does not secure another AIFM to assume management of AIFs pursuant to Para. [2] of this Article, such AIFM shall liquidate and dissolve AIFs pursuant to the operating rules of the AIFs and prospectuses, where these are required to be published, and pursuant to provisions of this Law that govern liquidation and dissolution.

Authorisation of an AIFM shall be withdrawn following the transfer of management rights in its AIFs to another AIF, or the liquidation or dissolution of AIFs, whereupon the Commission shall adopt the procedural decision referred to in Article 31 of this Law.

III. CROSS-BORDER PROVISION OF SERVICES BY AIFMS

1. Cross-Border Provision of Services by Serbian AIFMs vis-à-vis Member State AIFs

Marketing of Member State AIFs in the Republic

Article 63

An AIFM from the Republic managing a Member State AIF may market such shares of AIF to professional investors in the Republic provided that it meets the requirements of this Article.

Where the AIF referred to in Para. [1] of this Article is a feeder AIF, the master AIF must be an AIF from the Republic or Member State AIF managed by an AIFM from the Republic or Member State AIFM.

An AIFM referred to in Para. [1] of this Article shall notify the Commission of its intent to market each Member State AIF in the Republic and shall supply the following information:

1) a programme of activities the AIFM intends to carry out, identifying and describing the AIFs the AIFM intends to market and information on where the AIFs are established;

- 2) the AIF's operating rules or instruments of incorporation;
- 3) identification of the depositary of the AIF;
- 4) information on where the master AIF is established if the AIF is a feeder AIF;
- 5) any additional information in accordance with the provisions transposing the EU regulations into national law which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, not included in the previous points of this paragraph;
- 6) information on the arrangements established to prevent shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF, where this information must be provided pursuant to this Law and/or statutory instruments of the Commission.

Within 20 working days of receiving a complete file of documents referred to in Para. [3] of this Article, the Commission shall notify the AIFM of whether it will be allowed to market the AIF in Serbia.

If the AIFM's management of the AIF does not or will not comply with the provisions of this Law or the AIFM otherwise does not or will not comply with the provisions of this Law, the Commission will prevent the marketing of the AIF in the Republic.

The AIFM may market the Member State AIF as of the date of notification by the Commission referred to in Para. [4] of this Article.

The Commission shall inform the competent authorities of the home Member State of the AIF that the AIFM may start marketing shares of the AIF in the Republic.

In the event of a material change to any of the particulars communicated in accordance with Para. [3] of this Article, the AIFM shall give written notice of that change to the Commission at least 1 month before implementing the change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the Commission shall prevent the planned change.

If a planned change is implemented in contravention of Paras. [8] and [9] of this Article, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the Commission shall take all due measures in

accordance with this Law, including, when necessary, the prohibition of marketing of the AIF.

Marketing of AIFs from the Republic or Member State AIFs in a Member State

Article 64

An AIFM from the Republic managing an AIF from the Republic or a Member State AIF may market such AIF to professional investors in a Member State provided that it meets the requirements of this Article.

Where the AIF referred to in Para. [1] of this Article is a feeder AIF, the master AIF must be an AIF from the Republic or Member State AIF managed by an AIFM from the Republic or a Member State AIFM.

An AIFM referred to in Para. [1] of this Article shall notify the Commission of its intent to market each AIF from the Republic or a Member State AIF in a Member State and shall communicate the following information:

- 1) Member State in which the AIFM intends to market AIFs to professional investors;
- 2) a programme of planned activities the AIFM intends to carry out, identifying and describing the AIFs the AIFM intends to market and information on where the AIFs are established;
- 3) the AIF's operating rules or instruments of incorporation;
- 4) identification of the depositary of the AIF;
- 5) information on where the master AIF is established if the AIF is a feeder AIF;
- 6) any additional information in accordance with the provisions transposing the EU regulations into national law which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, not included in the previous points of this paragraph;
- 7) information on the arrangements established to market shares of the AIF in another Member State, and information on the arrangements established to prevent shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF, where this information must be provided pursuant to this Law and/or statutory instruments of the Commission.

Within 20 working days of receiving a complete file of documents referred to in Para. [3] of this Article, the Commission shall forward it to the competent authorities of the Member State in which the AIFM intends to market the AIF.

The Commission shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

The Commission shall forward the file and statement referred to in Paras. [3] and [5] of this Article only if the AIFM's management of the AIF complies with the provisions of this Law and if the AIFM otherwise complies with the provisions of this Law.

Upon the delivery of the notification referred to in Paras. [3] and [5] of this Article by the Commission to the competent authorities of the Member State in which the AIFM intends to market the AIF, the Commission shall, without delay, notify the AIFM thereof.

An AIFM from the Republic may market the AIF in the host Member State as of the date of notification by the Commission referred to in Para. [6] of this Article.

Where applicable, the Commission shall notify the competent authorities of the home Member State of the AIF that the AIFM may start marketing the AIF in the host Member State of the AIFM.

The competent authority of the host Member State shall be responsible for the oversight of compliance and the arrangements established by the AIFM in accordance with Para. [3]5) of this Article.

The AIFM shall provide the notification and documents referred to in Para. [3] of this Article, and any amendments thereof, to the Commission in the Serbian language or in a language customary in the sphere of international finance.

The Commission shall prepare the statement referred to in Para. [5] of this Article in the Serbian and the English language.

In the event of a material change to any of the particulars communicated in accordance with Para. [3] of this Article, the AIFM shall give written notice of that change to the Commission at least 1 month before implementing the change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the Commission shall prevent the planned change.

If a planned change is implemented in contravention of Paras. [13] and [14] of this Article, or if an unplanned change has taken place pursuant to which the AIFM's management of the

AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the Commission shall take all due measures in accordance with this Law, including, if necessary, the prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the compliance by the AIFM with the provisions of this Law otherwise, the Commission shall, without delay, inform the competent authority of the host Member State of the AIFM of those changes.

Management of Member State AIF Directly or via a Branch

Article 65

An AIFM from the Republic may, either directly or by establishing a branch in a Member State:

- 1) manage Member State AIFs, provided that the AIFM is authorised to manage that type of AIF;
- 2) provide ancillary services referred to in Article 9[1]2) of this Law which it is authorised to provide.

An AIFM from the Republic intending to perform the services referred to in Para. [1] of this Article in a Member State for the first time shall communicate the following information to the Commission:

- 1) Member State in which the AIFM intends to perform the services referred to in Para. [1] of this Article, either directly or by establishing a branch;
- 2) a programme of planned activities in particular the services which it intends to perform and identifying the AIFs or types of AIFs it intends to manage.

If the AIFM referred to in Para. [1] of this Article intends to establish a branch in a Member State, it shall provide the following information to the Commission in addition to that referred to in Para. [2] of this Article:

- 1) the organisational structure of the branch;
- 2) the address in the home Member State of the AIF from which documents may be obtained;
- 3) the names and contact details of the persons responsible for the management of the branch.

Within 1 month of receiving a complete file of documents referred to in Para. [2] of this Article, or within 2 months of receiving a complete file of documents referred to in Para. [3]

of this Article, the Commission shall forward it to the competent authorities of the host Member State of the AIFM.

The Commission shall enclose a statement to the effect that the AIFM concerned is authorised by it.

The Commission shall forward the file and statement referred to in Paras. [2], [3], and [5] of this Article only if the AIFM's management of the AIF complies with and will continue to comply with the provisions of this Law and if the AIFM otherwise complies with the provisions of this Law.

Upon the submission of the notification file referred to in Paras. [2], [3], and [5] of this Article by the Commission to the competent authorities of the host Member State of the AIFM, the Commission shall, without delay, notify the AIFM thereof.

An AIFM from the Republic may start to provide its services in the host Member State as of the date of notification by the Commission referred to in Para. [7] of this Article.

In the event of a change to any of the particulars communicated in accordance with Paras. [2] or [3] of this Article, the AIFM shall give written notice of that change to the Commission at least 1 month before implementing the change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the Commission shall prevent the planned change.

If a planned change is implemented in contravention of Paras. [9] and [10] of this Article, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the Commission shall take all due measures in accordance with this Law, including, if necessary, the prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the compliance by the AIFM with the provisions of this Law otherwise, the Commission shall, without delay, inform the competent authority of the host Member State of the AIFM thereof.

The AIFM shall provide the notification and documents referred to in Paras. [2] and [3] of this Article, and any amendments thereof, to the Commission in the Serbian language or in a language customary in the sphere of international finance.

The Commission shall prepare the statement referred to in Para. [5] of this Article in the Serbian and the English language.

2. Provision of Services by Member State AIFMs in the Republic

Article 66

A Member State AIFM may provide services in the Republic, either directly or by establishing a branch, where it has been authorised to provide such services by the competent authority of the home Member State of the AIFM pursuant to legislation transposing EU regulations into national law which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

The Member State AIFM may start to provide the services referred to in Para. [1] of this Article as of the date of notification by the competent authority of the home Member State of the AIFM about notifying the Commission and the notification and all documentation equivalent to the documentation referred to in Article 65[2] and [5] of this Law or, where applicable, Article 65[3] of this Law.

A Member State AIFM may establish in the Republic, set up, and manage only such AIFs that it is authorised for by the competent authority of the home Member State of the AIFM.

A Member State AIFM providing services in the Republic through a branch shall be required to comply with the provisions of this Law.

3. Cross-Border Provision of Services by AIFMs from the Republic vis-à-vis Third Countries

Article 67

An AIFM from the Republic may establish or manage a third country AIF and may market such AIF in the Republic or a Member State only provided that:

- 1) the AIFM complies with all the provisions of this Law pertaining to depositary and financial reporting by an AIF vis-à-vis third country AIFs;
- 2) appropriate co-operation arrangements are in place between the Commission and the supervisory authorities of the third country where the AIF is established in order to ensure efficient exchange of information that allows the Commission to carry out its duties in accordance with this Law.

AIFM from the Republic Marketing Third Country AIFs in the Republic and/or another Member State with a Passport

Article 68

An AIFM from the Republic intending to market to professional investors in Serbia and/or a Member State third country AIFs it manages and of Serbian or Member State feeder AIFs that do not fulfill the requirements referred to in Article 63[2] of this Law shall comply with all provisions of this Law, with the exception of the provisions of Arts. 63 to 66 of this Law, and shall meet the following requirements:

- 1) appropriate co-operation arrangements must be in place between the Commission and the supervisory authorities of the third country where the AIF is established in order to ensure an efficient exchange of information that allows the Commission to carry out its duties;
- 2) the third country where the AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF);
- 3) the third country where the AIF is established has signed an agreement with the Republic and with every other Member State in which the shares of the AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

AIFM from the Republic Marketing Third Country AIFs in the Republic

Article 69

An AIFM from the Republic intending to market to professional investors in Serbia third country AIFs it manages shall submit to the Commission an application for approval for marketing each such third country AIF with the following information:

- 1) a programme of planned activities the AIFM intends to carry out, identifying and describing the AIFs the AIFM intends to market and information on where the AIFs are established;
- 2) the AIF's operating rules or instruments of incorporation;
- 3) identification of the depositary of the AIF;
- 4) information on where the master AIF is established if the AIF is a feeder AIF;
- 5) any additional information in accordance with the provisions transposing the EU regulations into national law which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, not included in the previous points of this paragraph;
- 6) information on the arrangements established to prevent shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of

independent entities to provide investment services in respect of the AIF, where this information must be provided pursuant to this Law and/or statutory instruments of the Commission.

Within 20 working days of receiving a complete file of documents referred to in Para. [3] of this Article, the Commission shall decide on the application.

If the AIFM's management of the AIF does not or will not comply with the provisions of this Law or the AIFM otherwise does not or will not comply with the provisions of this Law, the Commission will prevent the marketing of the AIF.

The AIFM may market third country AIFs it manages in the Republic as of the date of being granted approval by the Commission to that effect.

The Commission shall also inform the European Securities and Markets Authority (ESMA) that the AIFM may start marketing the AIF from a third country it manages in the Republic.

In the event of a material change to any of the particulars communicated in accordance with Para. [1] of this Article, the AIFM shall give written notice of that change to the Commission at least 1 month before implementing the change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the Commission shall prevent the planned change.

If a planned change is implemented in contravention of Paras. [6] and [7] of this Article, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the Commission shall take all due measures in accordance with this Law, including, if necessary, the prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIF or AIFM with this Law, the Commission shall, without delay, inform ESMA and, if applicable, the competent authorities of the host Member States of the AIFM thereof, and in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs marketed of those changes.

AIFM from the Republic Marketing Third Country AIFs in another Member State

Article 70

An AIFM from the Republic intending to market third country AIFs it manages in a Member State shall notify the Commission of every such AIF.

The notice referred to in paragraph 1 shall contain the following information:

- 1) Member State in which the AIFM intends to market AIFs;
- 2) a programme of planned activities the AIFM intends to carry out, identifying and describing the AIFs the AIFM intends to market and information on where the AIFs are established;
- 3) the AIF's operating rules or instruments of incorporation;
- 4) identification of the depositary of the AIF;
- 5) information on where the master AIF is established if the AIF is a feeder AIF;
- 6) any additional information in accordance with the provisions transposing the EU regulations into national law which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, not included in points 1) to 5) of this paragraph;
- 7) information on the arrangements established to market shares of the AIF in another Member State, and when appropriate, information on the arrangements established to prevent shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

Within 20 working days of receiving a complete file of documents referred to in Para. [2] of this Article, the Commission shall forward it to the competent authorities of the Member State in which the AIFM intends to market the AIF.

The Commission shall provide a statement by electronic means to the competent authority of the Member State to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

The Commission shall submit to the competent authority of the Member State the notification and the statement referred to in Paras. [2] and [4] of this Article only if the AIFM, and the management of the AIF complies with the provisions of this Law and it shall notify thereof, without delay, the AIFM.

An AIFM from the Republic may market the third-country AIF in the host Member State as of the date of notification by the Commission referred to in Para. [5] of this Article.

The Commission shall inform ESMA that the AIFM from the Republic may start marketing the third country AIF in the host Member State of the AIFM.

The competent authority of the host Member State of the AIFM shall supervise the procedures established by the AIFM pursuant to Para. [2]7) of this Article.

The AIFM shall provide the notification and the documents referred to in Paras. [1] and [2] of this Article, and any amendments thereof, to the Commission in the Serbian and the English language.

The Commission shall prepare the statement referred to in Para. [4] of this Article in the Serbian and the English language.

Provisions of Article 69[6]-[8] of this Law shall apply accordingly in the event of a material change to any of the particulars communicated in accordance with Para. [2] of this Article.

Marketing of AIFs from the Republic in a Third Country

Article 71

AIFs from the Republic may be marketed in a third country only by:

- 1) an AIFM from the Republic authorised by the Commission to manage such AIFs;
- 2) a Member State AIFM authorised by the Commission to manage such AIFs;
- 3) a third country AIFM authorised by the Commission or the competent authority of the Member State of reference to manage such AIFs.

An AIFM referred to in Paragraph [1] of this Article intending to market AIFs from the Republic in a third country shall provide prior notice to the Commission thereof, indicating the following information:

- 1) third country in which the AIFM intends to market AIFs;
- 2) a programme of operations it intends to undertake in the third country;
- 3) detailed description of how it intends to market AIFs and options for doing so;
- 4) a detailed description of how documents and information are to be published in the third country and options for doing so;
- 5) detailed description of the commercial arrangements it has entered into in connection with the marketing of AIFs in the third country;
- 6) a list of AIFs it intends to market in the third country.

The Commission may prohibit the AIFM referred to in Para. [1] of this Article from marketing AIFs from the Republic in a third country where there are reasonable grounds to believe that inappropriate practices have occurred with regard to the marketing of AIFs and

options for doing so, provision of information to investors, and commercial arrangements established by the AIFM in connection with the marketing of AIFs in a third country.

The Commission may prohibit the AIFM referred to in Para. [1] of this Article from marketing AIFs from the Republic in a third country where the regulations of the third country in which the AIFM intends to market AIFs and the practice of implementation of such regulations would be likely to hinder supervision pursuant to the provisions of this Law.

Within 3 working days of marketing an AIF in a third country, an AIFM referred to in Para. [1] of this Article shall notify the Commission thereof.

Where an AIFM referred to in Para. [1] of this Article intends to change any of the particulars referred to in Para. [2] of this Article, it shall notify the Commission before making any such change.

4. Authorisation of Third Country AIFMs intending to Manage and Market AIFs Managed by Them in the EU

Conditions for Third Country AIFMs

Article 72

A third country AIFM intending to manage AIFs from the Republic and/or Member State or intending to market AIFs it manages in the Republic and/or a Member State must be authorised by the Commission in the event that the Republic is the Member State of reference for the third country AIFM.

The third country AIFM intending to apply for authorisation referred to in Para. [1] of this Article shall comply with all provisions of this Law with the exception of the provisions of Arts. 63 to 66.

Where it is impossible to combine compliance with the requirement of Para. [2] of this Article with compliance with a mandatory provision in the law of the third country in which the AIFM is established or in which the AIF is established that the AIFM intends to market, there shall be no obligation on the AIFM to comply with individual provisions of this Law if it can demonstrate that:

- 1) it is impossible at the same time to combine compliance with the provisions of this Law with a mandatory provision in the law of the third country in which the AIFM is established or in which the AIF is established that the AIFM intends to market;
- 2) the law of the third country where the AIFM and/or AIF is established provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the members or shareholders of the relevant AIF;

3) the third country AIFM and/or the third country AIF complies with the equivalent rule referred to in point 2) of this paragraph.

A third country AIFM intending to apply for prior authorisation as referred to in Para. [1] of this Article shall have a legal representative established in the Republic, who shall be the contact point of the AIFM in Member States and any official correspondence between the AIFM and the Commission or the competent authorities of Member States, and between the AIFM and investors of the relevant AIF in the Republic and other Member States shall take place through that legal representative. The legal representative shall perform the compliance function relating to the management and marketing activities performed by the AIFM under relevant regulations together with the AIFM.

Determination of Member State of Reference of Third Country AIFMs

Article 73

The Member State of reference of a third country AIFM shall be determined as follows:

1) if the third country AIFM intends to manage one or more AIFs established in Serbia, and does not intend to market such AIFs pursuant to Arts. 82 to 84 of this Law, Serbia is deemed to be the Member State of reference for that AIFM, and the Commission shall be responsible for authorisation and supervision of such AIFM;

2) if the third country AIFM intends to manage several AIFs established in different Member States, and does not intend to market such AIFs pursuant to Arts. 82 to 84 of this Law, the Member State of reference for the third country AIFM is either:

(1) the Member State where most of the AIFs are established;

(2) the Member State where the largest amount of assets is being managed;

3) if the third country AIFM intends to market only one Member State AIF in only one Member State, the Member State of reference is determined as follows:

(1) if the AIF is authorised in a Member State, the home Member State of the AIF or the Member State where the AIFM intends to market the AIF;

(2) if the AIF is not authorised in a Member State, the Member State where the AIFM intends to market the AIF;

4) if the third country AIFM intends to market only one third country AIF in only one Member State, the Member State of reference is that Member State;

5) if the third country AIFM intends to market only one Member State AIF, but in different Member States, the Member State of reference is determined as follows:

(1) if the AIF is authorised in a Member State, the home Member State of the AIF or one of the Member States where the AIFM intends to develop effective marketing;

(2) if the AIF is not authorised in a Member State, one of the Member States where the AIFM intends to develop effective marketing;

6) if the third country AIFM intends to market only one third country AIF, but in different Member States, the Member State of reference is one of those Member States;

7) if the third country AIFM intends to market several Member State AIFs in the EU, the Member State of reference is determined as follows:

(1) if those AIFs are all established in the same Member State, the home Member State of those AIFs or the Member State where the AIFM intends to develop effective marketing for most of those AIFs;

(2) if those AIFs are not all registered or authorised in the same Member State, the Member State where the AIFM intends to develop effective marketing for most of those AIFs;

8) if the third country AIFM intends to market several Member State and third country AIFs, or several third country AIFs in the EU, the Member State of reference is the Member State where it intends to develop effective marketing for most of those AIFs.

The determination of the Member State of reference shall be subject to provisions of the EU regulations governing the procedure for determination of the Member State of reference of non-EU AIFMs.

In accordance with the criteria set out in Para. [1], Point 2), Para. [1], Point 3), (1), Para. [1], Points 5) and 6), and Point 7)(1) of this Article, more than one Member State of reference for a third country AIFM is possible.

Where a situation occurs as referred to in Para. [3] of this Article, a third country AIFM intending to manage Member State AIFs without marketing them and/or market AIFs managed by it in the Union in accordance with Arts. 82 to 84 of this Law shall submit an application to the Commission for authorisation, where the Republic is a possible Member State of reference, as well as to the competent authorities of all of the Member States that are possible Member States of reference in accordance with the criteria set out in those points, to determine its Member State of reference, so that they are able to jointly decide the Member State of reference for the third country AIFM.

The Commission and the competent authorities of the Member States referred to in Para. [4] of this Article shall jointly decide the Member State of reference for the third country AIFM within 1 month of receipt of the application for authorisation.

Where the Republic is designated as the Member State of reference for the third country AIFM, the Commission shall notify the third country AIFM within 7 days of the decision made as referred to in Para. [5] of this Article.

Where the Commission and the competent authorities of the other Member States do not decide the Member State of reference for the third country AIFM within the period referred to in Para. [5] of this Article, or where the Commission does not notify the third country AIFM of the decision within the period referred to in Para. [6] of this Article, the third country AIFM may itself choose its Member State of reference based on the criteria set out in this Paragraph.

Where the Republic is designated as the Member State of reference for the third country AIFM, the AIFM shall demonstrate to the Commission its intention to develop effective marketing the Republic by disclosure of its marketing strategy.

Article 74

A third country AIFM intending to manage the Republic and/or Member State AIFs without marketing them and/or to market AIFs managed by it in the EU in accordance with Articles 82 to 84 of this Law, shall submit an application for authorisation to the Commission where the Republic is the Member State of reference of the third country AIFM.

After having received the application referred to in Para. [1] of this Article, the Commission shall determine whether the selection of the Republic as the Member State of reference complies with the criteria of Article 73 of this Law.

If the Commission considers that the selection of the Republic as the Member State of reference does not comply with the criteria of Article 73 of this Law, it shall refuse the application for authorisation referred to in Para. [1] of this Article, explaining the reasons for its refusal, and may notify ESMA thereof.

If the Commission considers that the selection of Serbia as the Member State of reference complies with the criteria of Article 73 of this Law, it shall notify ESMA thereof and request advice on its assessment.

In its notification referred to in Para. [4] of this Article, the Commission shall provide ESMA with the justification by the AIFM of its choice of the Republic as the Member State of reference and with information on the marketing strategy of the AIFM.

AESMA shall issue advice within 1 month of receiving the notification referred to in Para. [4] of this Article.

The term for making the decision on the application for authorisation shall be suspended until such time as the Commission has received advice from the ESMA as referred to in Para. [4] of this Article.

If the Commission proposes to grant authorisation contrary to the ESMA's advice referred to in Para. [4] of this Article, it shall inform the ESMA, stating its reasons.

If the Commission proposes to grant authorisation contrary to the ESMA's advice referred to in Para. [4] of this Article and the third country AIFM intends to market shares of AIFs managed by it in other Member States, the Commission shall also inform the competent authorities of those Member States thereof, stating its reasons and when applicable competent authorities of home Member States of those AIFs managed by the third country AIFM.

Decision-Making on an Application for Authorisation by a Third Country AIFM

Article 75

The Commission shall adopt a procedural decision denying authorisation to a third country AIFM where:

- 1) the Republic has not been designated as the Member State of reference pursuant to the criteria of Article 73 of this Law, or the Commission has not received information on the marketing strategy of the AIFM and the procedure referred to in Article 74 of this Law has not been conducted;
- 2) the AIFM has not appointed a legal representative established the Republic;
- 3) the legal representative shall not, together with the AIFM, be the authorised contact person of the third country AIFM for the members or shareholders of the relevant AIFs, for ESMA, for the Commission, and for the competent authorities as regards the activities for which the AIFM is authorised in the EU;
- 4) the legal representative does not meet the requirements for performing the compliance function pursuant to this Law;
- 5) appropriate co-operation arrangements are not in place between the Commission, the competent authorities of the home Member State of the third country AIFs concerned and the supervisory authorities of the third country where the third country AIFM is established in order to ensure at least an efficient exchange of information that allows the Commission to carry out its duties in accordance with the provisions of this Law;

the third country where the third country AIFM is established is listed as a Non-Cooperative Country and Territory by FATF;

7) the third country where the third country AIFM is established has not signed an agreement with Serbia, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

8) the effective exercise by the Commission of its supervisory functions under this Law is prevented by the laws, regulations or administrative provisions of a third country governing the AIFM, or by the powers of that third country's supervisory authorities.

Where a competent authority of the home Member State of the AIF does not enter into the required co-operation arrangements as set out in Para. [1]5) of this Article within a reasonable period of time, the Commission may refer the matter to the ESMA.

Article 76

Provisions of this Law governing the authorisation of AIFMs shall apply, *mutatis mutandis*, to decision-making with regard to the authorisation of third country AIFMs, subject to the exception that Article 26[1]6) shall not prejudice the application of Article 72[3] of this Law.

The third country AIFM shall supplement the information referred to in Article 26 of this Law, submitted to the Commission, by:

1) justification for its selection of Serbia as the Member State of reference, with information on the marketing strategy;

2) a list of the provisions of this Law incompatible with the law to which the third country AIFM or third country AIF marketed in the EU is subject;

3) written evidence based on the regulatory technical standards developed by ESMA that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to members or shareholders of the relevant AIFs and that the AIFM complies with that equivalent rule;

4) the name of the legal representative of the AIFM and the place where it is established, i.e. their name and surname and residence.

The written proof referred to in Para. [2]3) of this Article must be supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose of equivalent rules and the nature of the protection of members or shareholders pursued by it.

The AIFM shall provide the information referred to in Article 26 of this Law for the Republic or Member State AIFs it intends to manage, as well as for AIFs managed by the AIFM that it intends to market in the EU with the EU passport.

Article 77

Where the Commission considers that the AIFM need not fully comply with the provisions of this Law, it shall, without undue delay, notify ESMA thereof, shall support this assessment by the information referred to in Article 76[2] 2),3), and 4) of this Law.

Within 1 month of receipt of the notification referred to in Para. [1] of this Article, ESMA shall issue advice to the Commission about the application of the exemption for compliance with this Law.

The term for making the decision on the application for authorisation shall be suspended until such time as the Commission has received advice from the ESMA following the notification referred to in Para. [1] of this Article.

If the Commission proposes to grant authorisation contrary to the ESMA's advice referred to in Para. [2] of this Article, it shall inform the ESMA, stating its reasons.

If the Commission proposes to grant authorisation contrary to the ESMA's advice referred to in Para. [2] of this Article and the third country AIFM intends to market shares of AIFs managed by it in other Member States as well, the Commission, as the Member State of reference, shall also inform the competent authorities of those Member States thereof, stating its reasons.

Article 78

The Commission shall, without undue delay, inform ESMA of the outcome of the initial authorisation process, about any changes in the authorisation of the AIFM, and any withdrawal of authorisation of the third country AIFM whose Member State of reference is the Republic.

The Commission shall inform ESMA about the applications for authorisation that it has rejected, providing data about the AIFM having applied for authorisation and the reasons for the rejection.

The Commission shall be able to petition ESMA to allow inspection of a central register of third country AIFMs that have applied for authorisation in Member States.

Article 79

The determination of the Member State of reference shall not be affected by the further business development of the AIFM in the EU.

Notwithstanding Para. [1] of this Article, where the AIFM changes its marketing strategy within 2 years of its initial authorisation by the Commission, and that change would have affected the determination of the Member State of reference if the modified marketing strategy had been the initial marketing strategy, the AIFM shall notify the Commission of the change before implementing it and indicate its new Member State of reference in accordance with the criteria set out in Article 73 of this Law and based on the new strategy.

The AIFM shall accompany its notification to the Commission referred to in Para. [2] of this Article with its new marketing strategy and information referred to in Article 76 Para. [2] 4) of this law on its legal representative from the new Member State of reference.

The AIFM shall accompany its notification to the Commission referred to in Para. [2] of this Article with its new marketing strategy and information on its legal representative from the new Member State of reference and its registered office.

Upon receiving the notification referred to in Para. [2] of this Article, the Commission shall assess whether the determination of the AIFM referred to in Para. [2] of this Article is correct and shall notify ESMA thereof, also forwarding the explanation by the AIFM on the determination of the new Member State of reference and the new marketing strategy.

Within 1 month of receipt of the notification referred to in Para.[5] of this Article, ESMA shall issue advice to the Commission about its assessment.

After the receipt of ESMA's advice in accordance with Para. [6] of this Article, the Commission shall inform the third country AIFM, its legal representative and ESMA of its assessment.

Where the assessment referred to in Para. [7] of this Article is positive, the Commission shall notify the competent authorities of the new reference Member State of the changes and shall, without undue delay, transfer a copy of the authorisation and the supervision file relating to the third country AIFM to the new Member State of reference.

From the date of submission of the information referred to in Para. [8] of this Article, the competent authorities of the new Member State of reference shall be competent for authorising and supervising the third country AIFM.

Where the final assessment of the Commission referred to in Para. [7] of this Article is contrary to the ESMA's advice referred to in Para. [6] of this Article, the Commission shall inform ESMA and the competent authorities of the other Member States where the third country AIFM is marketing AIFs it manages thereof, stating its reasons, and, where

applicable, shall also notify the competent authorities of home Member States of AIFs managed by the third country AIFM.

Article 80

Where it appears from the actual course of the business development of the third country AIFM in the EU within 2 years after its authorisation that the marketing strategy as presented by the AIFM at the time of its authorisation was not followed, the third country AIFM made false statements in relation thereto or the third country AIFM has failed to comply with Article 79 of this Law when changing its marketing strategy, the Commission shall request that the third country AIFM indicate the Member State of reference based on its actual marketing strategy, in which case provisions of Article 79 of this Law shall apply, *mutatis mutandis*.

Where the third country AIFM does not comply as instructed by the Commission as referred to in Paragraph [1] of this Article, the Commission shall withdraw its authorisation.

Where the third country AIFM changes its marketing strategy after the period referred to in Para. [1] of this Article and intends to change its Member State of reference on the basis of its new marketing strategy, it may submit a request to change its Member State of reference to the Commission, in which case provisions of Article 79 of this Law shall apply, *mutatis mutandis*.

Article 81

Where the Republic is deemed to be the Member State of reference, any disputes arising between the Commission as the competent authority and the third country AIFM shall be settled in accordance with the law of and subject to the jurisdiction of Serbia.

Any disputes between the third country AIFM and/or AIF and members or shareholders from the Republic of the relevant AIF shall be settled in accordance with the law of and subject to the jurisdiction of the Republic.

5. Marketing AIFs Managed by Third Country AIFMs with the EU Passport

Article 82

Where a third country AIFM is authorised by the Commission or the competent authorities of a Member State, it is deemed to have a European passport and may market the Republic, Member State, or third country AIFs it manages to professional investors in the EU.

In addition to the requirements of Para. [1] of this Article, a third country AIFM of which the Republic is the Member State of reference may market third country AIFs to professional investors in the EU provided that:

- 1) appropriate co-operation arrangements are in place between the Commission and the supervisory authorities of the third country where the AIF is established in order to ensure an efficient exchange of information that allows the Commission to carry out its duties;
- 2) the third country where the AIF is established is not listed as a Non-Cooperative Country and Territory by the FATF;
- 3) the third country where the AIF is established has signed an agreement with Serbia and with each other Member State in which the shares of the AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

Article 83

Where a third country AIFM intends to market the Republic, Member State or third country AIFs in the Republic as its Member State of reference, it shall notify the Commission of its intent for each AIF it intends to market.

The notice referred to in paragraph 1 shall contain the following information:

- 1) a programme of planned activities the AIFM intends to carry out, identifying and describing the AIFs the AIFM intends to market and information on where the AIFs are established;
- 2) the AIF's operating rules or instruments of incorporation;
- 3) identification of the depositary of the AIF;
- 4) information on where the master AIF is established if the AIF is a feeder AIF;
- 5) any additional information in accordance with the provisions transposing the EU regulations into national law which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, not included in the previous points of this paragraph;
- 6) where relevant, information on the arrangements established to prevent shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

Within 20 working days following receipt of a complete notification file pursuant to Para. [2] of this Article, the Commission shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in Para. [2] of this Article in the Republic.

If the AIFM's management of the AIF does not or will not comply with the provisions of this Law or the AIFM otherwise does not or will not comply with the provisions of this Law, the Commission will prevent the marketing of the AIF in the Republic.

The AIFM may start marketing the Member State or third country AIF in the Republic from the date of the notification by the Commission to that effect as referred to in Para. [3] of this Article.

The Commission shall inform ESMA and the competent authority of the home Member State of the AIF that the AIFM may start to market Member State or third country AIFs in the Republic.

In the event of a material change to any of the particulars communicated in accordance with Para. [2] of this Article, the AIFM shall give written notice of that change to the Commission at least 1 month before implementing the change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the Commission shall prevent the planned change.

If a planned change is implemented in contravention of Paras. [7] and [8] of this Article, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the Commission shall take all due measures in accordance with this Law, including, if necessary, the prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the compliance by the AIFM with the provisions of this Law otherwise, the Commission shall, without delay, inform ESMA and, where applicable, the competent authorities of the host Member State of the AIFM of those changes, in so far the changes pertain to the cessation of marketing of a particular AIF or of additional AIFs.

Article 84

Where a third country AIFM of which the Republic is the Member State of reference intends to market the Republic, Member State or third country AIFs in a Member State, it shall notify the Commission of its intent for each AIF it intends to market.

The notice referred to in paragraph 1 shall contain the following information:

- 1) Member State in which the AIFM intends to market AIFs;

- 2) a programme of planned activities the AIFM intends to carry out, identifying and describing the AIFs the AIFM intends to market and information on where the AIFs are established;
- 3) the AIF's operating rules or instruments of incorporation;
- 4) identification of the depositary of the AIF;
- 5) information on where the master AIF is established, if the AIF is a feeder AIF;
- 6) any additional information in accordance with the provisions transposing the EU regulations into national law which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, not included in the previous points of this paragraph;
- 7) information on the arrangements established to market shares of the AIF in another Member State, and information on the arrangements established to prevent shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF, if such information must be provided pursuant to this Law and/or enactments of the Commission.

Within 20 working days of receiving a complete file of documents referred to in Para. [2] of this Article, the Commission shall forward it to the competent authorities of the Member State in which the AIFM intends to market the AIF.

The Commission shall also provide a statement by the same means to the competent authority of the Member State referred to in Para. [3] of this Article to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

The Commission shall transmit the file and statement referred to in Paras. [2] and [4] of this Article only if the AIFM's management of the AIF complies with and will continue to comply with the provisions of this Law and if the AIFM otherwise complies with the provisions of this Law.

After submitting the complete documentation referred to in Paras. [2] and [4] of this Article by the Commission to the competent authority of the Member State, the Commission shall, without delay, notify the AIFM about the submission.

The third country AIFM may start marketing the AIF in the relevant host Member State of the AIFM as of the date of the notification by the Commission as referred to in Para. [6] of this Article.

The Commission shall also inform ESMA and the competent authority of the home Member State of the AIF that the AIFM may start marketing the Republic, Member State, or third country AIF in the host Member State of the AIFM.

The competent authority of the host Member State of the AIFM shall supervise the procedures established by the AIFM pursuant to Para. [2]6) of this Article.

The AIFM shall provide the notification and documents referred to in Para. [2] of this Article, and any amendments thereof, to the Commission in the Serbian language or in a language customary in the sphere of international finance.

The Commission shall prepare the statement referred to in Para. [4] of this Article in the Serbian and the English language.

In the event of a material change to any of the particulars communicated in accordance with Para. [2] of this Article, the AIFM shall give written notice of that change to the Commission at least 1 month before implementing the change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the Commission shall prevent the planned change.

If a planned change is implemented in contravention of Paras. [13] and [14] of this Article, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the Commission shall take all due measures in accordance with its supervisory powers, including, if necessary, the prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the compliance by the AIFM with the provisions of this Law otherwise, the Commission shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs marketed and, if applicable, the competent authorities of the host Member State of the AIFM of those changes.

6. Management of Member State AIFs by a Third Country AIFM where the Republic is the Member State of Reference of that AIFM

Article 85

A third country AIFM of which the Republic is the Member State of reference may manage an AIF established in a Member State, either directly or by establishing a branch, provided that the AIFM is authorised to manage that type of AIF.

A third country AIFM of which the Republic is the Member State of reference intending to manage an AIF established in a Member State for the first time shall communicate the following information to the Commission in its capacity as the competent authority of the Member State of reference for that AIFM:

- 1) Member State in which the AIFM intends to perform the services referred to in Para. [1] of this Article, either directly or by establishing a branch;
- 2) a programme of planned activities in particular the services which it intends to perform and identifying the AIFs or types of AIFs it intends to manage.

If the third country AIFM intends to establish a branch in a Member State, it shall provide the following information to the Commission in addition to that referred to in Para. [2] of this Article:

- 1) the organisational structure of the branch;
- 2) the address in the home Member State of the AIF from which documents may be obtained;
- 3) the names and contact details of the persons responsible for the management of the branch.

Within 1 month of receiving a complete file of documents referred to in Para. [2] of this Article, or within 2 months of receiving a complete file of documents referred to in Para. [3] of this Article, the Commission shall forward it to the competent authorities of the host Member State of the AIFM.

The Commission shall enclose a statement to the effect that the AIFM concerned is authorised by it.

The Commission shall submit the file and statement referred to in Paras. [2] to [4] of this Article only if the AIFM's management of the AIF complies with the provisions of this Law and if the AIFM otherwise complies with the provisions of this Law.

Upon transmission of the notification file and statement referred to in Paras. [2], [3], and [5] of this Article by the Commission to the competent authorities of the host Member State of the AIFM, the Commission shall, without delay, notify the AIFM about the transmission.

The third country AIFM may start to provide its services in the host Member State as of the date of notification by the Commission referred to in Para. [7] of this Article.

The Commission shall notify ESMA that the AIFM may start to manage AIFs in the host Member State of the AIFM.

In the event of a material change to any of the particulars communicated in accordance with Para. [3] of this Article, the AIFM shall give written notice of that change to the Commission at least 1 month before implementing the change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Law or the AIFM would otherwise no longer comply with the provisions of this Law, the Commission shall prevent the planned change.

If a planned change is implemented in contravention of Paras. [10] and [11] of this Article, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Law or the AIFM otherwise no longer complies with the provisions of this Law, the Commission shall take all due measures in accordance with this Law, including, if necessary, the prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this Law, or the compliance by the AIFM with the provisions of this Law otherwise, the Commission shall, without delay, inform the competent authority of the host Member State of the AIFM thereof.

The language used in providing the notifications and documentation referred to in Paras. [2], [3], and [5] of this Article shall be subject to the provisions of Article 84[10],[11] of this Law, as appropriate.

7. Provision Services by a Third Country AIFM in the Republic where the Republic is not the Member State of Reference of that AIFM

Article 86

Where the Republic is not the Member State of reference of a third country AIFM, the third country AIFM may manage a the republic AIF, either directly or by establishing a branch, provided that the AIFM is authorised to manage that type of AIF by the competent authorities of the Member State of reference pursuant to legislation transposing into national law EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

The third country AIFM may start to provide its services referred to in Para. [1] of this Article as of the date of notification from the competent authorities of the Member State of reference that it has provided notification and statement equivalent to those referred to in Article 85[2],[3],[5] of this Law to the Commission.

The AIFM referred to in Para. [1] of this Article providing its services in the Republic through a branch shall be required to comply with all requirements of this Law that pertain to the duties and responsibilities of members of management of AIFMs, record-keeping of personal transactions, and management of conflicts of interest.

IV. OPERATION OF AIFMS AND AIFS

Article 87

In the course of its operations, an AIFM shall:

- 1) at all times be able to meet its obligations due (principle of liquidity), and be able to meet all its obligations on an ongoing basis (principle of solvency);
- 2) manage AIFs so that each AIF is able to meet its obligations due (principle of liquidity), and each AIF is able to meet all its obligations on an ongoing basis (principle of solvency);
- 3) ensure marketing and distribution of AIFs exclusively by persons duly authorised pursuant to this Law;
- 4) acquire assets and entrust them to a depositary for safe-keeping, pursuant to this Law, for:
 - (1) AIFs without legal personality, exclusively in the name and on behalf of the AIF;
 - (2) closed-ended AIFs without legal personality, exclusively in the name and on behalf of the AIF;
- 5) submit to the depositary documentation relevant for its operations as depositary;
- 6) disclose information on the AIFM and AIFs it manages pursuant to this Law, statutory instruments enacted as mandated by this Law, and other relevant regulations;
- 7) designate a point of contact with the Commission for purposes of reporting and communication;
- 8) manage AIFs pursuant to the restrictions on investment and risk for each individual AIF;
- 9) instruct the depositary to exercise rights in connection with assets of AIFs;
- 10) comply with other requirements of this Law.

Liability of AIFs

Article 88

An AIF shall not be liable for the obligations of an AIFM.

Members or shareholders of an AIF shall not be liable for the obligations of AIFMs arising from the transactions entered into by the AIFM in its own name and for the common behalf of members or shareholders of the AIF, or in the name or on behalf of the AIF.

An AIFM may not enter into a transaction that would incur liability for members or shareholders of an AIF.

An AIFM may pay compensation or remuneration in connection with a transaction for the common account of members or shareholders of an AIF exclusively from the assets of the AIF, and may not claim such costs directly from the members or shareholders of the AIF.

Voting Rights

Article 89

An AIFM shall exercise voting rights conferred by equity interests or shares in businesses held by AIFs either directly or through a depository.

The holder of a special power of attorney issued by an AIFM may also exercise voting rights conferred by shares and other instruments.

Prohibited Actions

Article 90

An AIFM shall not:

- 1) acquire or dispose of assets of an AIF it manages on its own behalf or on behalf of relevant persons;
- 2) acquire assets on behalf of an AIF, or enter into transactions not envisaged by the operating rules of the AIF or prospectus of the AIF, where one is required to be published;
- 3) enter into transactions in contravention of this Law, the operating rules of the AIF, or prospectus of the AIF, where one is required to be published, including provisions governing restrictions on the investment of assets of AIFs it manages;
- 4) dispose of assets of AIFs without consideration;
- 5) acquire or dispose of assets of AIFs it manages at a price less favourable than the market value or appraised value of such assets;

- 6) either directly or indirectly, with either immediate or delayed effect, agree the sale, purchase, or transfer of assets between two AIFs it manages, or between an AIF and a UCITS or an individual portfolio managed by the AIFM, pursuant to conditions other than market conditions or conditions that place one AIF or UCITS or individual portfolio at an advantage over another;
- 7) issue other financial instruments of open-ended AIFs or closed-ended AIFs without legal personality, except their investment units;
- 8) invest assets of an AIF in financial instruments issued by the AIFM;
- 9) pay dividends and bonuses to employees and members of management while not meeting capital requirements;
- 10) act in contravention of the operating rules of an AIF it manages or the prospectus of such AIF, where one is required to be published, in particular with regard to provisions governing restrictions on investment.

Article 91

Any offsetting of claims held by a third party against an AIFM with claims held by an AIF shall have no legal effect, regardless of whether claims against the AIFM are related to its management of the AIF.

Unless otherwise provided for by the operating rules of the AIF or the prospectus of such AIF, where one is required to be published, where an AIF acquires partly paid shares, the AIFM shall be liable for the payment of the difference in the price of shares.

Liability of AIFMs

Article 92

An AIFM shall be accountable to AIFs and members or shareholders of an AIF for the orderly and conscientious provision of services envisaged by this Law and the operating rules of the AIF or prospectus of the AIF, where one is required to be published.

Where an AIFM does not perform or fails to perform or accomplish, either wholly or in part, or inappropriately performs or accomplishes any service or duty envisaged under this Law, operating rules of an AIF, or prospectus of an AIF, where one is required to be published, the AIFM shall be liable to the AIF for the totality of damage caused to the assets of the AIF, where such damage has occurred in consequence of the failure of the AIFM to perform or accomplish its services or duties.

In the operating rules of an AIF, the AIFM shall provide for investor compensation in the event of errors in the valuation of shares in the AIF and in the event of infringement of the restrictions on investment referred to in this Law.

Information of Members or Shareholders of AIFs

Article 93

Where this Law or statutory instruments enacted pursuant to this Law stipulate the obligation of the AIFM to provide information to members or shareholders of AIFs on a durable medium, the AIFM may also provide such information by email, provided that:

- 1) the member or shareholder of an AIF has opted to receive information by such means;
- 2) the AIFM has provided an email address.

V. ESTABLISHMENT AND FEES OF AIFs

1. Establishment or Setting Up and Management of AIFs

Article 94

An AIFM shall submit an application to the Commission for the establishment or setting up and management of an AIF.

The Commission shall issue a procedural decision authorising the establishment or setting up and management of the AIF within 2 months of receiving the complete documentation where all requirements of this Law have been met for each type of AIF.

Denial of Authorisation for Establishment or Setting Up and Management of AIFs

Article 95

The Commission shall deny authorisation for establishment or setting up of an AIF where:

- 1) the AIFM has not entered into a contract appointing a depositary;
- 2) the operating rules of the AIF, or prospectus of the AIF, where one is required to be published, do not comply with the provisions of this Law;
- 3) the AIFM does not meet the requirements necessary to manage the type of AIF it has applied for authorisation to establish or set up, pursuant to this Law;

4) the AIFM does not possess the appropriate organisational structure to manage the type of AIF it has applied for authorisation to establish or set up.

The Commission may deny authorisation for establishment or setting up of an AIF where:

1) it determines that the relevant persons of the AIFM do not possess sufficient knowledge, experience, and ability to manage the AIF with a particular investment strategy;

2) the AIFM is managing existing AIFs in the Republic and the Commission has previously undertaken enforcement actions due to serious or repeated infringements of the provisions of this Law and statutory instruments enacted pursuant to this Law that the AIFM has failed to comply with.

Before denying authorisation for establishment and management of a Member State or third country AIF, the Commission shall consult with the competent authorities of the home Member State or Member State of reference of the AIFM.

Change in Conditions under which Authorisation was Granted to an AIFM to Establish or Set Up and Manage an AIF

Article 96

An AIFM shall notify the Commission of any material changes to information and conditions under which they were granted authorisation to establish or set up and manage an AIF within 30 days of making the decision to implement such changes.

Within 30 days of receiving the notice referred to in Para. [1] of this Article, the Commission shall assess the materiality of the changes and shall, as required, inform the AIFM of any restrictions to the scope of such changes or additional requirements of the AIFM with regard to such changes, or may contest the proposed changes. This period may be extended by an additional 30 days for justified reasons, of which the Commission shall notify the AIFM.

Where the Commission does not notify the AIFM, within the time period referred to in para. 2 of this Article, of any restrictions to the scope of such changes or additional requirements of the AIFM with regard to such changes, or does not contest the proposed changes, the Commission shall be deemed to have approved the proposed changes and the AIFM shall be deemed to meet all the requirements under which the Commission had initially authorised the establishment and management of the AIF.

Where changes to circumstances and conditions occur that are beyond the control of the AIFM, the AIFM shall notify the Commission of such changes without delay.

Within 30 days of receiving the notice referred to in Para. [4] of this Article, the Commission shall assess the materiality of the changes and shall inform the AIFM of any additional

requirements of the AIFM with regard to such changes. This period may be extended by an additional 30 days for justified reasons, of which the Commission shall notify the AIFM.

2. Fees Charged by AIFMs

Article 97

Fees charged by an AIFM directly to the members or shareholders of an AIF shall be set in the operating rules of the AIF and prospectus of the AIF, where one is required to be published.

Fees charged by an AIFM to an AIF shall be set in the operating rules of the AIF and prospectus of the AIF, where one is required to be published.

The collection of the fees referred to in Paras. [1] and [2] of this Article shall be overseen by the depositary of the AIF.

The operating rules of the AIF and prospectus of the AIF, where one is required to be published, must clearly determine the conditions for the collection of the fees referred to in this Article, amounts of the fees, and the manner in which the fees are assessed, as well as the option to reduce or waive fees at the discretion of the AIFM.

The Commission shall enact detailed regulations governing conditions for the collection of fees, their amounts, and the method used for their calculation as referred to in this Article.

Subscription and Redemption Fees Charged by AIFs

Article 98

The subscription fee and the price of the share in the AIF shall be collected directly from the member or shareholder when share is issued, whilst a redemption fee shall be collected directly from the member or shareholder at the time of redemption of the share in the AIF.

The fees referred to in Para. [1] of this Article shall be shown separately from the price of the share in the AIF, and may constitute the income of either the AIFM or the AIF.

The redemption fee shall not be paid in the event of liquidation or dissolution of the AIF, irrespective of the reason.

Sale of shares in an open-ended AIF subject to public offering shall be subject to the provisions of the law governing the establishment and operation of open-ended AIFs subject to public offering.

Other Costs and Fees Charged by AIFMs

Article 99

In addition to the fees referred to in Article 98 of this Law, an AIFM may charge operating costs and fees referred to in Para. [2] of this Article and the statutory instrument of the Commission referred to in Para. [4] of this Article and cited in the operating rules of the AIF or prospectus of the AIF, where one is required to be published.

Only the following may be paid directly from the assets of the AIF:

- 1) fees and costs payable to a depositary;
- 2) fees, commission, or charges payable in connection with the acquisition or sale of assets;
- 3) costs of valuation of assets of the AIF;
- 4) costs of maintaining the register of shares in the AIF, excluding the issuance of certificates of transactions or balance of shares in the AIF, where necessary;
- 5) costs of payment of income or profits;
- 6) costs of annual audit of the AIF;
- 7) all prescribed fees and charges payable to the Commission in connection with the authorisation of the AIF;
- 8) taxes payable by the AIF on its assets or profits;
- 9) costs of the disclosure of changes to operating rules and/or prospectus of the AIF and other required disclosures;
- 10) other costs payable under individual laws (for example the Commission fees and/or of other competent authority).

Where an AIF has opened a cash account with a depositary, the depositary may pay the fee referred to in Para. [2]1) of this Article from that account, for services of depositary set forth in this Law, only with the permission of the AIFM.

The Commission shall govern the conditions for the collection of fees, the amount of fees and charges referred to in this Article.

VI. CLOSED-ENDED AIFS WITH LEGAL PERSONALITY

General Provisions

Article 100

A closed-ended AIF with legal personality shall be a legal person incorporated as a joint-stock company or a limited liability company, within the meaning of the law governing companies.

A closed-ended AIF with legal personality shall be managed by an AIFM, except where the closed-ended AIF has been incorporated as an internally-managed closed-ended AIF.

Where a closed-ended AIF with legal personality is managed by an AIFM, the AIFM shall manage and dispose of the assets of the closed-ended AIF and shall exercise all the rights conferred by such assets in the name and on behalf of the AIF, pursuant to this Law and the operating rules of the AIF, or prospectus of the AIF, where one is required to be published.

A closed-ended AIF with legal personality shall be subject, as appropriate, to provisions of the law governing the capital market and of the law governing corporations, except where otherwise provided for by this Law.

A closed-ended AIF may not be an offeree company within the meaning of the law governing mergers of joint-stock companies.

The phrase ‘zatvoreni alternativni investicioni fond’ [‘closed-ended alternative investment fund’] or any similar phrase may only be used as part of its trading name or for advertising purposes by a closed-ended AIF authorised by the Commission.

Article 101

A closed-ended AIF with legal personality incorporated as a joint-stock company must have a memorandum of association, articles of association, and operating rules of the AIF, and, if units of it are subject to public offering, must also have a prospectus.

The articles of association of a closed-ended AIF with legal personality incorporated as a joint-stock company shall contain provisions mandated by the law governing companies and investment objectives of the AIF.

A closed-ended AIF with legal personality incorporated as a joint-stock company shall perform the activity of raising funds by public offering shares, pursuant to the operating rules of the AIF and prospectus of the AIF, where one is required to be published, and its articles of association, and shall register this activity with the company register as its primary activity.

Where shares are offered of a closed-ended AIF with legal personality incorporated as a joint-stock company, the AIFM shall comply with the provisions of the law governing the capital market.

The subscription and payment of shares of a closed-ended AIF with legal personality incorporated as a joint-stock company shall be subject to the provisions of the law governing corporations and the law governing the capital market.

Shares of a closed-ended AIF with legal personality incorporated as a joint-stock company shall be paid in cash and must be paid in full into the interim account of such AIF prior to the registration of the incorporation of the closed-ended AIF with legal personality or before any increase in initial capital.

Closed-ended AIFs shall issue dematerialised registered shares, which shall confer on their shareholders the rights set out in this Law, the law governing companies, operating rules of the AIF, prospectus of the AIF, where one is required to be issued, and articles of association.

A closed-ended AIF with legal personality incorporated as a joint-stock company must have a two-tier governance structure where its initial capital exceeds 200,000 euros.

Article 102

A closed-ended AIF with legal personality incorporated as a limited liability company must have a memorandum of association and operating rules of the AIF.

The memorandum of association of a closed-ended AIF with legal personality incorporated as a limited liability company shall contain provisions mandated by the law governing corporations, objectives of investment of the AIF, and other information as required by the Commission in a separate regulation.

A closed-ended AIF with legal personality incorporated as a limited liability company shall perform the activity of raising funds by private placement of shares and investing such funds pursuant to the law and operating rules of the AIF, and shall register this activity with the company register.

The acquisition of units of a closed-ended AIF with legal personality incorporated as a limited liability company shall be subject to the provisions of the law governing companies.

The initial capital of a closed-ended AIF with legal personality incorporated as a limited liability company must be paid in full into the interim account of such AIF prior to the registration of the incorporation of the closed-ended AIF with legal personality incorporated as a limited liability company with the company register, or before any increase in initial capital.

A closed-ended AIF with legal personality incorporated as a limited liability company must have a two-tier governance structure where its initial capital exceeds 200,000 euros.

Incorporation of a Closed-Ended AIF with legal personality

Article 103

A closed-ended AIF with legal personality managed by an AIFM shall be incorporated by the AIFM.

Prior approval from the Commission shall be required for the incorporation of a closed-ended AIF with legal personality.

The incorporation of a closed-ended AIF with legal personality shall be subject to the provisions of this Law that govern the establishment of closed-ended AIFs without legal personality and the provisions of the law governing companies, except unless otherwise provided for by this Law.

In addition to the documents and information referred to in Article 111[3] of this Law, an application for the incorporation and management of a closed-ended AIF with legal personality shall also contain:

- 1) the articles or memorandum of association of the AIF;
- 2) a management contract entered into between the closed-ended AIF with legal personality and the AIFM, where the closed-ended AIF with legal personality is managed by an AIFM;
- 3) decision on the appointment of members of the first supervisory board and their written declarations accepting appointment, where the closed-ended AIF with legal personality has been incorporated as a two-tier corporation.

The incorporation of an internally-managed closed-ended AIF with legal personality shall be subject, as appropriate, to the provisions of this Law that govern authorisation of AIFMs and approval for the incorporation and management of a closed-ended AIFM with legal personality.

The Commission shall enact detailed regulations governing the application and conditions for approval of closed-ended AIFs with legal personality.

Denial of Approval

Article 104

The Commission shall deny approval for incorporation and management of a closed-ended AIF with legal personality where:

- 1) the closed-ended AIF with legal personality fails to meet the requirements of this Law or other regulations in connection with form of incorporation, shares, or initial capital;
- 2) effective exercise of supervisory functions by the Commission or other competent authorities is not prevented by close links between the AIFM and any natural or legal persons; or
- 3) the effective exercise of supervisory functions by the Commission or other competent authority is prevented by regulations of a third country that apply to one or more natural or legal persons with close links to the closed-ended AIF with legal personality.

Supervisory Board of a Closed-Ended AIF with Legal Personality

Article 105

Members of the supervisory board of a closed-ended AIF with legal personality managed by an AIFM must have appropriate expertise and experience in managing the assets into which assets of the AIF are to be invested pursuant to the investment strategy of the AIF.

An employee or member of management of the AIFM or of a depositary, a member of management of two or more other legal persons, or persons with close links to those persons, may not be a member of the supervisory board of a closed-ended AIF with legal personality.

Members of the supervisory board of a closed-ended AIF referred to in Para. [1] of this Article shall be appointed to terms of office as envisaged pursuant to the law governing companies, which may not be longer than five years, and may be subject to re-appointment.

The supervisory board of a closed-ended AIF with legal personality incorporated as a joint-stock company shall consist of:

- 1) at least five members, where shares in the AIF are subject to public offering;
- 2) at least three members, where shares in the AIF are subject to private placement.

The supervisory board of a closed-ended AIF with legal personality been incorporated as a limited liability company shall consist of at least three members.

Article 106

Annual financial statements of a closed-ended AIF with legal personality managed by an AIFM shall disclose the total amount of fees and costs paid to members of the supervisory

board, as well as the number and value of all units of the AIF held by members of the supervisory board of the AIF.

Members of the supervisory board may not receive any rewards from issues of securities into which the closed-ended AIF with legal personality invests its assets.

Article 107

The Commission shall govern the additional powers and duties of the supervisory board of a closed-ended AIF with legal personality managed by an AIFM.

The supervisory board of a closed-ended AIF with legal personality shall adopt its rules of procedure that shall regulate its deliberations and any other issues relevant to the supervisory board of the closed-ended AIF with legal personality.

General Meeting of a Closed-Ended AIF with legal personality

Article 108

The convening, holding, and decision-making by the general meeting of a closed-ended AIF with legal personality shall be subject, as appropriate, to provisions of the law governing companies.

The AIFM shall have all powers in connection with the convening and holding of the general meeting of a closed-ended AIF with legal personality. The general meeting may also be convened by the supervisory board by a decision adopted by a two-thirds majority of all members.

The Commission shall govern in detail the convening of the general meeting, its sessions, and decision-making in sessions of the general meeting of a closed-ended AIF with legal personality.

Where the AIFM and persons with close links to the AIFM are members or shareholders of a closed-ended AIF with legal personality managed by that AIFM, such persons may not exercise their voting rights conferred by such shares, or make decisions in connection with issues relevant to the AIFM or such persons with close links to the AIFM, in sessions of the general meeting.

Contract on Management of a Closed-Ended AIF with legal personality Managed by an AIFM

Article 109

The management of a closed-ended AIF with legal personality managed by an AIFM shall be evidenced by written contract.

In the management contract referred to in Para. [1] of this Article the AIFM shall undertake to manage the closed-ended AIF with legal personality pursuant to the provisions of this Law, operating rules of the AIF, prospectus of the AIF, where one is required to be published, and articles or memorandum of association of the AIF, whilst the closed-ended AIF with legal personality shall undertake to pay a management fee to the AIFM, the amount and due dates of which shall be determined by the operating rules of the AIF and prospectus of the AIF, where one is required to be published, as well as to meet other costs of the AIFM envisaged in the operating rules of the AIF and prospectus of the AIF, where one is required to be published.

The AIFM shall notify the Commission of any change to the management contract referred to in Para. [1] of this Article.

Article 110

Both the AIFM and the closed-ended AIF with legal personality may unilaterally terminate the management contract by giving 3 months' notice, unless the memorandum or articles of association of the closed-ended AIF with legal personality envisages a longer notice period, which shall in any case be limited to a maximum of 6 months.

Upon the expiry of the notice period referred to in Para. [1] of this Article, the closed-ended AIF with legal personality shall transfer management rights to a new AIFM, failing which it shall be liquidated.

VII. AIFS WITHOUT LEGAL PERSONALITY

Approval for Setting Up of AIFs without Legal Personality

Article 111

The Commission shall have the powers to approve the setting up and management of open-ended and closed-ended AIFs without legal personality.

The AIFM shall apply with the Commission for approval of setting up and management of the AIFs referred to in Para. [1] of this Article.

The application for approval of the setting up and management of an AIF without legal personality shall contain:

1) name of the AIF, its investment strategy, and type of the AIF, pursuant to the provisions of this Law and statutory instruments of the Commission;

- 2) operating rules of the AIF and prospectus of the AIF, where applicable;
- 3) risk profile and information on risks associated with the AIF it intends to manage;
- 4) information on the master AIF, if the AIF is a feeder AIF;
- 5) contract appointing a depositary for the AIF;
- 6) evidence that the AIFM meets the organisational requirements referred to in Articles 39 to 52 of this Law that supports the conclusion that it possesses the appropriate organisational structure to manage that type of AIF.

The Commission shall rule on an application referred to in Para. [2] of this Article within 2 months of receiving a complete application.

Where the application referred to in Para. [2] of this Article is made by a Member State or third country AIFM, for the purposes of verifying compliance with the competent authorities of the home Member State of the AIFM or the Member State of reference of the AIFM, the Commission shall seek additional information on whether the authorisation of the AIFM to manage AIFs extends to the type of AIF indicated in the application for approval.

Approval for organising and managing an AIF without legal personality by the Commission shall also be deemed to constitute approval of the operating rules of the AIF and appointment of the depositary of the AIF.

The Commission shall regulate in detail the requirements and conditions for approval for organising and managing an AIF without legal personality.

Initial Offering of Investment Units in an AIF without Legal Personality

Article 112

The initial offering period of investment units in an AIF without legal personality shall be determined by the operating rules of the AIF and the prospectus of the AIF, where one is required to be published.

During the initial offering period, depending on the operating rules of the AIF and the prospectus of the AIF, where one is required to be published, the AIF may:

- 1) raise funds;
- 2) collect binding offers for the payment of funds into the AIF.

The funds referred to in Para. [2] of this Article may be paid either in dinars or in foreign currency.

In the event referred to in Para. [2]1) of this Article:

1) during the initial offering period, the entire amount of funds received shall be kept in the account of the AIF opened with the depositary and may not be invested until such time as the AIF meets the requirements to dispose of the funds, as envisaged by the operating rules of the AIF and prospectus of the AIF, where one is required to be published;

2) investment of the funds collected may begin only after the expiry of the initial offering period of investment units in the AIF.

The issue price and allocation of investment units to members shall be subject to Article 125 of this Law.

Fees shall not be assessed or charged from members until the initial offering period has been completed.

The AIFM shall notify the Commission of the funds raised and binding offers collected, as referred to in Para. [2] of this Article, within 3 days of the end of the initial offering period.

Where funds are not raised as envisaged by the operating rules of the AIF and the prospectus of the AIF, where one is required to be published, by the end of the initial offering period:

1) in the event referred to in Para. [2]1) of this Article, the AIFM shall make a refund to members within 8 days;

2) in the event referred to in Para. [2]2) of this Article, the AIFM shall reject offers made by investors at notify them in writing thereof.

The Commission shall regulate in detail the period and requirements for an initial offering of investment units referred to in this Article, as well as the requirements for payment of funds in foreign currency.

Issue of Investment Units

Article 113

Investment units shall be issued pursuant to payment of funds in the account of the AIF opened with the depositary.

Notwithstanding Para. [1] of this Article, investment units may be issued by the assignment of new investment units as profit-sharing, or by means of a dilution adjustment, or in other

cases as envisaged by the operating rules and key investor information of the AIF or as enacted by the Commission.

Assets of AIFs without Legal Personality

Article 114

The assets of an AIF without legal personality shall not belong to the AIFM, shall not constitute assets of the AIFM, may not enter the liquidation or bankruptcy estate of the AIFM or the depositary, and may not be enforced against in collection of claims against the AIFM and the depositary. Assets of AIFs shall be maintained and accounted for separately from the assets of the AIFM and those of the depositary.

All assets acquired by the AIFM in the exercise of rights enjoyed by AIFs without legal personality or pursuant to transactions with the assets of such AIFs or acquired by persons authorised to manage AIFs in compensation for rights enjoyed by AIFs shall also belong to AIFs and constitute their assets.

Assets of AIFs may not be used for lending or borrowing for the benefit of third parties, nor as collateral for third-party loans.

AIFMs and persons with close links to those AIFMs may not enter into contracts with AIFs without legal personality that could result in conflict of interest, except where this is allowed by the provisions of this Law or statutory instruments enacted by the Commission.

Disposal of Investment Units of AIFs without Legal Personality

Article 115

Units of AIFs without legal personality shall be dematerialised financial instruments within the meaning of the law governing the capital market transferable under the conditions envisaged by the operating rules of the AIF.

A member of an AIF without legal personality shall be entitled to dispose of their investment units, as well as to transfer or pledge them pursuant to law and the operating rules of the AIF.

Certificate of Acquisition or Disposal of Investment Units in AIFs without Legal Personality and Conditions for Payment in Redemption of Units in AIFs without Legal Personality

Article 116

A certificate of acquisition or disposal of investment units in an AIF without legal personality shall be issued at the application of a member within 7 working days at the latest, following the submission of a complete application.

The Commission shall regulate in detail the content of the application and the certificate of acquisition or disposal of units in an AIF referred to in the Paragraph 1 of this Article.

The redemption price for investment units in an AIF shall be paid to the holder pursuant to the operating rules of the AIF.

Where an acquirer acquires investment units pursuant to the ruling of a court or other competent authority, or by operation of the law or otherwise, whilst failing to meet the requirements to become a member of the AIF in accordance with and pursuant to the provisions of this Law, the operating rules of the AIF and the prospectus of the AIF, where one is required to be published, or acquires fewer investment units than the minimum prescribed by the operating rules of the AIF and the prospectus of the AIF, where one is required to be published, the AIFM shall redeem the investment units from the acquirer.

Where an investor, holder of a share in an AIF withholds information from the AIFM required by the AIFM to meet its obligations pursuant to tax laws or where there are reasonable grounds to believe that the member or shareholder has engaged in, attempted to engage in, or is likely to engage in, money laundering or financing of terrorism, within the meaning of the relevant regulations, the AIFM may redeem the shares of the AIF from such member or shareholder without their approval.

Where an investor, holder of an AIF withholds information from the AIFM that is relevant for enforcement of the Foreign Account Tax Compliance Act (FATCA) and the EU regulations governing automatic exchange of information between tax authorities, the AIFM may redeem the shares of the AIF from such member or shareholder without their approval.

Relationship between AIFMs, AIFs without Legal Personality, and AIF Members

Article 117

The AIFM shall manage and dispose of assets of an AIF without legal personality and shall exercise all rights conferred by such assets on its own behalf and for the common account of all members of such AIF, pursuant to the provisions of this Law and the operating rules of the AIF.

The relationship between the AIFM and members of an AIF without legal personality shall be regulated by an investment contract which shall be entered into by the AIFM and the members.

Under the investment contract, the AIFM shall undertake to:

- 1) manage assets raised from members of the AIF for the common account of the of the AIF members;
- 2) issue investment units in an AIF without legal personality to members of the AIF;
- 3) register the members;
- 4) effect any and all other transactions and undertakings required to manage the AIF pursuant to the provisions of this Law and the operating rules of the AIF.

In the event of original acquisition of an investment unit, the investment contract shall be deemed to have been entered into when the investor applies with the AIFM to purchase investment units and pays the amount indicated in the application and the AIFM does not refuse to enter into the contract within 5 working days of the application being made.

After the conclusion of an investment contract, the AIFM shall promptly enter the investor into the register of investment units.

In all other cases, the investment contract shall be deemed to have been entered into at the time of the registration of the acquirer. The period within which an application for registration can be denied shall be 5 working days of the acquirer applying with the AIFM.

The AIFM must refuse to enter into an investment contract if the application for issue of units is received whilst the issue and redemption of investment units are suspended.

The AIFM may refuse to enter into an investment contract where:

- 1) it determines that the purpose of the payment or application for issue of investment units is the abuse of ineffective statutory or other requirements governing the valuation of investment units;
- 2) entry into the contract or acceptance of the offer made by the investor would damage other investors, expose the AIF to risk of illiquidity or insolvency, or deny the attainment of the investment objectives and investment strategy of the AIF;
- 3) the relationship between the AIFM and investors has been seriously compromised, or in the event of litigation or other proceedings, unscrupulous behaviour by investors or potential investors, and the like;
- 4) there are reasonable grounds to believe that money laundering or financing of terrorism, within the meaning of the relevant regulations, has occurred or been attempted or is likely to occur.

The AIFM shall notify the investor of its refusal to enter into the investment contract.

Article 112 [3] shall apply accordingly to any event of original acquisition of an investment unit and all other cases of acquisition of investment units.

In an event referred to in Paras. [4] and [7] of this Article, where funds have been paid into the account of the AIF, the AIFM shall reimburse the nominal amount of the funds back into the account from which the payment was made, provided that the AIFM is aware of the account information.

VIII. RECORDS OF MEMBERS OR SHAREHOLDERS OF AIFS

Records and Registers of Shares of AIFs

Article 118

An AIFM shall keep a register of shares of AIFs.

All up-to-date information as provided for in the enactment referred to in Para. [10] of this Article shall be recorded in the register referred to in Para. [1] of this Article.

Records of members or shareholders of a closed-ended AIF with legal personality shall be subject to provisions of the law governing companies and of the law governing the capital market.

Units in an AIF without legal personality shall be maintained in an electronic format, and the AIFM may keep them in a register of investment units of AIFs maintained by the AIFM or in the central register of dematerialised financial instruments.

The register of units of AIF referred to in paragraph 4 of this Article shall contain the following information:

- 1) company name, address, registered office, registration number, and/or the tax number of the legal person or sole proprietor;
- 2) name and surname and citizen's unique personal identification number (CUPIN) for natural persons (passport number and date of birth for foreign citizens).

An investment unit may be registered in the name of an investment firm or depositary providing services of safe-keeping and administration in relation to financial instruments on behalf of a client, including depositary services and connected services and portfolio management, in which case the register of investment units of the AIF shall record that units of the AIF are held by the investment firm or depositary on behalf of third parties.

Personal information handled must be appropriate, relevant and limited to only those required relevant to the purpose of such data handling.

The purpose of handling of personal data contained in the register referred to in Para. 1 of this Article is performance of statutory obligations and liabilities prescribed by this Law by an AIFM and facilitation of regulatory and supervisory competencies of the Commission in this regard.

The information contained in the register referred to in paragraph 1 of this Article shall be published on the protected section of the AIFM website, pursuant to the Commission enactment referred to in paragraph 10 of this Article, and the access to such section of the AIFM website shall be provided only to AIMF employees, holders of AIFs and the Commission.

The Commission shall govern in detail the maintenance of the register of units of the AIF and the disclosure of information kept in that register.

Confidentiality of Data in the Register of Investment Units of AIFs without Legal Personality

Article 119

The person maintaining the register of investment units of an AIF without legal personality shall treat data about members, unit balances, and incoming and outgoing payments as confidential information.

The data shall be provided by the person maintaining the register of investment units, on application, to:

- 1) the member, whereby only data pertaining to the member may be disclosed;
- 2) depositary;
- 3) any person able to prove legal interest;
- 4) judicial or administrative authorities or other persons duly authorised pursuant to the law.

The Commission and the AIFM shall at all times be able to access the register of investment units.

Methods and Requirements for Registration of Investment Units of AIFs without Legal Personality

Article 120

Title to investment units shall be required by registration as referred to in Article 118 of this Law.

The person maintaining the register of investment units shall provide the members, at least once per year, a statement of the balance and turnover of the investment units of the AIF of which they hold units.

The person maintaining the register of investment units shall provide members or their representatives a statement of the balance and turnover of the units of the AIF of which they hold investment units at their request and at their expense.

Article 121

The person maintaining the register of investment units shall deny an application for registration where:

- 1) the documentation constituting legal grounds for disposal of the investment units is insufficient to determine all elements required for appropriate disposal of the investment units (identification of the transaction in question, parties to the transaction, units of the AIF, and the like);
- 2) the acquirer of the investment unit does not meet the requirements to become a member of the AIF pursuant to the provisions of this Law and the operating rules of the AIF and prospectus of the AIF, where one is required to be published;
- 3) the acquirer of the investment unit is acquiring or has acquired the unit in contravention of this Law and the operating rules of the AIF and prospectus of the AIF, where one is required to be published;
- 4) doing so would constitute disposal of investment units smaller in size than the smallest unit envisaged by the operating rules of the AIF and prospectus of the AIF, or where doing so would infringe provisions governing the smallest number of investment units.

The person maintaining the register of units shall keep documents on the disposal of investment units in AIFs for a period of 10 years.

IX. VALUATION OF ASSETS AND PRICING OF SHARES OF AIFs

1. Calculation of Net Asset Value of AIFs

Article 122

The AIFM shall calculate the total assets and liabilities for each AIF it manages. The value of total assets less the value of total liabilities of an AIF shall constitute the net asset value of the AIF.

The AIFM shall ensure that the net asset value per unit or share of AIFs is calculated and disclosed to the investors in accordance with this Law, other applicable regulations, and the operating rules of the AIF or prospectus of the AIF, where one is required to be published.

The operating rules of the AIF shall stipulate how members or shareholders are to be notified of the valuation and calculation of the net asset value of the AIF.

The Commission shall govern the calculation of the net asset value of an AIF for particular types of AIFs, based on whether shares in the AIF are subject to public offer or private placement.

Responsibility for Calculation of Net Asset Value of AIFs and Net Asset Value per Unit or Share of AIFs

Article 123

The method used for valuation of assets shall be determined by:

- 1) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM;
- 2) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.

Where organising or establishing an AIF, the AIFM shall ensure that it has adopted accounting policies or valuation methodologies for each AIF, and shall provide such policies or methodologies to the depositary of the AIF and the external valuer.

The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the members of the AIF.

The depositary shall be responsible for the control of net asset value calculation, and shall in doing so ensure that the calculation of the net asset value of the AIF and the net asset value per unit or share of the AIF by the AIFM or the external valuer complies with the accounting policies or valuation methodologies of the AIFM.

Where, in controlling the calculation of the net asset value of the AIF, the depositary determines errors and/or inaccuracies, the depositary shall notify the AIFM thereof without delay.

Where an external valuer performs the valuation function, the AIFM shall ensure that:

- 1) the external valuer is subject to mandatory professional registration for the performance of the valuation function;
- 2) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with statutory instruments enacted by the Commission;
- 3) the appointment of the external valuer complies with the requirements of statutory instruments enacted by the Commission;
- 4) the appointment of the external valuer complies with the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

The appointed external valuer shall not delegate the valuation function to a third party.

AIFMs shall notify the appointment of the external valuer to the Commission, which may require that another external valuer be appointed instead, where the conditions laid down in Para. [6] of this Article are not met.

Where the valuation function is not performed by an independent external valuer, the Commission may require the AIFM to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate, by a certified auditor, at the expense of the AIFM.

AIFMs shall be responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its members or shareholders shall, therefore, not be affected by the fact that the AIFM has appointed an external valuer.

The external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

When auditing the annual statements of the AIF, the certified auditor of the AIF shall audit the application of valuation approaches stipulated by the statutory instruments enacted pursuant to this Law to determine whether the net asset value of the AIF and net asset value per unit or share of the AIF determined using those approaches are accurate, as well as that the management fee and other fees and costs envisaged by this Law, statutory instruments

enacted pursuant this Law, operating rules of the AIF and prospectus of the AIF, where one is required to be published, do not exceed the amounts allowed.

The Commission shall regulate:

1) the criteria for proper valuation of net assets and calculation of net asset value per unit or share of the AIF, and reporting requirements applicable to the valuation of net assets and calculation of net asset value per unit or share of the AIF;

2) the professional guarantees the external valuer must be able to provide to effectively perform the valuation function.

Article 124

The operating rules of the AIF and prospectus of the AIF, where one is required to be published, shall prescribe the rules applicable to valuation of assets and calculation of net asset value per unit or share of the AIF, pursuant to criteria laid down by the Commission.

AIFMs shall ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with the provisions of this Law, other applicable regulations, and valuation policies or methodologies.

The procedures used for the valuation of an AIF shall ensure that the net asset value per unit or share is calculated at least as of the date of preparation of financial reports on the assets of the AIF.

When undertaking its obligations related to the valuation of assets of the AIF and calculation of the net asset value per unit or share of the AIF, the AIFM shall comply with the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

The Commission shall lay down the criteria, the frequency and procedure for valuation of assets of an AIF and calculation of net asset value per unit or share of the AIF in view of the assets the AIF invests in and its unit or share issue and redemption policy.

2. Pricing of Shares of AIFs

Article 125

The price of an investment unit in an AIF without legal personality shall be determined by the AIFM at the time of the initial offer, and shall be indicated in the operating rules of the AIF. Investment units shall be allocated to members of the AIF pursuant to the operating rules of the AIF.

Following the expiry of the initial offer, investment units shall be priced according to the latest calculation of net asset value per investment unit, excepting where operating rules of the AIF provide otherwise.

The initial offer of shares in a closed-ended AIF with legal personality shall be subject to the provisions of the law governing the capital market and the law governing companies.

The Commission shall govern the pricing and calculation of prices of units in AIFs.

Disclosure of Prices of Investment Units in Open-Ended AIFs Subject to Public Offering

Article 126

On the day of the offer, issue, or redemption of investment units in an AIF subject to public offering, the AIFM shall disclose the calculated value of those investment units as of the preceding day.

In addition to the requirement of Para. [1] of this Article, the AIFM shall disclose the estimated value of each investment unit at least twice per year.

The price of an investment unit in an open-ended AIF subject to public offering must be communicated to a member of the AIF who applies for this information either by mail or by email at the AIFM's email address, or must be made available at a branch of the AIFM or on the premises of an authorised intermediary.

Redemption of Investment Units of Open-Ended AIFs

Article 127

A member of an open-ended AIF may request the AIFM to redeem their investment units at any time, and the AIFM shall redeem such investment units and pay their price from the assets of the AIF, under the conditions stipulated by the operating rules of the AIF. The redemption of investment units of an open-ended AIF shall be deemed a final and unconditional disposal of such investment units by the member.

Investment units may be redeemed by means of the transfer of title to any type of asset of the AIF of a value equal to that of the investment unit so redeemed, where such redemption is envisaged by the operating rules of the AIF. In the event that such exercise of redemption rights involving the transfer of substantial assets of the AIF would place other members at a disadvantage, the redemption shall take place to the extent that is possible and feasible.

Where the redemption of an investment unit of an open-ended AIF would place other members or shareholders at a disadvantage, where so envisaged by the operating rules of the AIF and prospectus of the AIF, where one is required to be published, the redemption referred to in Para. [1] of this Article may be combined with the redemption by transfer of title referred to in Para. [2] of this Article.

The Commission shall lay down the conditions, periods, and procedure for redemption of investment units in an open-ended AIF.

Substitution of Investment Units in AIFs without Legal Personality

Article 128

Substitution of investment units shall constitute the simultaneous redemption of investment units of one AIF from a member and the issue of investment units in another AIF managed by the same AIFM by the same member, in exchange for financial consideration paid to the member.

The Commission shall govern the conditions for substitution of investment units of an AIF without legal personality by investment units of another AIF without legal personality managed by the same AIFM.

Suspension of Issue and Redemption of Investment Units in AIFs without Legal Personality

Article 129

The issue and redemption of investment units in an AIF without legal personality may be suspended where the AIFM and the depositary believe doing so is in the best interests of current or prospective members of the AIF.

The AIFM shall notify the suspension of issue and redemption of investment units in an AIF without legal personality without delay to the Commission and the depositary, as well as to disclose such suspension on its website.

In addition to the Commission, the AIFM shall notify the suspension without delay to the competent authorities of the home Member State of the AIF and the competent authorities of all countries in which investment units in the AIF without legal personality are marketed.

Where the depositary does not agree with the decision of the AIFM to suspend issue and redemption of investment units of the AIF without legal personality, the depositary shall notify the Commission thereof without delay, and no suspension may take place in this event.

Where the AIFM does not notify the suspension of issue and redemption to the Commission, the depositary shall do so without delay.

The Commission may order the issue and redemption of investment units of an AIF without legal personality where this is in the public interest or in the interest of members or shareholders of the AIF.

The Commission may order the AIFM and the depositary to temporarily suspend the issue and redemption of investment units in an AIF without legal personality in the event there are justified reasons to suspend issue and redemption in the interest of the current or prospective members of the AIF without legal personality.

The Commission may require the AIFM to supply documentation and information required to assess whether the decision to suspend the issue and redemption of investment units in an AIF without legal personality is justified. Where the Commission determines that the suspension of the issue and redemption of investment units of the AIF without legal personality jeopardises the interests of members of the AIF, the Commission shall order the depositary to defer the suspension of issue and redemption and shall notify the AIFM thereof.

The Commission shall govern in detail the conditions for the suspension and resumption of issue and redemption of investment units in an AIF without legal personality.

Article 130

The suspension of issue and redemption of investment units in an AIF without legal personality referred to in Article 129[1] of this Law must be lifted as soon as the reasons for the suspension no longer apply, and such suspension may not last for more than 28 days.

By way of an exception, the Commission may, at the application of the AIFM, extend the suspension of issue and redemption of investment units in an AIF where such application is made at the latest 10 days before the expiry of the period referred to in Para. [1] of this Article.

The AIFM shall notify the Commission of the resumption of operations of the AIF without delay and shall disclose this fact on its website.

The AIFM shall notify the resumption of operations of the AIF without delay to the competent authorities of all countries in which investment units in the AIF without legal personality are marketed.

X. MARKETING AND ADVERTISING OF SHARES IN AIFs AND AIFS

Conditions for Marketing

Article 131

A Member State or third country AIFM intending to market Member State AIFs in the Republic, of an AIF established in another Member State or a third country, must ensure all conditions are met in the Republic for regular:

- 1) payments to members or shareholders of AIFs;
- 2) offering, issue, and redemption of shares in AIFs;
- 3) publication of documents related to AIFs and provisions of documents to members or shareholders who purchased shares in AIFs in the Republic;
- 4) grievance redress for investors.

The Commission shall govern the conditions referred to in Para. [1] of this Article.

Advertising of AIFs

Article 132

Advertising of AIFs shall comprise all advertising materials designed to induce current or prospective members or shareholders of AIFs to purchase shares of AIFs by means of advertisements, public invitations, publicity materials, or otherwise.

AIFs that may be marketed in the Republic may also be advertised in Serbia.

Advertising materials must be clear, unambiguous, accurate, and compliant with the operating rules and prospectus of the AIF, where one is required to be published, and must not be misleading as to the conditions for investment in and operations of the AIF.

Advertising materials must contain information as to where, how, and in which language members or shareholders may access the operating rules of the AIF and, where applicable, the prospectus of the AIF.

The Commission shall govern the advertising of AIFs.

Article 133

Advertising provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering shall apply, where appropriate, to AIFs subject to public offering.

AIFs subject to private placement may not be advertised so as to attract prospective investors or members or shareholders.

Public presentation of materials containing the legal name and activity of the AIFM that invite prospective investors to contact the AIFM shall not be considered unauthorised advertising of AIFs subject to private placement.

All presentation materials regarding an AIF subject to private placement and the AIFM that manages it must be complete, clear, truthful, and accurate, and must not be misleading, in particular with regard to the risks and fees involved, and must be approved by the management of the AIFM.

Distribution of Shares in AIFs

Article 134

Shares in AIFs may be sold by legal persons from the Republic other than the AIFM pursuant to a distribution contract (hereinafter referred to as ‘distributors’), where allowed to do so pursuant to this Law, the law governing the capital market, and statutory instruments enacted pursuant to these laws.

Provisions governing the sale of shares in AIFs shall apply, mutatis mutandis, to Member State or third country AIFMs marketing AIFs in the Republic.

The AIFM shall notify the Commission of each contract referred to in Para. [1] of this Article it has entered into.

The Commission shall regulate in detail the conditions for distributors and natural persons employed or otherwise engaged by distributors that sell shares in AIFs.

Marketing AIFs to Retail Investors

Article 135

An AIFM intending to market AIFs to retail investors in the Republic must receive prior authorisation to do so from the Commission.

The Commission shall determine whether each individual AIF may be considered marketable to retail investors in the Republic, pursuant to the provisions of this Law.

The Commission shall regulate in detail authorisation referred to in Para. [1] of this Article and the required documentation.

XI. REPORTING TO MEMBERS AND SHAREHOLDERS; OPERATING RULES OF AIFS; ANNUAL STATEMENTS AND NOTIFICATIONS

1. Documents, Notifications, and Other Disclosures

Article 136

An AIFM shall:

- 1) adopt operating rules for each AIF subject to private placement it manages;
- 2) for each AIF without legal personality subject to public offering, adopt and disclose prospectus, key investor information, and operating rules of the AIF intended for investors, pursuant to provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering;
- 3) for each closed-ended AIF with legal personality incorporated as a joint-stock company and selling shares by public offering, adopt a prospectus and summary prospectus, pursuant to provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering, and adopt a prospectus, where one is required to be published, pursuant to provisions of the law governing the capital market;
- 4) for each AIF, adopt and disclose semi-annual and audited annual financial statements;
- 5) regularly make other material disclosures to members or shareholders of the AIF in connection with the operations of the AIF.

Unless otherwise provided for by this Law, the documents and disclosures referred to Para. [1] of this Article must be prepared and, where required, published, in the Serbian language.

The latest versions of the documents and disclosures referred to in Para. [1] of this Article must be published on the website of the AIFM.

Liability of AIFMs for Accuracy and Completeness of Information

Article 137

An AIFM shall be held liable for damage caused to members or shareholders of AIFs due to:

- 1) issue or redemption of shares of AIFs;
- 2) failure to redeem shares of AIFs;

where such action or failure to act by the member or shareholder of the AIF is due to the documents or disclosures referred to in Article 136 of this Law containing inaccurate, incomplete, or misleading information, or to statements made by persons selling shares in AIFs in the name and on behalf of the AIFM.

2. Operating Rules of AIFs

Article 138

The operating rules of an AIF shall be the principal document of the AIF governing the key characteristics, rights, and obligations of the AIF.

For each AIF it manages, an AIFM shall be required to provide the following information to each investor before entering into an investment contract:

- 1) operating rules of the AIF and prospectus of the AIF, where one is required to be published;
- 2) latest annual financial statement of the AIF;
- 3) information on the latest valuation of assets of the AIF, calculated net asset value per unit or share of the AIF, or market price of shares of the AIF.

The information provided in the operating rules must be truthful, accurate, complete, and consistent.

The supervisory board of the AIFM and the depositary must be in agreement on the operating rules of an AIF without legal personality, whilst the supervisory board of the AIF and the depositary must be in agreement on the operating rules of a closed-ended AIF with legal personality.

When authorising the establishment of an AIF, the Commission shall also approve the operating rules of that AIF.

Content of Operating Rules of AIFs

Article 139

The operating rules of AIFs must contain the following information:

- 1) legal name and type of the AIF;
- 2) date of establishment of the AIF and period for which it has been established, where the AIF is established for a limited period of time;

- 3) place where copies may be obtained of the operating rules of the AIF and prospectus of the AIF, where one is required to be published, or the memorandum or articles of association of the AIF, together with any additional information on the AIF;
- 4) lowest amount of funds intended to be raised and action to be taken in the event of failure to raise the lowest envisaged amount;
- 5) brief information as to the tax regulations applicable to the AIF relevant for members, and indication of whether withholding income tax or capital gains tax is payable on the dividends paid by the AIF to the member;
- 6) key characteristics of shares of the AIF, in particular:
 - (1) the nature of rights conferred by shares of the AIF;
 - (2) indication of the potential classes of shares of the AIF;
 - (3) rights deriving from shares of the AIF;
- 7) conditions under which a decision may be taken to liquidate or dissolve the AIF and the procedure for liquidation or dissolution of the AIF;
- 8) procedures and conditions for issue of shares of the AIF, lowest individual investment in the AIF, manner of registration or issue of shares in the AIF, initial price of shares in the AIF, procedures and conditions for offering of shares in the AIF, manner and conditions for redemption and payment in exchange for shares in the AIF, and conditions under which issue or redemption may be suspended;
- 9) information on the manner and frequency of payment of dividends or income of the AIF;
- 10) description of the investment strategy and objectives of the AIF;
- 11) information on where the master AIF is established and where feeder funds are established, in the event that the AIF is a fund of funds;
- 12) description of the types of assets may invest in and the approaches it may utilise, as well as any related risks and investment restrictions;
- 13) conditions for use by the AIF of leverage, type and source of permitted leverage and associated risks, any restrictions on the use of leverage, and any procedures in connection with reuse of collateral and assets and maximum level of leverage which the AIFM may employ on behalf of the AIF;

- 14) conditions under which the AIF may borrow;
- 15) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both, as well as reporting requirements and other rights of investors in the event of an intended change;
- 16) a description of the conditions under which the operating rules of the AIF may be changed, as well as a description of actions to be taken to protect existing investors, primarily in terms of disclosures made to investors and other rights of investors in the event of an intended change;
- 17) a description of the main legal implications of the contractual relationship entered into for the purpose of investment;
- 18) information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;
- 19) the identity of the AIFM, the AIF's depository, auditor and any other service providers and a description of their duties and the rights of members or shareholders;
- 20) a description of any delegated management function by the AIFM and of any safe-keeping function delegated by the depository, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- 21) a description of how the AIFM complies with requirements on additional own funds, where the net asset value of the AIF exceeds 250,000 euros;
- 22) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets, and frequency of valuation of assets of the AIF, pursuant to this Law;
- 23) the time, method, and frequency of pricing for the purpose of issuing new shares in the AIF or redemption of existing ones, and how the prices are published; and a description of the amounts and frequency of payment of allowed fees and costs for issue or redemption of shares of the AIF;
- 24) the procedures and conditions for issue and sale of the AIF;
- 25) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with members or shareholders;

26) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by members or shareholders and a clear description of the manner of calculation of fees;

27) a description of how the AIFM ensures a fair treatment of members or shareholders and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;

28) availability of the latest semi-annual and annual statements;

29) where available, the historical performance of the AIF;

30) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;

31) a description of how and when the information required under Article 144 of this Law will be disclosed;

32) the duration of the financial year;

33) any other information envisaged under this Law and statutory instruments enacted pursuant to this Law.

The AIFM shall lay down in the AIF operating rules how it will inform the investors, before they conclude a contract on investing in the AIF, of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article 166[6] of this Law, and how it will inform the members or shareholders of AIF of liabilities and any changes with respect to depositary liability.

In addition to information referred to in Paras. [1] and [2] of this Article, the operating rules of an AIF must also contain:

1) key rights, obligations, and duties of the AIFM towards members or shareholders of an AIF;

2) key rights, obligations, and duties of members or shareholders of an AIF towards the AIFM and the AIF, and how they may be exercised and safeguarded;

- 3) key rights, obligations, and duties of the AIFM towards the depositary, of the depositary towards the AIFM and members or shareholders of the AIF, and of the member or shareholder of the AIF towards the depositary;
- 4) general information on the operating requirements of the AIFM and oversight of its operations;
- 5) objectives and strategy of the AIFM;
- 6) organisational structure of the AIFM, clearly indicating lines of accountability;
- 7) procedures for compensation of members or shareholders of AIFs in the event of inaccurate valuation of shares in the AIF and infringement of any restriction on investment;
- 8) information on conflicts of interest and their resolution, in particular with regard to potential conflicts of interest between the AIF or a member or shareholder of the AIF and a member or shareholder with a qualifying holding in the AIFM and/or a person with close links to the AIFM, conflicts of interest between AIFs, and conflicts of interest arising from other activities and services referred to in Article 9 of this Law, where provided by the AIFM;
- 9) a description of the grievance redress mechanism available to the AIFM and investors.

Where the AIF does not have legal personality, its operating rules shall envisage whether shares are freely transferable, as well as how they may be disposed of, transferred, or pledged.

Where the AIF has legal personality and is incorporated as a joint-stock company, in which case the AIFM shall prepare and publish a prospectus pursuant to provisions of the law governing the capital market, in the event that the operating rules of the AIF are an integral part of the prospectus, such operating rules shall contain only information referred to in Paras. [1] to [3] of this Article that complement the information contained in the prospectus.

The content of the operating rules and prospectus of an AIF subject to public offering, approval by the Commission of operating rules and prospectus of such AIF, material changes to these documents, and material changes to the contract with the depositary and notifications in these events, shall be subject, as appropriate, to provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering, unless otherwise provided for by this Law.

The AIFM shall notify the Commission of any changes to the operating rules of an AIF subject to private placement.

Where shares are offered of a closed-ended AIF with legal personality incorporated as a joint-stock company, the AIFM shall comply with the provisions of the law governing the capital market.

Publication or Delivery of Operating Rules of AIFs

Article 140

Publication of operating rules of AIFs subject to public offering shall be subject, as appropriate, to provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering.

AIFs subject to private placement authorised by the Commission shall not make their operating rules public but shall deliver them to their members or shareholders as envisaged by the operating rules of those AIFs.

Notification and rights of members or shareholders of AIFs subject to private placement in the event of changes to mandatory elements of their operating rules shall be governed by the operating rules of those AIFs.

3. Reporting and Notification of Members and Shareholders by AIFs

Financial year for AIFs

Article 141

The financial year of an AIF shall be determined by the AIFM in the operating rules of the AIF or prospectus of the AIF, where one is required to be published.

Financial reporting and auditing by AIFs shall be subject to regulations governing accounting and auditing, as well as to statutory instruments enacted by the Commission.

The Commission shall prescribe the chart of accounts and the content of the accounts listed therein for each AIF.

Reporting by AIFMs

Article 142

The AIFM shall produce regular annual financial statements for each AIF it manages and each AIF it markets.

In performing its duties under Para. [1] of this Article, the AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIF.

The Commission shall enact detailed regulations governing the structure, content, and manner of and time limits for the publication of AIF financial reports, as well as the structure, content, and manner of and time limits for publication of other AIF reports that the AIFM must produce for the Commission.

Annual financial statements of AIFs shall be subject, as appropriate, to provisions of laws governing accounting.

Availability of Operating Rules, Prospectuses, and Annual Financial Statements of AIFs

Article 143

Operating rules, prospectuses, where required to be published, key investor information, and latest annual financial statements of AIFs must be made publicly available wherever shares in AIFs are marketed.

Marketing of investment units of open-ended AIFs subject to public offering shall be subject to provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering.

Other Disclosures and Notifications to Members or Shareholders

Article 144

For each AIF it manages and each AIF it markets, the AIFM shall periodically disclose to members or shareholders of the AIF:

- 1) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- 2) any new arrangements for managing the liquidity of the AIF;
- 3) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

An AIFM managing or marketing AIFs employing leverage shall regularly disclose to members or shareholders of each such AIF:

- 1) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
- 2) the total amount of leverage employed by that AIF.

At the request of investors, the AIFM shall without delay disclose information on the limits applicable to the management of risk of AIFs managed by the AIFM, procedures employed for that purpose, and changes to risks and yields of the main categories of financial instruments in which the AIF has invested.

In performing its duties envisaged under this Article, an AIFM shall comply with EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

Reporting Obligations to the Commission

Article 145

An AIFM from the Republic shall regularly notify the Commission of the principal markets in which it markets AIFs and instruments in which it trades on behalf of the AIFs it manages.

The reports referred to in Para. [1] of this Article must provide information on the instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the principal exposures and most important concentrations of each of the AIFs it manages.

In performing its duties under Para. [1] and [2] of this Article, the AIFM shall comply with the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIF.

An AIFM from the Republic shall, for each AIF from the Republic and Member State AIFs it manages and for each of the AIFs it markets in the EU, provide reports to the Commission containing:

- 1) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- 2) any new arrangements for managing the liquidity of the AIF;
- 3) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;

4) information on the main categories of assets in which the AIF invested;

5) the results of stress tests performed in accordance with provisions of this Law governing risk management and liquidity.

The Commission shall regulate the content of the reports referred to in Para. [4] of this Article.

Article 146

In addition to the documents referred to in Article 145 of this Law, the AIFM shall also provide the following to the Commission:

1) an annual statement of each EU AIF managed by the AIFM and of each AIF marketed by it in the EU, for each financial year;

2) for the end of each quarter a detailed list of all AIFs which the AIFM manages.

An AIFM managing AIFs employing leverage on a substantial basis shall make available, at the request of the Commission, information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements.

The information referred to in Para. [2] of this Article shall include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

For third country AIFMs, the reporting obligations referred to in Paras. [2] and [3] of this Article shall be limited to AIFs from the Republic managed by them and third country AIFs marketed by them in the Republic.

Where necessary for the effective monitoring of systemic risk, the Commission may require information in addition to that described in this Article, on a periodic as well as on an ad-hoc basis.

The Commission shall inform ESMA about the additional information requirements referred to in Para. [5] of this Article.

In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth, ESMA may request the Commission to impose reporting requirements additional to those envisaged in this Article.

4. Leverage and Acquisition of Control over Non-Listed Companies or Issuers

Use of Information by Commission and Other Competent Authorities; Supervisory Co-Operation; Limits to Leverage

Article 147

The Commission shall use information gathered pursuant to Article 146 of this Law for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets, and risk to long-term growth of the economy of the Republic.

The Commission shall submit the information referred to in paragraph 1 of this Article to the Government and the National Bank of Serbia at their request.

The Commission shall place any and all information collected pursuant to Article 146 of this Law in connection with all AIFMs it supervises, as well as information collected in the course of authorising AIFMs and AIFs, at the disposal of the competent authorities of other Member States, ESMA, and the European Systemic Risk Board (ESRB), pursuant to provisions of this Law governing supervisory co-operation. The Commission shall also, pursuant to these provisions, submit information to the competent authorities of other directly interested Member States where an AIFM supervised by the Commission or an AIF managed by that AIFM potentially constitutes an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States.

The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times.

The Commission shall assess the risks that the use of leverage by an AIFM with respect to the AIFs it manages could entail, and, where deemed necessary in order to ensure the stability and integrity of the financial system, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF, shall impose limits to the level of leverage that an AIFM are entitled to employ or other restrictions on the management of the AIF with respect to the AIFs under its management to limit the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system or risks of disorderly markets.

The Commission shall duly inform ESMA, the ESRB and the competent authorities of the AIF, of actions taken under Para. [5] of this Article pursuant to the provisions of this Law governing supervisory co-operation.

The Commission shall notify ESMA under Para. [6] of this Article not less than 10 working days before the proposed measure is intended to take effect or to be renewed. The notification shall include details of the proposed measure, the reasons for the measure and when the measure is intended to take effect.

In exceptional circumstances, the Commission may decide that the proposed measure takes effect within the period referred to in Para. [7] of this Article.

After receiving the notification referred to in Para. [7] of this Article from the Commission, ESMA shall issue advice on the measures proposed or taken by the Commission.

On the basis of the information received in accordance with Para. [3] of this Article, and after taking into account any advice of the ESRB, ESMA may determine that the leverage employed by an AIFM, or by a group of AIFMs, poses a substantial risk to the stability and integrity of the financial system and may issue advice to the Commission specifying the remedial measures to be taken, including limits to the level of leverage, which that AIFM, or that group of AIFMs, are entitled to employ. ESMA shall immediately inform the competent authorities concerned, the ESRB, and the European Commission of any such determination.

If the Commission proposes to take action contrary to the ESMA's advice on the measures to be taken to limit the level of leverage that an AIFM or a group of AIFMs are entitled to employ, it shall inform ESMA, stating its reasons.

ESMA may publish the fact that the Commission does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the Commission for not complying with its advice, notifying the Commission in advance about such publication.

Obligations for AIFMs which Acquire Control of Non-Listed Companies and Issuers on Behalf of AIFs they Manage

Article 148

The provisions of Articles 148 to 152 of this Law shall apply to the following:

- 1) AIFMs which, on behalf of one or more AIFs they manage, which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company;
- 2) AIFMs cooperating with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company.

The provisions of Articles 148, Paras. 3 to 11 and Articles 149 to 152 of this Law shall not apply where the non-listed companies concerned are:

- 1) small and medium-sized legal persons within the meaning of the law governing accounting;

2) special purpose vehicles with the purpose of purchasing, holding or administrating real estate.

Article 149[1] of this Law shall also apply to AIFMs managing AIFs that acquire a non-controlling participation in a non-listed company.

Article 150[1],[2],[3] and Article 151 of this Law shall apply also to AIFMs managing AIFs that acquire control over issuers. For the purposes of those Articles, Paras. [1] and [2] of this Article shall apply, *mutatis mutandis*.

For the purposes of Articles 148 to 152, for non-listed companies, control shall mean more than 50 percent of the company voting rights.

When calculating the percentage of voting rights held by the relevant AIF in a non-listed company, pursuant to Paras. [1] and [7] of this Article, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following shall be taken into account:

- 1) an undertaking controlled by the AIF;
- 2) a natural or legal person acting in its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF.

The percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

For the purposes of Article 150[1]-[3] and Article 152 of this Law, in regard to issuers, control shall be determined in accordance with the provisions of the law governing takeovers of joint-stock companies.

Where information deemed commercially confidential pursuant to the law governing legal protection of commercially confidential information is communicated to the employees' representatives or, where there are none, the employees themselves, such information shall enjoy protection under commercial confidentiality rules only where it has been expressly provided in confidence to the employees' representatives or, where there are none, the employees themselves.

The Commission may prescribe cases in which the AIFM shall not be required to notify, nor shall be required to request the non-listed company to notify the employees' representatives or, where there are none, the employees themselves, of the acquisition of control by the AIF and/or all or some information referred to in Article 149[3] of this Law.

The Commission may prescribe cases in which the non-listed company may not notify the employees' representatives or, where there are none, the employees themselves, of the

acquisition of control by the AIF and/or all or some information referred to in Article 149[3] of this Law.

The provisions of Articles 148 to 152 of this Law shall apply subject to the conditions and restrictions of the Labour Law in so far as it regulates commercial confidentiality arrangements, and regulations of Member States governing these issues.

Notification of the Acquisition of Major Holdings and Control of Non-Listed Companies

Article 149

An AIFM that, on behalf of an AIF it manages, acquires, disposes of or holds shares of a non-listed company shall notify the Commission of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

An AIFM that, on behalf of an AIF it manages, acquires, individually or jointly, control over a non-listed company pursuant to Article 148[1] and [5] of this Law, shall notify the following of the acquisition of control by the AIF:

- 1) the non-listed company;
- 2) the shareholders or members of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access;
- 3) the Commission.

The notice referred to in paragraph 2 of this Article shall contain the following information:

- 1) the resulting situation in terms of voting rights;
- 2) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;
- 3) the date on which control was acquired.

In its notification to the non-listed company, the AIFM shall request the management of the non-listed company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in Para. [3] of this Article. The AIFM shall

use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the management of the non-listed company.

The notifications referred to in Paras. [1] to [3] of this Article shall be made without delay, but no later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Disclosure in Case of Acquisition of Control over a Non-Listed Company

Article 150

An AIFM that, on behalf of an AIF it manages, acquires, individually or jointly, control of a non-listed company or an issuer shall make the information referred to in Para. [2] of this Article available to:

- 1) the company concerned;
- 2) the shareholders or members of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access;
- 3) the Commission.

The AIFM shall make available:

- 1) the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control;
- 2) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the company is concluded at arm's length;
- 3) the policy for external and internal communication relating to the company in particular as regards employees.

In its notification to the company pursuant to Para. [1] of this Article, the AIFM shall request the management of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in Para. [2] of this Article. The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the management of the non-listed company.

An AIF that, on behalf of an AIF it manages, acquires, individually or jointly, control of a non-listed company, it shall disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:

- 1) the non-listed company;
- 2) the shareholders or members of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

In addition to the disclosure pursuant to Para. [4] of this Article, the AIFM shall request and use its best efforts to ensure that the management of the non-listed company makes available the information set out in paragraph 4 of this Article to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

An AIFM that, on behalf of an AIF it manages, acquires control of a non-listed company, shall provide the Commission and the AIF's members or shareholders with information on the financing of the acquisition.

Special Provisions Regarding Annual Statements of AIFs on Behalf of which AIFMs Exercise Control over Non-Listed Companies

Article 151

An AIF that, on behalf of an AIF it manages, acquires, individually or jointly, control of a non-listed company shall:

- 1) request and use its best efforts to ensure that the annual statements of the non-listed company drawn up in accordance with Para. [2] of this Article is made available by the management of the company to the employees' representatives or, where there are none, to the employees themselves within the period such annual statement has to be drawn up in accordance with regulations governing accounting;
- 2) for each such AIF include in the annual statement the information referred to in Para. [2] of this Article relating to the relevant non-listed company.

The additional information to be included in the annual statement of the non-listed company or the AIF, in accordance with Para [1] of this Article, shall include at least a fair review of the development of the non-listed company's business representing the situation at the end of the period covered by the annual statement. The annual statement shall also give an indication of:

- 1) any important events that have occurred since the end of the financial year;

- 2) the company's likely future development;
- 3) the information concerning acquisitions of own shares or equity interests.

The AIFM that has acquired control over a non-listed company on behalf of an AIF it manages shall:

- 1) request and use its best efforts to ensure that the management of the non-listed company makes available the information referred to in Para. [1]2) of this Article relating to the company concerned, to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period for the publication of the annual statement;
- 2) make available the information referred to in Para. [1]1) of this Article to the members or shareholders of the AIF, in so far as already available, no later than the date on which the annual statement of the non-listed company is drawn up in accordance with the national applicable law.

Asset Stripping

Article 152

An AIF that, on behalf of an AIF it manages, acquires, individually or jointly, control of a non-listed company shall for a period of 24 months following the acquisition of control of the company by the AIF:

- 1) not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company, nor vote in favour of such actions at the general meetings of the company;
- 2) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in Para. [2] of this Article;
- 3) in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company over which it has acquired control.

The prohibited distributions referred to in Para. [1] of this Article shall relate to:

- 1) any distribution to shareholders or members of the company made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are,

or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the statutes, or memorandum of association, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital;

2) any distribution to shareholders or members the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes, or memorandum of association;

3) to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares or equity interests previously acquired by the company and held by it, and shares or equity interests acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in Point 1) of this Paragraph, if acquisitions of own shares are permitted.

For the purposes of Para. [2] of this Article:

1) the term 'distribution' referred to in Points 1) and 2) of Paragraph [1] of this Article shall include, in particular, the payment of dividends and of interest relating to shares or equity interests;

2) the provisions on capital reductions shall not apply to a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10 percent of the reduced subscribed capital.

No provision of Para. [2] of this Article shall prejudice the ability to acquire own shares or equity interests in the following circumstances:

1) where the shares or equity interests are acquired as a result of a universal transfer of assets;

2) where the shares or equity interests are acquired free of charge;

3) where the shares or equity interests are acquired by banks and other financial institutions as purchasing commission;

4) where the shares or equity interests are acquired pursuant to a court ruling;

5) where the shares or equity interests are acquired in order to indemnify minority shareholders or members of associated companies;

6) where the shares or equity interests are acquired from a shareholder or member in the event of failure to pay them up;

7) where fully paid-up shares or equity interests are acquired under a sale enforced by a court order for the payment of a debt owed to the company by the owner of the shares.

5. Notification of Members or Shareholders from the Republic by Member State and Third Country AIFMs

Notification of Members or Shareholders from the Republic

Article 153

A Member State AIFM or its legal representative shall provide to members or shareholders from the Republic of the AIF and members or shareholders in the home Member State of the AIF any and all information it possesses related to the operations of the Member State AIF marketed in the Republic.

A third country AIFM or its legal representative shall provide to members or shareholders from the Republic of the AIF and members or shareholders in the third country where the AIF has its registered office any and all information it possesses related to the operations of the third country AIF marketed in the Republic.

The documentation and information about the Member State or third country AIF must be provided or made available to members or shareholders who purchased the units of such AIFs in the Republic even after the AIFs cease to be marketed in in the Republic for as long as there are members of such AIFs who purchased their own units in the Republic.

Provision of any and all documentation and information referred to in Paras. [1] and [2] of this Article by a Member State or third country AIFM to members or shareholders shall be subject to the provisions of this Law governing the provision of documentation and information by AIFs.

Notwithstanding Para. [4] of this Article, the frequency of disclosure of the prices of units of Member State or third country AIFs shall be subject to regulations of the home Member State of the AIF or third country where the AIF has its registered office.

The documentation and information about the Member State or third country AIF referred to in Paras. [1] and [2] of this Article must be made available or provided to members or shareholders from the Republic no later than the date on which such documentation and information is made available or provided to members or shareholders in the home Member State of the AIF or third country where the AIF has its registered office.

Language of Notifications

Article 154

The operating rules of a Member State or third country AIF and prospectus of a Member State or third country AIF, where one is required to be published, must be made available or provided to members or shareholders from the Republic in the Serbian language.

The remaining documentation and information about the Member State or third country AIFM must be made available or provided to members from the Republic or shareholders in either the Serbian language or a language customary in the sphere of international finance.

The Member State or third country AIFM shall be liable for the authenticity and accuracy of translations of the documentation and information referred to in Paras. [1] and [2] of this Article.

XII. DEPOSITARY

1. Persons Authorised to Act as Depositary

Article 155

For each AIF it manages, the AIFM shall appoint a depositary in accordance with the provisions of this Law and evidence such appointment by written contract, pursuant to this Law.

The contract referred to in Para. [1] of this Article must comply with the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

An AIF may have only one depositary.

In the Republic, a depositary may be a credit institution having its registered office in the Republic and authorised by the Commission to act as depositary for the AIF in question.

A depositary may also be an investment firm authorised by the Commission to perform the ancillary services of safe-keeping and administration in relation to financial instruments on behalf of clients, pursuant to the law governing the capital market.

The depositary must permanently meet all organisational requirements and conditions necessary for acting as depositary pursuant to the provisions of this Law.

The general manager of the depositary of an AIF shall be the person in charge of managing the operations of the organisational unit performing the depositary functions within the credit institution.

The Commission shall grant prior approval to the appointment of the general manager of the depositary of an AIF, who must possess the required experience and be of good repute.

In order to avoid conflicts of interest between the depositary, the AIFM and/or the AIF and/or its investors:

- 1) no single entity may act as both AIFM and depositary;
- 2) a prime broker acting as counterparty to an AIF shall not act as depositary for that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the members or shareholders of the AIF.

Delegation by the depositary of the services of safe-keeping and administration of financial instruments, to the prime broker, referred to in Para. [9]2) of this Article shall be allowed if the relevant conditions for delegation pursuant to the provisions of this Law are met.

The contract between the depositary and the AIFM referred to in Para. [1] of this Article shall be subject to the law of the home Member State of the AIF.

In performing their obligations under this Section, the AIFM and depositary shall comply with the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs.

The Commission shall regulate:

- 1) the content of the contract referred to in Para. [1] of this Article;
- 2) further requirements for carrying out depositary functions;
- 3) the conditions regarding staff qualification, organizational capacity and technical equipment for carrying out depositary functions.

Article 156

A depositary established in the Republic may only be a depositary referred to in Article 155[4] of this Law.

Where an AIFM from the Republic manages a Member State or third country AIF, the depositary shall be established in one of the following locations:

- 1) for Member State AIFs, in the home Member State of the AIF;

2) for third country AIFs, in the third country where the AIF is established or in the Republic.

Where the Republic is the Member State of reference of a third country AIFM, the depositary for third country AIFs managed by that AIFM shall be established in the third country where the AIF is established or in the Republic.

The appointment of a depositary established in a third country by an AIFM from the Republic, shall be subject to the following conditions:

- 1) appropriate co-operation arrangements are in place between the Commission and the competent authorities of the third country where the AIFM intends to market the AIF and the competent authorities of the depositary;
- 2) the depositary is subject to effective prudential regulation, including minimum capital requirements which have the same effect as the EU law;
- 3) the third country where the depositary is established is not listed as a Non-Cooperative Country and Territory by FATF;
- 4) the third country where the depositary is established has signed agreements with Serbia and every Member State where the AIFM intends to market shares of the third country AIF which fully comply with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements;
- 5) the depositary shall by contract with the AIFM be liable to the AIF or to the members or shareholders of the AIF.

Appointment and Substitution of Depositary

Article 157

The Commission shall approve the appointment of the depositary as part of its approval procedure for AIFs, and shall also grant prior approval for any subsequent substitution of depositary.

The Commission shall regulate the approval conditions referred to in Para. [1] of this Article.

2. Functions of a Depositary

Article 158

The depositary shall perform the following functions for an AIF:

- 1) oversight and control functions;
- 2) cash flow monitoring;
- 3) safe-keeping functions.

Oversight and Control Functions

Article 159

Depending on the type of assets that the AIF invests in, the depositary shall perform the following oversight and control functions for that AIF:

- 1) ensuring that the sale, issue, re-purchase, redemption and cancellation of shares in the AIF comply with this Law, operating rules of the AIF, and prospectus of the AIF, where one is required to be published;
- 2) ensuring that the net asset value of the AIF and the asset value per unit or share of the AIF are calculated pursuant to its accounting policies and valuation methodologies, this Law, operating rules of the AIF, and prospectus of the AIF, where one is required to be published;
- 3) executing orders of the AIFM in connection with transactions involving financial instruments and other assets making up the portfolio of the AIF, provided that they do not contravene this Law, the operating rules of the AIF, and prospectus of the AIF, where one is required to be published;
- 4) ensuring that in transactions involving the AIF's assets any consideration is remitted to the AIF within the usual time limits;
- 5) ensuring that income of the AIF are used as envisaged by this Law, operating rules of the AIF, and prospectus of the AIF, where one is required to be published;
- 6) verifying that assets of the AIF are invested pursuant to pre-established objectives and provisions of the operating rules of the AIF, prospectus of the AIF, where one is required to be published, and this Law;
- 7) reporting to the Commission and the AIFM of the results of controls of the determination of net asset value of the AIF;
- 8) notifying the Commission of any material or grave breaches of this Law and the depositary contract by the AIFM.

Cash Flow Monitoring

Article 160

The depositary shall ensure that an AIF's cash flows are efficiently and properly monitored, and shall in particular ensure that all payments made by members upon the subscription of shares of AIFs, as well as all other cash of the AIF, are booked in cash accounts:

- 1) opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF;
- 2) opened with a bank having its registered office in the Republic or a Member State or a bank having its registered office in a third country approved by a competent authority, in a market where such cash accounts are required for the operation of the AIF and are subject to regulations which have the same effect as regulations of the Republic governing banks and the capital market and are effectively enforced;
- 3) maintained pursuant to client asset protection principles envisaged by the law governing the capital market.

Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, such accounts may not contain:

- 1) the own cash of an entity referred to in Para. [1]2) of this Article;
- 2) the own cash of the depositary.

The depositary shall maintain and keep updated its own records of the AIF's cash booked in cash accounts opened with the entities referred to in Para. [1]2) of this Article.

Safe-Keeping and Custody Functions

Article 161

The assets of an AIF shall be entrusted to the depositary for safe-keeping, as follows:

- 1) for financial instruments that can be held in custody, the depositary shall:
 - (1) register all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
 - (2) ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in the law governing the capital

market, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF;

2) for other assets, the depositary shall:

(1) verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets, pursuant to information or documents provided to the depositary by the AIF or AIFM, or pursuant to information held in publicly available registers and records or external evidence, where such information is available;

(2) keep its record of such assets up-to-date.

The depositary shall regularly provide a complete list of the assets of the AIF to the AIFM, for each AIF it performs depositary functions, or, as appropriate, allow the AIFM uninterrupted access to the AIF's open positions with the depositary.

The depositary shall notify the AIFM of key events for issuers of securities and other financial instruments related to the assets of the AIF entrusted to it for safe-keeping, and shall execute orders of the AIFM in response to such key events.

Segregation of Depositary and AIFM and Management of Assets of AIFs

Article 162

In the performance of their functions and duties envisaged under this Law, the depositary and the AIFM shall act with due professional care, fairly, honestly, independently, and solely in the interest of AIFs and their members.

A depositary shall not carry out activities with regard to the AIF that may create conflicts of interest between the AIF, the members or shareholders of the AIF, or the AIFM and the depositary, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the members or shareholders of the AIF.

The chief officer of a depositary may not be a person employed by the AIFM.

Members of management of the AIFM may not be employed by the depositary.

The depositary shall at all times keep and maintain assets of the AIF clearly segregated from those belonging to the depositary or other clients of the depositary.

Assets of the AIF entrusted to the safe-keeping of a depositary in the name of an AIF or in the name of an AIFM and on behalf of an AIF shall not be property of the depositary and

shall not be deemed assets of the depositary; such assets do not enter the liquidation or insolvency estate of the depositary and may not be used for payment of debts owed by the depositary to third parties.

In the event the operating licence or authorisation to provide depositary functions of the depositary is withdrawn, or insolvency or liquidation proceedings are opened against the depositary, the AIFM shall immediately terminate its depositary contract and obtain approval of the Commission for the appointment of a new depositary.

A depositary whose operating licence or authorisation to provide depositary functions has been withdrawn or that is the subject of insolvency or liquidation proceedings shall immediately transfer assets of the AIF to the depositary appointed by the AIFM.

Where the AIFM or internally-managed closed-ended AIF with legal personality fails to act as referred to in Para. [7] of this Article, the Commission shall appoint a new depositary.

The Commission may propose that the AIFM or internally-managed closed-ended AIF with legal personality substitute the depositary where actions of the depositary have materially threatened the interests of the members or shareholders of the AIF.

In the event of the insolvency of the depositary or third party referred to in Article 163 of this Law to which the depositary has delegated safe-keeping functions, the assets of the AIF entrusted to the safe-keeping of the depositary shall not enter the insolvency estate of the depositary or the third party, nor may be enforced against in collection of any claims owed by the depositary or the third party.

3. Delegation of Functions of Depositary to a Third Party

Article 163

The depositary may delegate the functions referred to in Article 161 of this Law to a third party, which may be a bank from the Republic or a foreign bank.

Delegation shall be permitted subject to the following conditions:

- 1) the tasks are not delegated with the intention of avoiding the obligations and requirements of this Law;
- 2) there is an objective reason for the delegation and its purpose is to enhance the efficiency of the functions;
- 3) the depositary must demonstrate that it has exercised all due diligence in the selection of the third party;

4) the depositary must at all times be able to exercise all due diligence and efficiency in the ongoing monitoring of the performance of the delegated functions;

5) the depositary ensures that the third party meets the following conditions at all times during the effectiveness of the delegation contract:

(1) the third party has the internal structure and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF which have been entrusted to it;

(2) for the delegation of functions of depositary, the third party must be subject to:

- effective prudential regulation and supervision in the jurisdiction concerned (including minimum capital requirements), aligned to the relevant EU legislation;

- external periodic independent external audit to ensure and verify that the financial instruments entrusted to its safe-keeping are in its possession and/or subject to its supervision;

(3) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;

(4) the third party takes any and all actions necessary to ensure that in the event of insolvency of the third party the assets of the AIF entrusted to the safe-keeping of the third party do not enter the insolvency and/or liquidation estate of the third party;

(5) the third party does not make use of the assets without the prior approval of the AIF or the AIFM acting on behalf of the AIF and prior notification to the depositary;

6) the third party complies with the general obligations and prohibitions set out in Articles 161 and 162 of this Law.

Notwithstanding Para. [2]5)(2) of this Article, where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in Para. [2]5)(2) of this Article, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements laid down in Para. [1] of this Article, subject to the following requirements:

1) the members or shareholders of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country, the circumstances justifying the delegation, and the risk involved;

2) the AIFM must instruct the depositary to delegate the custody of such financial instruments to such local entity.

The third party may, in turn, sub-delegate those functions, subject to the requirements of Paras. [1] and [3] of this Article, in which case Article 166 of this Law shall apply, mutatis mutandis, to the relevant parties.

The depositary shall be liable to the AIFM and the members or shareholders of the AIF for the selection of the third party.

For the purposes of this Article, the services provided by securities settlement services pursuant to the provisions of laws governing settlement finality in payment and securities settlement systems shall not be considered to be delegation of custody functions.

Article 164

The depositary must obtain prior approval from the Commission for delegation of functions to third parties.

The Commission shall enact detailed regulations governing approval for delegation of functions to third parties.

A depositary that has delegated functions referred to in Article 161 of this Law to a third party shall submit to the Commission:

- 1) notice of the contract entered into with the third party;
- 2) list of all third parties with which it has entered into delegation contracts, at the latest by 31 March of each year.

The depositary shall submit the list referred to in Paragraph [3]2) of this Article to the AIFM, which shall publish it without delay on its website.

Article 165

Where a depositary has delegated functions referred to in Article 161 of this Law to a third party, the operating rules of the AIF, or the prospectus of the AIF where one is required to be published, must contain the following information with regard to the depositary:

- 1) description of all functions delegated by the depositary to third parties; list of all third parties with which the depositary has entered into delegation contracts; and potential conflicts of interests that may arise due to such delegation;

2) declaration by the depositary that up-to-date information referred to in Point 1) of this Paragraph will be available to members or shareholders of the AIF upon request.

4. Liability of Depositary

Article 166

The depositary shall be liable to the AIFM and the members or shareholders of the AIF, for the loss by the depositary or a third party to which the depositary has delegated functions, of the financial instruments referred to in Article 161, paragraph 1 of this Law.

In the case of such a loss of a financial instrument held in custody, the depositary shall return a financial instrument of identical type or the corresponding amount to the AIF without undue delay.

The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The depositary shall also be liable to the AIFM, or the members or shareholders of the AIF, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfill its obligations pursuant to:

- 1) this Law and the statutory instruments enacted pursuant to this Law;
- 2) the EU regulations governing the functions of depositaries of AIFs.

The depositary's liability referred to in Paras. [1] to [4] of this Article shall not be affected by any delegation of functions referred to in Article 163 of this Law to third parties.

In case of a loss of financial instruments held in custody by a third party to which the depositary has delegated functions pursuant to this Law, the depositary may discharge itself of liability if it can prove that:

- 1) requirements for the delegation of its custody tasks set out in the Article 163 of this Law are met;
- 2) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf;

3) a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

Where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in Article 163[2]5)(2) of this Law, the depositary can discharge itself of liability to the AIFM and the members or shareholders of the AIF provided that the following conditions are met:

- 1) the operating rules of the AIF, or the prospectus of the AIF, where one is required to be published, expressly allow for such a discharge under the conditions set out in this Paragraph;
- 2) the investors of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- 3) the AIF or the AIFM on behalf of the AIF instructed the depositary to delegate the custody of such financial instruments to a local entity;
- 4) there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, which expressly allows such a discharge;
- 5) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

Exercise of Requests and Rights of Depositary and with Respect to Depositary

Article 167

The AIFM shall be authorised and required to, in its own name and on behalf of the members or shareholders of an AIF, execute requests and rights of the members or shareholders of the AIF with respect to the depositary. This shall not prevent the members or shareholders of the AIF from advancing claims on the depositary individually and independently, provided that doing so does not lead to double protection or to unequal treatment of the members or shareholders of the AIF.

Reporting by Depositary on Issues Relevant for Supervision

Article 168

The depositary shall make available to the Commission, on request, all disclosures and information relevant for its supervision of the performance of the functions of depositary for AIFs.

Where, in performing its duties and obligations pursuant to this Law, a depositary discovers non-compliance and/or violations of the law due to the actions of the AIFM that constitute infringements of the duties of the AIFM pursuant to this Law, the operating rules of the AIF, and the prospectus of the AIF, where one is required to be published, the depositary shall notify the Commission thereof in writing without delay.

The depositary shall make available and submit any and all information about the AIF to the Commission, certified accountants, and other parties authorised to perform supervision.

The Commission shall regulate the manner for notification of infringements referred to in Para. [2] of this Article.

Compliance Audit of Depositary

Article 169

The depositary must appoint a certified auditor to prepare an annual report on compliance by the depositary with its obligations, and shall notify the Commission thereof without delay.

The certified auditor referred to in Para. [1] of this Article shall be an auditor that audits annual financial statements of credit institutions, and must have appropriate experience in relation to the subject-matter of the audit.

The depositary must appoint the certified auditor within the period of time stipulated by regulations governing auditing.

The Commission may instruct the depositary to appoint a new auditor within one month of receiving the notification referred to in Para. [1] of this Article where it deems that to be necessary to achieve the purpose of the audit.

The certified auditor shall be required to submit the compliance audit report, once completed, to the depositary without delay. The depositary shall be required to submit the report to the Commission without delay, and at the latest within 4 months of the end of the financial year the report pertains to.

Where the Commission determines that no compliance audit has been performed of the depositary, or that the compliance audit report has not been prepared in accordance with this Law, regulations governing accounting and auditing, and professional auditing standards, or where it determines, through its supervision of the depositary or otherwise, that the compliance audit and compliance audit report of the depositary are not based on accurate and

objective facts, it may reject the compliance audit report for the depositary and instruct the depositary to have a different auditor perform the audit at the expense of the depositary. In this case, the Commission may make publicly available its rejection of the compliance audit report for the depositary and the reasons for such rejection.

The Commission shall enact detailed regulations governing the coverage and content of the compliance audit report for the depositary.

Confidentiality

Article 170

The depositary shall treat as confidential any and all information available to it, that concern the members or shareholders of AIFs, their shares in AIFs, and incoming and outgoing payments, pursuant to the provisions of this Law and the law governing banks i.e. credit institutions.

5. Substitution of Depositary

Article 171

A depositary intending to cease carrying out the functions of depositary for AIFs shall notify the Commission and AIFMs managing AIFs for which it provides functions of depositary of this intention at the latest three months before ceasing to carry out these functions.

In an event referred to in Para. [1] of this Article, the AIFM shall enter into a contract with a different depositary and shall submit an application for approval of substitution of the depositary to the Commission at the latest 30 days before the current depositary ceases carrying out these functions.

Where the AIFM does not enter into a contract with a new depositary pursuant to Para. [2] of this Article, or where the Commission does not approve the substitution of the depositary before the current depositary ceases carrying out these functions, the current depositary shall, if able to, continue carrying out these functions for an additional 60 days beyond the date on which it had intended to cease carrying out these functions.

Where, within the additional period of 60 days referred to in Para. [3] of this Article, a contract with a new depositary is not entered into and approval is not obtained from the Commission, AIFs for which the depositary carried out the functions of depositary must be liquidated or dissolved pursuant to the provisions of this Law.

Article 172

An AIFM may substitute a depositary with the prior approval of the Commission pursuant to Article 157 of this Law.

A depositary previously carrying out the functions of depositary must, within 3 days of receiving notice from the AIFM of the termination or repudiation of its contract on carrying out the functions of depositary, inform the Commission whether, to the best of its knowledge, there are any unresolved infringements of this Law or other regulations.

Article 173

On the date on which the contract on carrying out the functions of depositary entered into with a new depositary envisages that the new depositary will commence carrying out the functions of depositary, the previous depositary shall transfer all assets of AIFs for safe-keeping and administration to the new depositary with which the AIFM has entered into a contract on carrying out the functions of depositary that has been approved by the Commission.

The previous depositary must surrender to the new depositary all books of account, records, and any and all other documents and materials relevant to the operations of the AIFs for which it had previously carried out the functions of depositary, either in hard copy or in an electronic format, depending on how the information was originally recorded.

Article 174

The Commission shall adopt a procedural decision withdrawing its approval of the appointment of a depositary:

- 1) as of the date liquidation or insolvency proceedings are opened against the depositary;
- 2) as of the date the authorisation of the depositary is withdrawn by the competent authority that granted such authorisation;
- 3) in the event that the approval was obtained by providing or making false, inaccurate, or misleading information or statements or by any other irregular means;
- 4) in the event that the depositary no longer meets the conditions under which it was granted authorisation;
- 5) where it determines that the depositary does not perform its duties in compliance with the obligations it has undertaken and/or the provisions of this Law, in particular with respect to delegated functions;

6) where there is reason to suspect the ability of the depositary to perform its duties in connection with the obligations it has undertaken and/or the provisions of this Law in an orderly, timely, and appropriate fashion, in particular with respect to delegated functions;

7) in the event that the depositary has seriously or systematically infringed the provisions of this Law or the operating rules of the AIF, or where envisaged under the prospectus of the AIF;

8) where there are justified reasons to suspect that the AIFM and the depositary are colluding against the interests of the members or shareholders of the AIF.

In any event referred to in Para. [1] of this Article, the AIFM shall, within 30 days of the approval of the appointment of the depositary being withdrawn, enter into a contract with another depositary and apply for the appropriate approval of the Commission, pursuant to the provisions of this Law.

The Commission shall rule on the application referred to in Para. [2] of this Article within 15 days of receiving such application.

Where the AIFM does not act as envisaged in Para. [2] of this Article, or where the Commission rejects the application referred in Para. [2] of this Article, the AIFs for which the depositary had carried out the functions of depositary must be liquidated or dissolved pursuant to the provisions of this Law governing the liquidation and dissolution of AIFs.

The Commission shall regulate in detail the actions by the AIFM and the depositary in cases referred to in Para. 1 and 2 of this Article.

XIII. TYPES OF AIFS AND LIMITS ON INVESTMENT

1. General Limits on Investment

Article 175

Investment in assets of an AIF shall be subject to limits envisaged by this Law, secondary legislation of the Commission, and the operating rules of the AIF and prospectus of the AIF, where one is required to be published.

Limits on investment in assets of an AIF may be exceeded where the AIF exercises preemptive or subscription rights attaching to transferable securities or money market instruments which form part of its assets, as well as in connection with the sale of assets of the AIF for the purpose of redeeming a large proportion of shares in the AIF.

Where the limits referred to in Para. [1] of this Article are exceeded due to circumstances beyond the control of the AIFM, changes in investment strategy of the AIF, or the exercise of

subscription rights referred to in Para. [2] of this Article, the AIFM shall bring investment by an AIF subject to public offering into compliance within six months of the limits being exceeded, and shall undertake transactions involving assets of the AIF primarily to ensure compliance of investment by the AIF, and in doing so must act in the best interests of the members or shareholders of the AIF and endeavour to minimise any losses.

Notwithstanding the above, the Commission may, at the application of the AIFM, extend the time limit referred to in Para. [3] of this Article by an additional six months, where this is in the best interests of the members or shareholders of the AIF.

Where the limits referred to in Para. [1] of this Article are exceeded due to circumstances beyond the control of the AIFM or the exercise of subscription rights referred to in Para. [2] of this Article, the AIFM shall bring investment by an AIF subject to private placement into compliance either:

1) where so envisaged by the operating rules of the AIF or the prospectus of the AIF, where one is required to be published;

2) where this is not envisaged by the operating rules and/or prospectus of the AIF, where one is required to be published, and there is no established procedure for approval and decision-making by members or shareholders of the AIF in such cases, the AIFM shall obtain approval by members or shareholders for the course of action it will propose, in their best interests;

3) where action pursuant to Paras. [1] and [2] of this Article is not possible, bring investment into compliance within six months of the limits being exceeded, and undertake transactions involving the assets of the AIF primarily to ensure compliance of investment by the AIF, and in doing so must act in the best interests of the members or shareholders of the AIF and endeavour to minimise any losses.

Where the limits referred to in Para. [1] of this Article are exceeded as the result of a transaction entered into by the AIFM that, at the time of its execution, caused the limits on investment to be exceeded or additionally increased the amount by which the limits were exceeded, the AIFM shall bring investment by the AIF into compliance immediately upon learning of the matter. The AIFM shall compensate the AIF and/or the members or shareholders of the AIF for the damage.

The limits on investment referred to in Para. [1] of this Article may be exceeded in the first six months from the establishment of the AIF, whilst ensuring observance of the principle of risk spreading and protection of the best interests of members or shareholders.

2. Types of AIFs

General Provisions

Article 176

In the Republic there may be established:

- 1) AIFs subject to public offering;
- 2) AIFs subject to private placement;

The AIFs referred to in Para. [1] of this Article may be established as either open-ended or closed-ended AIFs.

Investors in AIFs

Article 177

Shares in AIFs may be marketed to professional and semi-professional investors.

Notwithstanding Para. [1] of this Article, shares in AIFs subject to public offering may also be marketed to retail investors.

Assessment of Eligibility of Semi-Professional Investors

Article 178

The AIFM shall assess the eligibility of semi-professional investors by reviewing the following criteria:

- 1) alignment between the objectives and investment strategy of the AIF and the objectives of the investor;
- 2) ability of the investor to assume the risks arising from investment into the shares of the AIF;
- 3) whether the investor possesses the knowledge and experience required to understand the risk of investing into the shares of the AIF.

For the purposes of the assessment referred to in Para. [1] of this Article, the AIFM shall collect information about the objectives of the investor, its financial position, and its knowledge and experience with the subject-matter of the investment.

The AIFM shall allow the investor access to clear and understandable information on the key features of the AIF, as well as on the types and meaning of any and all risks associated with investing into the particular AIF, and obtain from the investor a specific signed declaration regarding their knowledge and acceptance of those risks.

Using the information collected pursuant to Para. [2] of this Article, the AIFM shall assess whether the investor is eligible to invest in the shares of the AIF in question, and shall prepare an eligibility report which it shall provide to the investor.

Where the AIFM fails to collect the information referred to in Para. [2] of this Article required to assess eligibility as referred to in Para. [1] of this Article and the declaration referred to in Para. [3] of this Article, or, having assessed eligibility, deems that the investor is not eligible to invest in the shares of the AIF in question, the AIFM may not enter into an investment contract and shall notify the investor thereof.

The notice referred to in Para. [5] of this Article shall be made in writing.

The AIFM shall adopt and apply appropriate procedures that ensure the information collected about the investor is accurate, complete, up-to-date, and documented.

The Commission shall enact detailed regulations governing the conditions under which the AIFM shall assess whether a retail investor possesses sufficient experience with the capital market and professional knowledge to understand investment risks that make them eligible as a semi-professional investor, as well as the structure of information referred to in Para. [2] of this Article.

1) AIFs Subject to Public Offering

Open-Ended AIFs Subject to Public Offering

Article 179

Where investment units of an open-ended AIF are offered publicly, the law governing the establishment and operation of open-ended investment funds subject to public offering shall apply, *mutatis mutandis*, to the drawing up and publication of the prospectus and operating rules of the AIF, delivery of prospectus and rules to members, offering of investment units and advertising, and the development, disclosure, and delivery of all information, reports, and data that should be made available to investors.

An AIFM managing an open-ended AIF subject to public offering shall ensure that the net asset value per unit or share of the AIF is calculated at least as of the date of issue or redemption of the investment units, and at a minimum once every month.

An AIFM managing an open-ended AIF subject to public offering shall allow the issue and redemption of investment units at a minimum once every month.

An AIFM managing an open-ended AIF subject to public offering shall pay the redemption price to the member of the AIF at the latest within 7 working days of receiving a complete redemption request.

Where investment units in an open-ended AIF are offered publicly, the AIFM shall prepare key investor information pursuant to the law governing the establishment and operation of open-ended investment funds subject to public offering.

Closed-Ended AIFs Subject to Public Offering

Article 180

Shares in a closed-ended AIF with legal personality may be offered publicly provided that the prospectus and/or operating rules of the AIF require the shares of the AIF to be listed on a regulated market within the meaning of the law governing the capital market.

Within 30 days of the establishment of a closed-ended AIF subject to public offering, the AIFM shall take all measures necessary to have the shares of that AIF listed on a regulated market, which shall include the filing of a complete application for listing pursuant to the rules of the regulated market.

In the prospectus and/or operating rules of the closed-ended AIF subject to public offering, the AIFM shall determine the rights and obligations of shareholders, the AIFM, and the AIF in the event the requirement referred to in Para. [2] of this Article is not met.

Permitted Investments for AIFs Subject to Public Offering

Article 181

An AIFM managing an AIF subject to public offering must, taking into account the investment strategy and objectives of the AIF as indicated in its prospectus, ensure appropriate diversification of investment risk.

Assets of AIFs subject to public offering may be invested exclusively in:

- 1) transferable securities and/or money market instruments;
- 2) investment units of UCITS;
- 3) investment units of UCITS and shares of other open-ended investment funds meeting statutory criteria from the Law, authorised by another Member State or third country;
- 4) shares of AIFs subject to public offering authorised or approved for marketing to retail investors by the Commission;

5) shares of AIFs subject to public offering authorised or approved for marketing to retail investors by the competent authorities of a Member State or third country that co-operate with the Commission, where such AIFs are subject to supervision deemed by the Commission to have the same effect as the supervision envisaged by this Law, and where the investment and borrowing powers of such AIFs are equally or more restrictive than the permitted investment and investment restriction rules laid down in this Article and the restrictions envisaged in statutory instruments enacted by the Commission;

6) deposits with banks which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the bank has its registered office in the Republic or a Member State or, if the bank has its registered office in a third country, provided that it is subject to prudential rules considered by the Commission as equivalent to those laid down in the EU law;

7) money-market instruments not traded in a regulated market referred to in Para. [1] of this Article if the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings;

8) commodities traded in a commodities market;

9) real-estate.

Where assets of the AIF are invested in real estate, the provision of Article 183[3] of this Law shall apply.

The assets referred to in Para. [2]1),7) of this Article shall be subject, *mutatis mutandis*, to provisions of the law governing the establishment and operation of open-ended investment funds subject to public offering in so far as it pertains to permitted investment, asset valuation, and pricing of shares of AIFs.

Investment in shares of AIFs managed by the same AIFM must be envisaged in the prospectus of the AIF subject to public offering.

Assets of an AIF may be deposited as cash in a bank account, provided that the bank has its registered office in the Republic.

The Commission shall regulate the assets in which assets of AIFs subject to public offering may be invested, and the manner and conditions of and restrictions applicable to such investment.

Article 182

The AIFM shall ensure that the total exposure of an AIF subject to public offering to financial derivative instruments does not exceed 110 percent of the net value of the assets of the AIF at any time. Exposure shall be calculated with reference to the current value of underlying assets, counterparty risk, future market movements and the time available to liquidate the positions.

Where transferrable securities or money market instruments embed a financial derivative instrument, that instrument shall be taken into account when calculating asset exposure to financial derivative instruments.

Closed-Ended Real Estate AIFs

Article 183

A closed-ended real estate AIF subject to public offering shall be an AIF the assets of which are primarily invested in real estate, pursuant to the operating rules of the AIF and the prospectus of the AIF, where one is required to be published.

The legal name of the AIF referred to in Para. [1] of this Article must contain the phrase ‘zatvoreni AIF sa javnom ponudom za ulaganje u nepokretnosti’ [‘closed-ended real estate AIF’].

A closed-ended real estate AIF is not and cannot be an investor or contractor, nor may otherwise participate in building construction within the meaning of the law governing planning and construction.

Permitted Investments for Closed-Ended Real Estate AIFs

Article 184

A closed-ended real estate AIF subject to public offering may acquire real estate in the Republic, a Member State, or a third country based on reciprocity, as follows:

- 1) residential and/or commercial buildings;
- 2) development land where construction of buildings referred to in Point 1) of this Paragraph is in progress, if such construction is reasonably likely to be completed within an appropriate period of time that does not exceed 2 years;
- 3) undeveloped development land zoned, pursuant to regulations in effect, for construction of residential and/or commercial buildings;
- 4) agricultural land;

5) investment in other real estate expressly envisaged in the prospectus and/or operating rules of the AIF.

A closed-ended real estate AIF subject to public offering may acquire real estate referred to in Para. [1] of this Article:

1) that is located in a geographical area indicated in the prospectus and/or operating rules of the AIF;

2) for which the AIFM has commissioned an external valuer referred to in Article 123 of this Law to prepare a valuation report, within 15 days of the date of the report, which identifies any mortgages encumbering the real estate and contains a statement to the effect that the real estate could be disposed of at the request of the AIFM within a suitably short period of time at the appraised value;

3) which must be acquired or the acquisition of which must be contracted within 6 months of the date of receipt of the report referred to in Point 2) of this Paragraph at a price not greater than 105 percent of its appraised value, where the AIFM is not aware of any conditions due to which the report referred to in Point 2) of this Paragraph has ceased to be relevant;

4) which may be acquired directly or by means of one or more special purpose vehicles wholly owned by the AIF, the purpose of which is to administer the real estate on behalf of the AIF. Such investment shall be deemed direct investment in real estate for the purposes of this Law. Special purpose vehicles shall acquire, dispose of, and manage real estate on behalf of the AIF in accordance with its investment strategy and objectives. Where applicable, the special purpose vehicles must share the same auditor and produce financial statements for the same reporting periods and on the same dates as the AIFs. Financial statements of special purpose vehicles shall be consolidated with the financial statements of AIFs.

Where explicitly envisaged by the prospectus and/or operating rules of the AIF, investment in real estate shall be deemed to be investment in:

1) shares (equity interests) or shares of stock in companies that exclusively or primarily acquire, sell, lease, and/or manage real estate;

2) shares of other real estate AIFs;

3) other transferable securities or derivative financial instruments the value of which is based on the price of real estate.

In addition to investing in assets referred to in Paras. [1] to [3] of this Article, a closed-ended real estate AIF subject to public offering may also invest in other assets referred to in Article 181 of this Law, where this is explicitly envisaged by the operating rules of the AIF and prospectus of the AIF, where one is required to be published.

The Commission shall enact detailed regulations governing restrictions on investment by closed-ended real estate AIFs subject to public offering.

c) AIFs Subject to Private Placement

Investment by AIFs Subject to Private Placement

Article 185

The assets of an AIF subject to private placement may be invested in:

- 1) transferable securities or money market instruments;
- 2) equity interest in limited liability companies or other companies;
- 3) instruments of a like nature to registered instruments that private equity AIFs may invest in, in accordance with this Law and statutory instruments enacted pursuant to this Law;
- 4) shares of investment funds referred to in Article 181[2]4) of this Law;
- 5) deposits with financial institutions that have their registered offices in the Republic, a Member State, or a third country;
- 6) derivative financial instruments traded in a regulated market within the meaning of the law governing the capital market in Serbia, a Member State, or a third country, or derivative financial instruments traded outside of a regulated market (OTC derivatives);
- 7) claims for outstanding loans;
- 8) real-estate;
- 9) commodities;
- 10) other types of assets, where this is explicitly envisaged by the operating rules of the AIF.

When investing assets of AIFs, an AIFM must comply with the following requirements:

- 1) the total investment into transferable securities, investment units, or money market instruments issued by the same person and the value of deposits with that person and exposure arising out of transactions in OTC derivatives entered into with that person may not

exceed 40 percent of the asset value of the AIF. Persons with close links to one another shall be deemed to be one issuer;

2) the limit referred to in Point 1) of this Paragraph shall not apply to transferable securities or money market instruments issued or guaranteed by the Republic or a local authority of the Republic, a Member State or a local authority of a Member State, a third country, or an international public organisation the membership of which comprises one or more Member States;

3) the total investment into instruments of a like nature to registered instruments referred to in Para. [1]3) of this Article may not exceed 20 percent of the asset value of the AIF;

4) where assets of the AIF are invested into units of investment funds managed, either directly or by delegation, by the same AIFM or another company with which the AIFM is linked by common management or control, or by a substantial direct or indirect holding, that AIFM or other company may not charge subscription or redemption fees on account of the AIFs' investment in the investment units of such other investment funds;

5) where a substantial proportion of the assets of the AIF is invested in investment units of other investment funds, the operating rules of the AIF must disclose in its prospectus the maximum level of the management fees that may be charged both to the AIF itself and to the other investment funds in which it intends to invest, and annual statements of the AIF must clearly indicate the maximum proportion of management fees charged both to the AIF itself and to the other investment funds in which the AIF invests.

The restriction referred to in Para. [2] 1) and 3) of this Article shall not apply to private equity AIFs or venture capital AIFs.

Where assets of an AIF subject to private placement are invested in real estate, the provision of Article 192[2]-[4] shall apply, *mutatis mutandis*.

Types of AIFs Subject to Private Placement

Article 186

An AIFM may establish an AIF subject to private placement of any type in the Republic, pursuant to the provisions of laws and statutory instruments enacted by the Commission, as follows:

- 1) general AIFs subject to private placement;
- 2) specific types of AIFs subject to private placement:
 - (1) private equity AIFs;

- (2) venture capital AIFs;
- (3) real estate AIFs subject to private placement;
- (4) funds of funds;
- (5) hedge funds;
- (6) specialised AIFs;
- (7) European Venture Capital Funds;
- (8) European Social Entrepreneurship Fund.

The European Venture Capital Funds and European Social Entrepreneurship Funds referred to in Para. [1]2)(7)-(8) of this Article are governed by specific Union regulations.

Article 187

In the operating rules of an AIF subject to private placement, the AIFM shall regulate:

- 1) the investment strategy and objectives of the AIF;
- 2) the type of assets in which the AIF may invest, effective asset management techniques it may employ, and applicable investment restrictions;
- 3) risk management for individual AIFs, AIF risk profiles, and diversification of investment risk;
- 4) the conditions under which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF.

In the operating rules of an AIF subject to private placement, the AIFM may regulate:

- 1) the minimum or maximum allowed number of investors;
- 2) the creation of an investor committee and the powers, decision-making, and number of members of that committee;
- 3) time limits for subscription to the AIF by new investors, where the AIF is established for a limited period of time.

The minimum required subscription by a single investor in an AIF subject to private placement shall be 50,000 euros, as envisaged in the operating rules of the AIF.

General AIFs Subject to Private Placement

Article 188

Assets of general AIFs subject to private placement may be invested in assets referred to in Article 185[1]1) and 4)-10) of this Law, and must be subject to at least six different investments.

Subscriptions of semi-professional investors into the master AIF subject to private placement shall be made on a one-off basis, without the investors being required to make any additional subscription payments.

The Commission shall regulate the manner of and restrictions on investment by general AIFs subject to private placement, calculation of subscriptions, and determination of the relevant costs.

Private Equity AIFs

Article 189

A private equity AIF shall be an AIF with private placement, the assets of which are invested, pursuant to the operating rules of the AIF, primarily in companies with the aim of optimising their operational and financial performance and in expectation of a return on investment.

Investments by private equity AIFs in companies referred to in Para. [1] of this Article must be made in the form of equity instruments or instruments of a like nature to equity instruments.

Private equity AIFs may be established only for a limited period of time.

The Commission shall regulate the manner of investment and instruments in which private equity AIFs may invest, restrictions on, types of, and timeframes for subscriptions by members or shareholders in private equity AIFs, the type and extent of restrictions on investment, calculation of subscriptions, and determination of the relevant costs.

Investment by Semi-Professional Investors in Private Equity AIFs

Article 190

A semi-professional investor in a private equity AIF shall be a retail investor who:

a) has undertaken to make a one-off subscription of 250,000 euros or more, or an equivalent amount in other currency, to be invested into the shares of a private equity AIF, pursuant to the operating rules of such AIF;

b) has been identified by the AIFM as having sufficient experience in the capital market and professional knowledge to understand the risks of investing, as well as that investment in the private equity AIF meets his investment objectives.

Relevant persons in relation to the AIFM shall be deemed to be semi-professional investors in private equity AIFs where such persons are investors in AIFs managed by the AIFM, and shall not be subject to the provisions of Para. [1] of this Article.

The eligibility assessment referred to in Para. [1]2) of this Article shall be subject, *mutatis mutandis*, to the provisions of Article 178 of this Law.

Venture Capital AIFs

Article 191

A venture capital AIF shall be an AIF subject to private placement, the assets of which are invested, pursuant to the operating rules of the AIF, primarily in start-up or early-stage companies that the AIFM has identified as having potential for growth and expansion.

Investments by venture capital AIFs in companies referred to in Para. [1] of this Article must be made in the form of registered instruments or instruments of a like nature to registered instruments.

The Commission shall enact detailed regulations governing the manner of investment and instruments in which venture capital AIFs may invest, the restrictions, types, and timeframes for subscriptions by members or shareholders in venture capital AIFs, the type and extent of restrictions on investment, calculation of subscriptions, and determination of the relevant costs.

Real Estate AIFs Subject to Private Placement

Article 192

A real estate AIF subject to private placement shall be an AIF the assets of which are invested, pursuant to the operating rules of the AIF, primarily in real estate or assets deemed to be investment in real estate within the meaning of Article 184[1]-[3] of this Law.

A closed-ended real estate AIF subject to private placement may acquire real estate in the Republic or a foreign country, as follows:

- 1) residential and/or commercial buildings;
- 2) development land where construction of buildings referred to in Point 1) of this Paragraph is in progress, if such construction is reasonably likely to be completed within an appropriate period of time that does not exceed 2 years;
- 3) undeveloped development land zoned, pursuant to regulations in effect, for construction of residential and/or commercial buildings;
- 4) agricultural land;
- 5) investment in other real estate expressly envisaged in the prospectus and/or operating rules of the AIF.

A closed-ended real estate AIF subject to private placement may acquire real estate referred to in Para. [1] of this Article:

- 1) that is located in a geographical area indicated in the prospectus and/or operating rules of the AIF;
- 2) for which the AIFM has commissioned an external valuer referred to in Article 123 of this Law to prepare a valuation report, within 15 days of the date of the report, which identifies any mortgages encumbering the real estate and contains a statement to the effect that the real estate could be disposed of at the request of the AIFM within a suitably short period of time at the appraised value;
- 3) which must be acquired or the acquisition of which must be contracted within 6 months of the date of receipt of the report referred to in Point 2) of this Paragraph at a price not greater than 105 percent of its appraised value, where the AIFM is not aware of any conditions due to which the report referred to in Point 2) of this Paragraph has ceased to be relevant; or
- 4) which may be acquired directly or by means of one or more special purpose vehicles wholly owned by the AIF, the purpose of which is to administer the real estate on behalf of the AIF. Such investment shall be deemed direct investment in real estate for the purposes of this Law. Special purpose vehicles shall acquire, dispose of, and manage real estate on behalf of the AIF in accordance with its investment strategy and objectives. Where applicable, the special purpose vehicles must share the same auditor and produce financial statements for the same reporting periods and on the same dates as the AIFs. Financial statements of special purpose vehicles shall be consolidated with the financial statements of AIFs.

Where explicitly envisaged by the prospectus and/or operating rules of the AIF, investment in real estate shall be deemed to be investment in:

- 1) equity interests or shares in companies that exclusively or primarily acquire, sell, lease, and/or manage real estate;
- 2) shares of other real estate AIFs; and
- 3) other transferable securities or derivative financial instruments the value of which is based on the price of real estate.

The AIF referred to in Para. [1] of this Article may be established only as a closed-ended AIF.

The legal name of the AIF referred to in Para. [1] must contain the phrase ‘za ulaganje u nepokretnosti’ [‘real estate investment’].

Not less than 70 percent of the net asset value of the AIF must be invested in real estate or property deemed to be investment in real estate within the meaning of Paras. [2]-[4] of this Article.

Restriction on investment referred to in Para. [7] of this Article may be exceeded in the first two years following the establishment of a closed-ended real estate AIF subject to private placement.

The Commission shall enact detailed regulations governing the manner of and restrictions on investment by real estate AIFs subject to private placement, restrictions on investment, manner of and timeframes for subscriptions by members or shareholders in real estate AIFs subject to private placement; the type and extent of restrictions on investment, calculation of subscriptions, and determination of the relevant costs.

Funds of Funds

Article 193

A fund of funds shall be an AIF subject to private placement, the assets of which are invested, pursuant to the operating rules of the AIF, primarily in shares of other AIFs.

Not less than 70 percent of the net asset value of the AIF referred to in Para. [1] of this Article must be invested in shares of other AIFs.

An AIF referred to in Para. [1] of this Article may be established as an AIF investing in hedge funds, an AIF investing in private equity AIFs, an AIF investing in specialised AIFs, or an AIF investing in different types of AIFs.

The name of the AIF referred to in Para. [1] of this Article must clearly indicate that it is a fund of funds.

The Commission shall regulate the instruments in which a fund of funds may invest, restrictions on investment, manner of and timeframes for subscriptions by members or shareholders in funds of funds; the type and extent of restrictions on investment, calculation of subscriptions, and determination of the relevant costs.

Hedge Funds

Article 194

A hedge fund shall be an AIF subject to private placement the assets of which may be invested, pursuant to the operating rules of the AIF, in high-risk assets of various types for the purpose of yielding a high return over a short period of time.

Only professional investors may invest in a hedge fund.

The Commission shall regulate the manner of and restrictions on investment by a hedge fund, as well as the instruments in which it may invest.

Specialised AIFs

Article 195

A specialised AIF shall be an AIF subject to private placement that specialises in investment in particular industry or sector, such as e.g. sustainable development, environmental protection, energy, technology, trade, and the like, or in a particular commodity, such as e.g. precious metals, works of art, jewellery, precious stones, and the like.

Not less than 70 percent of the net asset value of the AIF referred to in Para. [1] of this Article must be invested in the specific area the AIF is specialised for.

The name of the AIF referred to in Para. [1] of this Article must contain a reference to the specific area the AIF is specialised for.

The Commission shall regulate the instruments in which a specialised fund may invest, restrictions on investment, manner of and timeframes for subscriptions by members or shareholders in specialised AIFs; the type and extent of restrictions on investment, calculation of subscriptions, and determination of the relevant costs.

XIV. SPECIAL TYPES OF AIFS

1. Umbrella AIFs and Sub-Funds

Article 196

An AIFM may establish an umbrella AIF that consists of two or more sub-funds.

The umbrella fund shall not have legal personality.

The AIFM may determine various amounts of subscription and redemption fees, management fees, and other costs for each sub-fund; investors shall not be charged subscription or redemption fees when shifting positions between sub-funds.

Where an AIF consists of sub-funds, each sub-fund shall be deemed to be a separate AIF for the purposes of this Law.

A sub-fund may be a feeder fund within the meaning of Article 203 of this Law.

Establishment of Umbrella AIFs

Article 197

An AIFM shall obtain approval from the Commission for the establishment or setting up and management of an umbrella AIF, as well as approval for the establishment or setting up and management of each sub-fund of an umbrella fund.

Following the establishment or setting up of an umbrella AIF, the AIFM may, with the approval of the Commission, subsequently establish new sub-funds it will group under the umbrella AIF, and shall in doing so comply with the provision of Article 199[2] of this Law.

An AIFM managing at least two AIFs may establish an umbrella AIF by converting existing AIFs into sub-funds and grouping them under an umbrella AIF.

Applications for establishment of umbrella AIFs and sub-funds shall be subject, mutatis mutandis, to the provisions of this Law governing the establishment of AIFs.

Name of Umbrella AIF and Sub-Funds

Article 198

The name of an umbrella AIF must contain the phrase ‘krovni AIF’ [‘umbrella AIF’].

The name of a sub-fund must contain the name of the umbrella AIF without the phrase ‘umbrella AIF’ and a name clearly distinguishing that sub-fund from other sub-funds of the umbrella AIF.

Documents of Umbrella AIFs

Article 199

The AIFM shall adopt operating rules of an umbrella AIF and prepare a prospectus of an umbrella AIF where one is required to be published. No separate operating rules shall be adopted for sub-funds of an umbrella AIF, nor shall separate prospectuses be prepared where these are required to be published; rather, the specific nature of each sub-fund shall be determined by the operating rules of the umbrella AIF and prospectus of the umbrella AIF, where one is required to be published.

The operating rules or prospectus, where one is required to be published, must clearly indicate the provisions that pertain to all sub-funds of an umbrella AIF and those that pertain only to any specific sub-fund.

In addition to the information required under Article 139 of this Law, the operating rules of the umbrella AIF must contain an indication that the AIF is an umbrella AIF.

Where the AIFM establishes additional sub-funds following the establishment of an umbrella AIF, it shall accordingly amend the operating rules of the umbrella AIF and prospectus of the umbrella AIF, where one is required to be published.

Assets and Investments of Sub-Funds

Article 200

The assets of one sub-fund shall be kept separately from those of other sub-funds.

Liabilities or receivables arising out of transactions for the account of a sub-fund shall be settled exclusively using the assets of that sub-fund and credited to the assets of that sub-fund.

Each sub-fund of an umbrella AIF shall be subject, as appropriate, to the provisions of this Law and statutory instruments governing permitted investments and restrictions on investment for particular types of funds.

An AIFM may consolidate risk management arrangements for individual sub-funds into a single risk management arrangement for the umbrella AIF, where risk management considerations specific to a particular sub-fund shall only be indicated for that sub-fund.

Depositary Functions and Asset Segregation

Article 201

The AIFM shall enter into a depositary contract with a depositary for the account of the umbrella AIF and all its sub-funds.

Pursuant to the depositary contract for the umbrella AIF, the depositary shall provide depositary functions for each individual sub-fund.

The AIFM and the depositary shall ensure the segregation of assets of each individual sub-fund.

The assets of one sub-fund shall be kept and maintained clearly segregated from those belonging to other sub-funds of the umbrella AIF, the AIFM, or the depositary.

Termination

Article 202

An umbrella AIF shall terminate where:

- 1) at least two sub-funds are no longer grouped under the umbrella AIF;
- 2) all sub-funds of an umbrella AIF are grouped under another umbrella AIF.

An umbrella AIF or sub-fund shall be dissolved, in addition to the grounds for dissolution envisaged under Article 216 of this Law, where:

- 1) the AIFM enacts a formal decision to dissolve it;
- 2) an event occurs that is envisaged in the operating rules or prospectus, where one is required to be published, as grounds for dissolution of the sub-fund or umbrella AIF;
- 3) management responsibilities for the umbrella AIF cannot be compulsorily transferred, pursuant to this Law.

2. Master and Feeder AIFs

Application for Approval of Establishment or Setting Up of Feeder AIFs

Article 203

AIFMs must obtain approval from the Commission to establish or set up feeder AIFs.

A feeder AIF may be created by the establishment of a new AIF or by the conversion of an existing AIF into a feeder AIF.

A feeder AIF managed by an AIFM from the Republic or Member State AIFM shall be deemed to have a European passport only where the master AIF is established in the Republic

or a Member State and is managed by an AIFM having its registered office in the Republic or a Member State.

Where any of the conditions referred to in Para. [3] of this Article are not met, the feeder AIF is deemed to be a third country AIF.

Where the feeder AIF is established as an AIF subject to public offering, the master AIF may only be an AIF subject to public offering.

Article 204

The AIFM shall apply with the Commission for approval of the establishment or setting up of a feeder AIF.

The application referred to in Para. [1] of this Article shall be accompanied by an application to amend the operating rules of the AIF and prospectus of the AIF, where one is required to be published, in the event that the feeder AIF is established or set up through a conversion of an existing AIF.

The application for approval of establishment or setting up of a feeder AIF shall include:

- 1) operating rules of the AIF and prospectus of the AIF, where one is required to be published;
- 2) information exchange agreement between the AIFMs of the master AIF and the feeder AIF, or internal rules adopted pursuant to this Law and statutory instruments of the Commission enacted in accordance with this Law;
- 3) information exchange agreement between the depositaries of the feeder AIF and the master AIF, when entered into, pursuant to this Law and statutory instruments of the Commission enacted in accordance with this Law;
- 4) information exchange agreement between the certified auditors of the feeder AIF and the master AIF referred to in Article 206 of this Law, where applicable;
- 5) where the master AIF has its registered office or is established in a different Member State, authorisation by the competent authority of the master AIF;
- 6) notice to members or shareholders referred to in Article 205 of this Law, where applicable.

The Commission shall grant approval for the establishment or setting up of a feeder AIF where it determines that the applicant AIFM, the feeder AIF, its depositary, auditor, and master AIF meet all conditions envisaged under this Law.

Article 205

Having received approval from the Commission for the establishment or setting up of a feeder AIF through a conversion of an existing AIF and amendment of the operating rules of the AIF and prospectus of the AIF, where one is required to be published, that requires substitution of the master AIF, the AIFM shall provide a notice to the members or shareholders of the feeder AIF containing:

- 1) information on the approval of the Commission and the amendment of the operating rules of the AIF and prospectus of the AIF, where one is required to be published;
- 2) information on the planned starting date of investment by the feeder AIF in the master AIF, or, where the feeder AIF had previously invested in the master AIF, on the date on which investment by the feeder AIF in the master AIF will exceed the limits on investment in investment units of a single investment fund, pursuant to this Law, operating rules of the feeder AIF, and prospectus of the feeder AIF, where one is required to be published;
- 3) a statement to the effect that members or shareholders of the feeder AIF may request the AIFM to redeem their shares in the AIF without charging redemption fees.

The AIFM shall provide the notice referred to in Para. [1] of this Article to members or shareholders of the feeder AIF no later than 30 days before the starting date of investment by the feeder AIF in the master AIF.

Where shares of a Member State feeder AIF are marketed in the Republic, the notice referred to in Para. [1] of this Article must be provided in the Serbian language to members or shareholders who acquired shares in the feeder AIF in the Republic.

Start Date of Investment by Feeder AIF in Master AIF

Article 206

A feeder AIF may start investing in the master AIF only after the expiry of the period referred to in Article 205[2] of this Law and following the entry into effect of the information exchange agreements between the AIFMs of the master and feeder AIFs and between depositaries of the master and feeder AIFs, the internal enactments required where the same AIFM manages both the master and the feeder AIF, the information exchange agreement between depositaries of the master and feeder AIFs referred to in Article 204 of this Law, and, where applicable, the agreement between the auditors of the master and feeder AIFs referred to in Article 204 of this Law.

The Commission shall regulate the content of the information exchange agreements referred to in Para. [1] of this Article and the conditions under which these agreements may be entered into, as well as the restrictions on investment by feeder AIFs.

Operating Rules and Prospectus of Feeder AIFs

Article 207

In addition to the elements required under Article 138 of this Law, the operating rules of feeder AIFs shall also contain:

- 1) a declaration to the effect that that the AIF is a feeder AIF within the meaning of Article 2[1]17) of this Law, and the name of the master AIF;
- 2) investment objectives and strategy of the feeder AIF, with a description of the risks associated with investing in shares of the master AIF and the risk profile and risk appetite of the feeder AIF;
- 3) a declaration to the effect that rates of return of the feeder and master AIFs are equal or description of any differences and the underlying reasons;
- 4) a description of how the remaining assets of the feeder AIF will be invested;
- 5) a clear summary of the features of the master AIF, its investment objective and investment strategy, risk profile, and risk appetite;
- 6) an indication of where and how the operating rules and, where applicable, prospectus of the master AIF may be obtained;
- 7) a summary of the agreement between the AIFM managing the master AIF and the AIFM managing the feeder AIF, or the internal operating rules of the AIF, and an indication of where additional information about that agreement may be obtained;
- 8) a description of all fees and costs paid by the feeder AIF to the master AIF on account of its investment in shares of the master AIF, as well as the total costs of the feeder and master AIFs;
- 9) a description of the tax impact on the feeder AIF of investment in shares of the master AIF.

For a feeder AIF subject to public offering, the information referred to in Para. [1] of this Article shall be contained in the prospectus of the AIF.

Semi-Annual and Annual Statements of Feeder AIFs

Article 208

In addition to information that must be contained in semi-annual and annual statements of AIFs, the semi-annual statements of feeder AIFs shall also present the total costs of the feeder and master AIFs.

The semi-annual and annual statements of feeder AIFs shall indicate where and how the audited annual statements of the relevant main AIFs may be obtained.

Calculation of Exposure of Feeder AIFs

Article 209

The total exposure of a feeder AIF to derivative financial instruments shall be determined by calculating the direct exposure of the feeder AIF to derivative financial instruments together with:

- 1) the actual exposure of the master AIF to derivative financial instruments in proportion to investment by the feeder AIF in the master AIF;
- 2) the greatest total exposure of the master AIF to derivative financial instruments, as allowed by the operating rules of the master AIF and prospectus of the master AIF, where one is required to be published, in proportion to investment by the feeder AIF in the master AIF.

Calculation and Disclosure of Net Asset Value

Article 210

AIFMs managing master and feeder AIFs shall take the required measures to align schedules for calculation and disclosure or notification of investors with the provisions of the operating rules of the master and feeder AIF governing net asset value so as to prevent any abuse due to divergent valuation schedules.

Other Obligations of AIFMs

Article 211

The AIFM managing the master AIF shall notify the Commission of each feeder AIF of that master AIF.

The AIFM managing the master AIF shall notify the Commission of the receipt of initial payments by each feeder AIF into the master AIF.

The AIFM managing the master AIF shall not charge feeder AIFs subscription or redemption charges.

The AIFM managing the feeder AIF shall provide to members of feeder AIFs, at their request and without charge:

- 1) the operating rules and prospectus of the master AIF, where one is required to be published;
- 2) the annual statements of the master AIF;
- 3) the semi-annual statements of the master AIF;
- 4) the agreement between the AIFMs managing the master and feeder AIFs, or internal operating rules of the AIFM where one AIFM manages both the main and feeder AIFs.

The AIFM managing a feeder AIF subject to public offering shall, in all advertising materials for that AIF, indicate that the AIF is a feeder AIF on behalf of a master AIF.

Monitoring Performance of Master AIFs

Article 212

The AIFM managing the feeder AIF shall effectively monitor the adequacy of the management and operations of the master AIF.

The AIFM managing the feeder AIF shall draw conclusions as to the adequacy of the management and operations of the referred to in Para. [1] of this Article based on the information and documents provided by the AIFM managing the master AIF, the depositary, and the certified auditor.

Any fees collected by the AIFM managing the feeder AIF, or any other person acting on behalf of the feeder AIF or the AIFM managing it, in connection with investment into shares of the master AIF, shall belong to the feeder AIF and constitute part of its assets.

The Commission shall notify the AIFM managing a feeder AIF and, where appropriate, the depositary of the feeder AIF, of any supervisory measures it has taken in connection with the operation of the master AIF.

Termination of Master AIFs

Article 213

Following a decision to liquidate or dissolve the master AIF, the AIFM managing the feeder AIF must, without delay, initiate the liquidation or dissolution of the feeder AIF.

Para. [1] of this Article shall not apply where the Commission grants approval to the AIFM managing the feeder AIF for:

- 1) changing the operating rules of the feeder AIF and prospectus of the feeder AIF, where one is required to be published, to allow the feeder AIF to invest not less than 85 percent of its assets in shares of a different master AIF;
- 2) changing the operating rules of the feeder AIF and prospectus of the feeder AIF, where one is required to be published, to allow the feeder AIF to be converted into an AIF that is not a feeder AIF.

The AIFM managing a feeder AIF shall submit to the Commission an application for approval of any changes referred to in Para. [2] of this Article, or the decision to liquidate or dissolve the feeder AIF, within 2 months of the date on which it is notified of the intended liquidation or dissolution of the master AIF. Where the AIFM managing a feeder AIF has been notified of the intended liquidation or dissolution of the master AIF 5 or more months before the commencement of the liquidation or dissolution, it shall submit the application or decision to the Commission at the latest 3 months before that date.

The AIFM managing the feeder AIF shall notify all members or shareholders of the feeder AIF referred to in Para. [1] of this Article without delay following its decision to liquidate or dissolve that feeder AIF.

The master AIF shall be liquidated within 3 months of the date on which the AIFM managing the master AIF notified the intended liquidation to:

- 1) all members or shareholders of the master AIF;
- 2) the Commission;
- 3) the competent authorities of the home Member State of the feeder AIF.

Changes in Status or Form of Incorporation of AIFs that Include Other AIFs

Article 214

When carrying out a change in status or form of incorporation of a master AIF that includes other AIFs, the AIFM managing the feeder AIF must initiate the liquidation or dissolution of the feeder AIF without delay.

Notwithstanding Para. [1] of this Article, the AIFM managing the feeder AIF shall not initiate the liquidation or dissolution of the feeder AIF where the Commission grants approval to the AIFM managing the feeder AIF for:

1) changing the operating rules of the feeder AIF and prospectus of the feeder AIF, where one is required to be published, to allow the feeder AIF to remain a feeder AIF of that master AIF;

2) changing the operating rules of the feeder AIF and prospectus of the feeder AIF, where one is required to be published, to allow the feeder AIF to become a feeder AIF of a different master AIF that will be created following the change in status or form of incorporation of the master AIF that includes another fund;

3) changing the operating rules of the master AIF, and the operating rules of the feeder AIF and prospectus of the feeder AIF, where one is required to be published, to allow the feeder AIF to become the feeder AIF of a different master AIF;

4) changing the operating rules of the feeder AIF and prospectus of the feeder AIF, where one is required to be published, to allow the feeder AIF to be converted into an AIF that is not a feeder AIF.

The master AIF may undergo a change in status or form of incorporation upon the expiry of 60 days of the date on which the master AIF notified the members or shareholders of the master AIF and the Commission of its intent to perform the change in status.

The master AIF must redeem its own shares in the feeder AIF at the request of the feeder AIF within the period referred to in Para. [3] of this Article, and must not in doing so charge any redemption fees to the feeder AIF.

The AIFM managing a feeder AIF shall submit to the Commission an application for approval of any changes referred to in Para. [2] of this Article, or the decision to dissolve the feeder AIF, within 2 months of the date on which it is notified of the intended change in status or form of incorporation of the master AIF. Where the AIFM managing a feeder AIF has been notified of the intended change in status or form of incorporation of the master AIF more than 4 months before the change in status or form of incorporation, it shall submit the application or decision to the Commission at the latest 3 months before that date.

The AIFM managing the feeder AIF shall notify all members of the feeder AIF referred to in Para. [1] of this Article without delay following its decision to liquidate or dissolve that feeder AIF.

Article 215

If a master AIF temporarily suspends the re-purchase or redemption of its shares, whether at its own initiative or at the request of its competent authorities, each of its feeder AIFs shall be entitled to suspend the re-purchase or redemption of its units within the same period of time as the master AIF.

XV. LIQUIDATION, INSOLVENCY, DISSOLUTION, AND TERMINATION OF AIFS

Reasons for Dissolution

Article 216

An AIF without legal personality shall be dissolved in the event of:

- 1) the voluntary termination of the provision of services by the AIFM, where responsibility for managing the AIF is not transferred to a different AIFM;
- 2) the depositary ceasing to perform the function of depositary, or the Commission withdrawing approval for appointment of depositary and the AIFM failing to comply with Article 174[2] of this Law or the Commission rejecting an application referred to in Article 174[2] of this Law;
- 3) authorisation of the AIFM being withdrawn or the AIFM being subject to insolvency or liquidation, where responsibility for managing the AIF is not transferred to a different AIFM, or the AIFM no longer being able to manage the AIF;
- 4) the Commission ordering the management of the AIFM to dissolve the AIF;
- 5) other circumstances as envisaged under this Law, operating rules of the AIF, and prospectus of the AIF, where one is required to be published.

The person referred to in Article 217[1] of this Law shall adopt the decision to dissolve the AIF without delay once the grounds for dissolution have arisen.

Procedure for Dissolution of AIFs

Article 217

An AIF without legal personality shall be dissolved by:

- 1) the AIFM, except where the AIFM is subject to insolvency or liquidation procedure or where the Commission has withdrawn the authorisation of the AIFM, or where the AIFM is no longer able to manage the AIF;
- 2) the AIFM, except where the competent authorities of the Member State of the AIFM have withdrawn the authorisation of the AIFM;
- 3) the depositary of the AIF, where the AIF cannot be dissolved by the AIFM; or

4) a person appointed by the Commission, where the AIFM or depositary of the AIF are insolvent or have had their authorisation withdrawn.

The Commission shall appoint the person referred to in Para. [1]4) of this Article without delay, and shall in doing so act with particular diligence and concern for the rights and interests of members and shareholders of the AIF.

The Commission shall regulate:

- 1) the conditions, costs, and periods for dissolution of AIFs;
- 2) reporting in the course of dissolution;
- 3) manner of and conditions for the appointment of the person tasked with dissolution referred to in Para. [1]4) of this Law.

Notification of Members or Shareholders and the Commission of the Dissolution of an AIF without Legal Personality

Article 218

The person charged with dissolving an AIF without legal personality shall, after adopting the decision to dissolve the AIF or as of the date of appointment, notify the Commission thereof and submit the notification and announcement referred to in Para. [2] of this Article.

The person charged with dissolving an AIF without legal personality shall, within 3 working days of adopting the decision to dissolve the AIF, notify each member or shareholder of the AIF of the commencement of dissolution and, where the AIF is an open-ended AIF subject to public offering, make a public announcement of the dissolution of the AIF.

Where an AIFM charged with dissolving an AIF without legal personality does not comply with Paras. [1] and [2] of this Article, the depositary of the AIF shall do so within the periods referred to in Paras. [1] and [2] of this Article, which shall run as of the day on which the depositary learned or ought to have learned of the failure to comply of the AIFM charged with dissolving the AIF.

Where the depositary is charged with dissolving an AIF without legal personality, the depositary may demand compensation from the AIFM of the costs incurred in complying with Para. [3] of this Article.

The Commission shall enact detailed regulations governing the content, delivery, and publication of the notification and announcement referred to in Para. [2] of this Article.

Legal Consequences of Dissolution of AIFs

Article 219

Any further issue or redemption of shares in an AIF shall be prohibited after the adoption of a decision to dissolve it.

The AIF shall not be required to pay fees or costs in connection with its dissolution starting from the date of dissolution, excepting the depositary fee referred to in Article 218[4] of this Law.

The person charged with dissolving the AIF shall produce and submit to the Commission a final report and a report on the dissolution of the AIF.

In dissolving the AIF, the person charged with dissolving the AIF shall act in the best interests of the members or shareholders and ensure that the dissolution is completed within a reasonable period of time, and shall in doing so first settle the liabilities of the AIF that became due before the date of adoption of the decision to dissolve the AIF, followed by any other liabilities of the AIF that did not become due before the date of adoption of the decision to dissolve the AIF which arose out of transactions connected with the management of its assets.

The residual net assets of the AIF remaining after the liabilities of the AIF referred to in Para. [4] of this Article have been met shall be distributed to the members or shareholders in proportion to their holdings of investment units in the AIF.

Liquidation and Insolvency of Closed-Ended AIFs with Legal Personality

Article 220

A closed-ended AIF with legal personality shall be liquidated pursuant to the law governing corporations, except otherwise provided for by this Law or a statutory instrument enacted by the Commission.

The insolvency of a closed-ended AIF with legal personality shall be administered pursuant to the law governing corporate insolvency.

On the first subsequent working day following the adoption of the decision to liquidate or the filing of an insolvency petition, the liquidation or bankruptcy administrator of a closed-ended AIF with legal personality shall notify the Commission thereof.

Termination of AIFs Established for Limited Periods of Time

Article 221

The date of termination of an AIF established for a limited period of time shall be determined in the operating rules of the AIF and prospectus of the AIF, where one is required to be published.

Where the AIF was established for a limited period of time, one day before termination the AIFM shall calculate the price of shares of that AIF, redeem all shares of the AIF at that price, and make a full payment to the members or shareholders of the AIF.

The proceeds shall be paid into the accounts of the members or shareholders of the AIF at the latest within 7 days following the termination of the AIF, excepting where the operating rules of the AIF or prospectus of the AIF, where one is required to be published, stipulate otherwise.

The AIFM or general meeting of a closed-ended AIF with legal personality established for a limited period of time may decide to terminate the AIF before the termination date stipulated in its operating rules or prospectus, where one is required to be published, where the purpose of the AIF has been achieved or where doing so is in the best interests of the members or shareholders of the AIF, and where this option is allowed by the operating rules of the AIF or prospectus of the AIF, where one is required to be published.

In the event of the termination of an AIF established for a limited period of time before the termination date stipulated in its operating rules or prospectus, where one is required to be published, the AIFM shall notify the Commission and the members or shareholders of the AIF without delay, and may not charge redemption fees from the members or shareholders of the AIF.

Where the AIF was established for a limited period of time, the AIFM, or general meeting in the event of a closed-ended AIF with legal personality, may decide to extend its operation where this option is allowed by the operating rules of the AIF or prospectus of the AIF, where one is required to be published. The AIFM shall notify the Commission and the members or shareholders of the AIF thereof without delay.

The AIFM shall redeem the shares of members or shareholders wishing to leave the AIF due to any extension of its operation on the originally envisaged termination date of the AIF where the AIF is:

- 1) an AIF subject to public offering;
- 2) an AIF subject to private placement, except where otherwise provided for by the operating rules of the AIF.

The Commission shall enact detailed regulations governing the conditions for and manner of termination of AIFs, as well as the conditions for and manner of extension of operations of an AIF established for a limited period of time.

XVI. CHANGES IN STATUS AND CHANGES OF TYPE OF AIFS

Changes of Type of AIFs

Article 222

An AIF without legal capacity subject to private placement may become an AIF without legal capacity subject to public offering only with the approval of the Commission, which the Commission shall grant within 30 days of receiving an application accompanied by a complete set of documents, provided that the following conditions have been met:

- 1) that such change is not expressly prohibited by the operating rules of the AIF;
- 2) that at least three-quarters of the members or shareholders of the AIF in question have agreed to such change;

In the event referred to in Para. [1] of this Article, within seven days of the expiry of the period referred to in Para. [1] of this Article, the AIFM shall notify the members or shareholders of such change, indicating that the investors disagreeing with that change may request the redemption of their investment units without being charged redemption fees within at least 30 days of the date of the notice, provided that the Commission has granted consent as referred to in Para. [1] of this Article.

An AIF subject to public offering without legal capacity may become an AIF subject to private placement without legal capacity only if the following conditions have been met:

- 1) that such change is not expressly prohibited by the operating rules of the AIF;
- 2) that at least three-quarters of the members or shareholders of the AIF in question have agreed to such change;
- 3) that the investors meet criteria for investing in the AIF subject to private placement.

In an event referred to in Para. [3] of this Article, the AIFM shall notify the members or shareholders and shall redeem the shares of the AIF without charging redemption fees as envisaged and within the period referred to in Para. [2] of this Article held by members or shareholders disagreeing with such change or no longer meeting the criteria for investing in the AIF.

In the events referred to in Paras. [1] and [3] of this Article, where the AIF has legal capacity, provisions of the law governing corporations shall apply, mutatis mutandis, as shall, where applicable, provisions of the law governing the capital market.

An open-ended AIF subject to private placement without legal personality may be converted into a UCITS only with the approval of the Commission, provided that the following conditions have been met:

- 1) that such change is not expressly prohibited by the operating rules of the AIF;
- 2) that at least three-quarters of the members or shareholders of the AIF in question have agreed to such change.

An open-ended AIF subject to public offering without legal personality may be converted into a UCITS only with the approval of the Commission, provided that the following conditions have been met:

- 1) that such change is not expressly prohibited by the operating rules of the AIF;
- 2) that at least three-quarters of the members or shareholders of the AIF in question have agreed to such change.

In an event referred to in Paras. [6] and [7] of this Article, the AIFM shall notify the members or shareholders of the change to the type of the AIF and advise them of their right to have their shares in the AIF redeemed without being charged a redemption fee if they disagree with such change, as envisaged and within the periods referred to in Para. [2] of this Article.

Changes in Status of AIFs without Legal Personality

Article 223

Two or more AIFs without legal personality may be merged or consolidated with the prior approval of the Commission.

AIFs shall be merged by having the totality of the assets, rights, and liabilities of one or more AIFs (hereinafter referred to as the ‘transferor AIF’) transferred to another existing AIF (hereinafter referred to as the ‘transferee AIF’).

AIFs shall be consolidated by the establishment of a new transferee AIF, to which shall be transferred the totality of the assets, rights, and liabilities of two or more transferor AIFs involved in the consolidation.

Changes in status of AIFs without legal personality may involve multiple transferor AIFs and only one transferee AIF.

The Commission shall regulate the conditions for changes in status of AIFs without legal personality.

Changes in Status of closed-ended AIFs with Legal Personality

Article 224

Changes in status of closed-ended AIFs with legal personality shall be subject to the law governing companies, excepting where otherwise provided for by this Law or a statutory instrument enacted by the Commission.

XVII. SUPERVISION OF AIFMS, AIFS, DEPOSITARIES, AND OTHER ENTITIES

Supervision

Article 225

The Commission shall supervise the operations of AIFMs and AIFs, and the performance of services by depositaries (hereinafter: supervised entities), to the extent envisaged by this Law.

In making decisions in administrative matters, the Commission shall apply the provisions of the law governing general administrative procedure.

Procedural decisions adopted by the Commission in the course of supervision shall be final.

Supervised Entities

Article 226

The Commission shall perform supervision and verification of supervised entities pursuant to this Law and the law governing the capital market.

The Commission may inspect the documentation and other information of a supervised entity or other person that are relevant for the supervision.

Within the meaning of this Law, supervised entities shall be:

- 1) AIFMs from the Republic and their branches outside the Republic;
- 2) AIFs established in the Republic;

- 3) Member State AIFs marketed in the Republic;
- 4) third country AIFs marketed in the Republic;
- 5) Member State AIFMs operating directly in the Republic, to the extent envisaged by this Law;
- 6) branches of Member State AIFMs operating in the Republic, to the extent envisaged by this Law;
- 7) third country AIFMs operating directly in the Republic, to the extent envisaged by this Law;
- 8) branches of third country AIFMs operating directly in the Republic;
- 9) depositaries of AIFs from the Republic, in so far as they carry out depositary functions.

Article 227

Having undertaken a supervision procedure, the Commission may impose supervisory measures envisaged by this Law against supervised entities to ensure that such supervised entities comply with regulations and operate in an orderly manner, safeguard the interests of the members or shareholders of AIFs, and protect the public interest.

The Commission may also impose supervisory measures envisaged by the EU regulations governing particular types of funds, such as venture capital and social entrepreneurship funds, to ensure that such supervised entities comply with regulations and operate in an orderly manner, safeguard the interests of the members or shareholders of AIFs, and protect the public interest.

Supervision of AIFMs and AIFs from the Republic

Article 228

The Commission shall be empowered, where this is necessary for supervision pursuant to this Law and statutory instruments, to require reports and information from, as well as to supervise operations and inspect the books of account and business documents of:

- 1) persons having close links to AIFMs and AIFs;
- 2) persons with qualifying holdings in AIFMs;
- 3) other persons or entities who may hold information relevant and/or required for supervision.

Where the AIFM has delegated particular functions to a third party, the Commission shall be empowered to require such third party to provide reports and information, and to inspect the operations and books of account and business documents of such third party in so far as they pertain to the exercise of delegated functions, as well as to temporarily prohibit the exercise of such delegated functions by such third party.

Where a different competent authority is responsible for the supervision of a person referred to in Para. [2] of this Article, the Commission shall co-operate with such authority in inspecting the books of account and business documents of the person referred to in Para. [2] of this Article, pursuant to the provisions of this Law governing co-operation between different competent authorities.

Supervision of AIFMs and AIFs Outside the Republic

Article 229

The Commission shall supervise the operations of AIFMs and AIFs located outside the Republic, except where otherwise provided for by this Law.

Supervisory Measures

Article 230

Where the Commission ascertains non-compliance with the provisions of this Law following a supervision procedure, it shall adopt a procedural decision ordering such non-compliance to be remedied within a set period of time, and may also take one or more of the following measures:

- 1) pronounce a public censure;
- 2) withdraw approval for appointment of member of management;
- 3) ban the issue of shares in the AIF for up to three months;
- 4) other measures in compliance with the law governing the capital market.

Independently of the other measures imposed under this Article, the Commission may impose a fine on the supervised entity, and a member of management which shall not be less than 1% or higher than 5% of the minimum capital, i.e. the supervised entity's capital, according to the last financial statement, i.e. it cannot be lower than one salary or higher than the total of twelve salaries the member of management has received in the period of twelve months preceding the day of adoption of the decision.

Where the Commission considers there are indications of a criminal offence, commercial offence, or misdemeanour, it shall bring appropriate charges with the relevant competent authority, i.e. it shall refer a request for charges against the person to the state authority responsible for investigating and prosecuting criminal offences, commercial offences or misdemeanours.

Article 231

The Commission shall be empowered to impose the supervision measures referred to in Article 232 of this Law:

- 1) where it determines that the AIFM has failed to comply with the procedural decision ordering non-compliance to be remedied, as referred to in Article 230, paragraph 1 of this Law;
- 2) where it determines that the AIFM has not established or complied with or does not continue to meet the organisational, technical, staffing, and other operating requirements pursuant to Articles 39 to 52 of this Law;
- 3) where it determines that the initial capital of the AIFM is below the threshold envisaged by this Law;
- 4) where it determines that the AIFM does not comply with provisions governing restrictions on investment by AIFs it manages or other restrictions envisaged by the operating rules of the AIF or prospectus of the AIF, where one is required to be published, or by the provisions of this Law and the statutory instruments enacted pursuant to this Law;
- 5) in other cases where the Commission deems it necessary.

Article 232

Where the requirements of Article 231 of this Law are met, the Commission may adopt a procedural decision:

- 1) ordering the AIFM to increase its capital to the appropriate level as envisaged by this Law;
- 2) ordering the AIFM to dismiss a member or members of its supervisory board or board of directors and appoint a new member or new members of its supervisory board or board of directors;
- 3) temporarily banning the AIFM from:

- (1) making payments from its capital reserve account or retained earnings to members, members of management, and staff of the AIFM;
- (2) entering into transactions with persons who have close links to the AIFM;
- (3) issuing and redeeming shares of AIFs or selling shares of AIFs;
- (4) disposing of assets of AIFs;
- (5) performing some or all activities of a particular type, or expanding the network of persons authorised to market shares of AIFs, or introducing new products, or may impose limitations on these activities;
- 4) ordering the AIFM to establish, comply with, or enhance adherence to the organisational, technical, staffing, and other operating requirements pursuant to Articles 39 to 52 of this Law;
- 5) ordering the AIFM to establish, comply with, or enhance adherence to the organisational, technical staffing, and other operating requirements pursuant to the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs;
- 6) ordering the AIFM to liquidate an AIF or merge it with another AIF;
- 7) ordering the AIFM to transfer responsibilities for managing an AIF to another AIFM within a period set by the Commission, pursuant to the provisions of Article 60 of this Law and the procedure of voluntary transfer of management rights over AIFs;
- 8) ordering the AIFM to enhance its risk management strategies, policies, and processes;
- 9) ordering the AIFM to reduce risks connected with the operations of the AIFM or of AIFs it manages;
- 10) ordering the AIFM to reduce operating costs, including by limiting the salaries of its staff and remuneration of its members of management, members of its supervisory board or board of directors, or other staff of the AIFM;
- 11) ordering the AIFM to take other proportional measures as needed for the AIFM to comply with this Law and statutory instruments enacted pursuant to this Law or pursuant to other laws governing the operations of AIFMs and statutory instruments enacted pursuant to these.

In the procedural decision referred to in Para. [1] of this Article, the Commission shall set a time limit for compliance with measures referred to in this Article, where applicable, as well as a time limit for reporting such compliance to the Commission.

Supervision of an AIFM from the Republic Operating in a Member State

Article 233

The Commission shall be responsible for supervising a Serbian AIFM where that AIFM manages and/or markets AIFs in a Member State, notwithstanding the supervisory powers exercised by the competent authorities of the host Member State of the AIFM.

Where an AIFM from the Republic operates in the host Member State of the AIFM, the competent authorities of the host Member State of the AIFM shall be responsible for applying the provisions of Articles 37, 39[1]7), and 40 of this Law.

The Commission may perform an on-site supervision procedure having first notified the competent authorities of the host Member State where the AIFM from the Republic operates in the host Member State of the AIFM either directly or through a branch.

The Commission may request the competent authorities of the host Member State of the AIFM to perform an on-site supervision procedure of the branch of the AIFM.

Measures against an AIFM Branch in a Host Member State

Article 234

Where an AIFM from the Republic operating in a Member State directly or through a branch fails to provide the documents or information equivalent to those referred to in Article 247[1] of this Law to the competent authorities of the host Member State in contravention of a request made by such authorities, or fails to act as instructed by the competent authorities of the host Member State, or persists in breaching the legal or regulatory provisions in force in its host Member State, the Commission shall order compliance measures pursuant to the provisions of this Law and shall notify the competent authorities of the home Member State of the measures taken or shall, as applicable, request the required information from the relevant supervisory authorities of third countries.

Where, despite the measures taken by the Commission pursuant to Para. [1] of this Article, or because such measures prove to be inadequate or are not available under this Law and the statutory instruments enacted pursuant to it, the AIFM continues to refuse to provide the documents or information requested by the competent authorities of its host Member State or persists in breaching the legal or regulatory provisions in force in its host Member State, the competent authorities of the host Member State of the AIFM may, after informing the Commission, take appropriate measures available to them to prevent or penalise further

irregularities and/or non-compliance and, in so far as necessary, to prevent that AIFM from initiating any further transactions in its jurisdiction. Where the function carried out in the host Member State of the AIFM is the management of AIFs, the host Member State may require the AIFM to cease managing those AIFs.

Notification of the Competent Authorities of the Host Member State of the AIFM

Article 235

Where the Commission withdraws the authorisation or prohibits the performance of a particular function of an AIFM from the Republic, it shall notify the competent authorities of the Member State in which the AIFM operates, either directly or through a branch.

Powers of the Commission to Supervise Depositories

Article 236

The Commission shall be responsible for supervising depositories where those depositories carry out the functions envisaged by this Law.

In performing its supervision function, the Commission shall identify and assess the risks the depository is or is likely to be exposed to in connection with the functions it carries out pursuant to this Law, and shall in doing so take into account the opinions of the National Bank of Serbia and other regulatory authorities responsible for supervising depositories established abroad.

Where the depository has delegated particular functions to a third party, the Commission shall be empowered to require such third party or the depository to provide reports and information in connection with the exercise of such delegated functions by the third party, and to allow the Commission to inspect these operations and books of account and business documents of such third party in so far as they pertain to the exercise of delegated functions, as well as to temporarily withdraw approval for the delegation of those functions to the third party.

Where the depository has delegated particular functions to a third party, the Commission shall supervise such third party as and when requested to do so by the National Bank of Serbia.

The National Bank of Serbia and the Commission shall conclude an agreement regarding the activities referred to in paragraph 2 of this Article, regulating in detail the exchange of information and the activities required to be undertaken in supervision procedures and other powers and duties laid down in this Law, within six months from the day of entry into force of this Law.

Supervision Measures the Commission may Impose against Depositories

Article 237

Where the Commission ascertains non-compliance with the provisions of this Law by a depositary in a supervision procedure, it shall adopt a procedural decision ordering such non-compliance to be remedied within a set period of time, and may also take one or more of the following measures:

- 1) issue a recommendation to the management of the depositary;
- 2) issue a reprimand;
- 3) withdraw its approval for the appointment of the depositary;
- 4) order a substitution of the third party carrying out the functions of depositary by delegation, in particular in the event of negligence or if there are reasons to suspect the ability of the third party to carry out the functions in an orderly, timely, and reliable manner and in compliance with the obligations undertaken or the provisions of this Law.

The supervision measures referred to in Para. [1]1)-2) of this Law that may be imposed against a depositary shall be subject, mutatis mutandis, to the provisions of Article 31, Article 228, and Articles 230-232 of this Law.

The Commission shall notify the regulatory authority responsible for supervising banks of any compliance measures referred to in Para. [1] of this Article it has imposed against a depositary.

Powers of the Commission to Supervise Member State AIFMs Operating in the Republic through Branches

Article 238

The Commission shall supervise Member State AIFMs operating in the Republic through branches and/or marketing AIFs through branches, in so far as required to assess compliance with the requirements of Article 52, Article 53[1], and Article 54 of this Law.

Powers of Competent Authorities of Home Member States of AIFMs to Supervise Branches of Member State AIFMs

Article 239

Where a Member State AIFM operates in the Republic through a branch, the competent authorities of the home Member State of the AIFM may require the Commission to cooperate in performing supervisory activities in the Republic by:

- 1) directly performing supervision of operations of the branch of the AIFM, either on its own or through persons authorised by it, having previously notified the Commission thereof;
- 2) requesting the Commission to directly perform supervision of operations of the branch of the Member State AIFM operating in the Republic.

Notwithstanding Para. [1] of this Article, the Commission may directly perform on-site supervision of the branch of a Member State AIFM to safeguard the interests of investors and other persons using the services of the AIFM or to protect the public interest.

The competent authorities of the home Member State of the AIFM may take part in the on-site supervision of the AIFM branch referred to in Paras. [1] and [2] of this Article, regardless of which authority performs such on-site supervision.

Powers of the Commission to Supervise Member State AIFMs

Article 240

The Commission shall not require Member State AIFMs to provide any information beyond that which it requires from AIFMs from the Republic, where the Member State AIFM operating in the Republic either directly or through a branch provides all documentation or information the Commission requires to verify compliance by the AIFM with the provisions of this Law that the Commission is responsible for supervising.

Where the Commission ascertains that the Member State AIFM operating in Serbia either directly or through a branch does not comply with the provisions of this Law that the Commission is responsible for supervising, it shall adopt a procedural decision ordering the AIFM to put an end to such non-compliance, and shall notify the competent authorities of the home Member State of the AIFM thereof without delay.

Where a Member State AIFM operating in Serbia either directly or through a branch refuses to provide the requested documentation or information to the Commission in contravention of Para. [1] of this Article, or where a Member State AIFM operating in Serbia either directly or through a branch fails to comply with a procedural decision referred to in Para. [2] of this Article, the Commission shall notify the competent authorities of the home Member State of the AIFM thereof without delay.

Having received the notification referred to in Para. [3] of this Article, the competent authorities of the home Member State of the AIFM shall, as a matter of urgency:

- 1) take any and all appropriate measures to ensure that the Member State AIFM operating in the Republic either directly or through a branch provides the information requested by the Commission pursuant to Para. [1] of this Article or complies with the procedural decision of the Commission referred to in Para. [2] of this Article;

2) request the appropriate information from the competent authorities of third countries.

The competent authorities of the home Member State of the AIFM shall notify the Commission of the measures referred to in Para. [4]2) of this Article.

Where, despite the measures taken by the competent authorities of the home Member State of the AIFM pursuant to Para. [4] of this Article, or because such measures prove to be inadequate or are not available under the legal or regulatory provisions in force in the Member State in question, the AIFM continues to refuse to provide the documents or information requested by the Commission or persists in breaching the provisions of this Law, the Commission may, after informing the competent authorities of the home Member State of the AIFM, take appropriate measures available to it to prevent or penalise further irregularities and/or non-compliance and, in so far as necessary, to prevent that AIFM from initiating any further transactions in the Republic. Where the function carried out in the Republic is the management of AIFs, the Commission may require the AIFM to cease managing those AIFs.

Where the Commission has clear and demonstrable grounds for believing that the AIFM is in breach of the obligations arising from rules in relation to which it has no responsibility for supervising compliance, it shall refer those findings to the competent authorities of the home Member State of the AIFM which shall take appropriate measures, including, if necessary, requesting additional information from the relevant supervisory authorities in third countries.

Where, despite the measures taken by the competent authorities of the home Member State of the AIFM, or because such measures prove to be inadequate or if the home Member State of the AIFM fails to act within a reasonable timeframe, the AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the market in the Republic, the Commission may, after informing the competent authorities of the home Member State of the AIFM, take all appropriate measures needed in order to protect the members or shareholders of the relevant AIF, the financial stability and the integrity of the market, including the possibility of preventing the AIFM concerned to further market the shares of the relevant AIF in the Republic.

The Commission shall also act as envisaged under Paras. [7] and [8] of this Article in the event that it has clear and demonstrable grounds for disagreement with the authorisation by the Member State of reference of a non-EU AIFM operating in Serbia either directly or through a branch.

The Commission may bring the matter to the attention of ESMA where it disagrees with any of the measures taken by the competent authorities of the home Member State of the AIFM pursuant to Paras. [4], [5], and [7] of this Article.

The Commission shall notify the competent authorities of the home Member State of an AIF which it is aware is being managed from a Member State in the event of the withdrawal of authorisation of the relevant AIFM with regard to some or all functions.

Where the Commission receives notification from the competent authorities of the home Member State of the AIFM managing an AIF in Serbia concerning the withdrawal of authorisation of that AIFM with regard to some or all functions, it shall take all appropriate measures to protect the interests of investors, including prohibiting transactions or prohibiting the issue or redemption of shares in the AIF in the Republic.

Powers of the Commission to Supervise Third Country AIFMs

Article 241

Where the Commission has been designated the competent authority of the Member State of reference, it shall supervise third country AIFMs in the manner in which and to the extent it supervises AIFMs with the registered office the Republic.

Where the Commission, as the competent authority of the Member State of reference of an AIFM, assesses that the third country AIFM is in breach of the provisions of this Law and the statutory instruments enacted pursuant to this Law, it shall notify ESMA without delay, setting out full reasons.

Where the Commission has not been designated the competent authority of the Member State of reference, it shall supervise third country AIFMs in the manner in which and to the extent it supervises Member State AIFMs.

Publication of Measures and Sanctions

Article 242

The Commission may inform the public about the measures imposed for breaches of the provisions of this Law by publishing them on its website after having first notified the person against whom the measure was imposed.

Before informing the public of the measures referred to in Para. [1] imposed against a depositary having its registered office in the Republic, the Commission shall consult the National Bank of Serbia.

The Commission shall publish the information about the type and nature of breaches of this Law, and shall regulate in its enactment – the conditions in connection with the publication of such information.

Decisions published pursuant to this Article shall remain publicly available on the website of the Commission for at least five years from the date of initial publication.

XVIII. CO-OPERATION WITH OTHER SERBIAN AND EU SUPERVISORY AUTHORITIES

European Supervisory Framework

Article 243

The European Banking Authority (EBA) is governed by Regulation (EC) No 1093/2010 of the European Parliament and of the Council.

The European Insurance and Occupational Pensions Authority (EIOPA) is governed by Regulation (EC) No 1094/2010 of the European Parliament and of the Council.

The ESRB is governed by Regulation (EC) No 1092/2010 of the European Parliament and of the Council.

The ESMA, EBA, and EIOPA, together with the ESRB, comprise the European System of Financial Supervision.

Co-Operation between Supervisory Authorities of the Republic

Article 244

At the request of competent authorities, the Commission and other competent authorities of the Republic responsible for supervision of financial institutions shall supply any and all information about individual supervised entities that is required for supervision, authorisation, or for other purposes.

The competent authorities shall be required to keep one another informed about any non-compliance or other findings where such non-compliance or findings are relevant for the operation of any other competent authorities.

Article 245

An AIFM that is part of a financial conglomerate within the meaning of the law governing financial conglomerates shall be included:

1) within the scope of consolidated supervision of banks and investment firms, or within the scope of supplementary supervision of insurance undertakings in an insurance group;

- 2) where the group is a financial conglomerate, within the scope of supplementary supervision;
- 3) within the financial conglomerate identification process.

An AIFM shall be added to the sector to which it belongs within the group, and, if it does not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

For the purposes of supplementary supervision referred to in Para. [1]2) of this Article, the AIFM shall be treated as part of whichever part of the financial sector it is included in by virtue of Para. [2] of this Article.

Co-Operation with Competent Authorities of Member States, ESMA, and ESRB

Article 246

The Commission shall co-operate with the competent authorities of other Member States, ESMA, and ESRB. The Commission shall supply these with the information required for the purposes of carrying out their supervisory duties under regulations transposing into Member State law the provisions of the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, and under regulations that govern venture capital and social entrepreneurship funds. For this purpose, the Commission shall supply any and all required for the purposes of carrying out these supervisory duties without delay, at the request of these authorities or at its own initiative.

The Commission shall also co-operate with the competent authorities of Member States by participating in investigations.

Pursuant to its duty of co-operation, the Commission shall supply information referred to in Paras. [1] and [2] of this Article even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in the Republic.

The Commission shall forward a copy of the relevant cooperation arrangements entered into by it in accordance with Article 68[1] 1) and Article 82[2]1) of this Law, and the information about third country AIFMs it receives from the competent authorities of the third country, and, where applicable, information in accordance with Article 247[5],[6] of this Law, to the host Member State of the AIFM concerned.

Where the Commission considers that the contents of cooperation arrangements equivalent to those referred to in Article 68[1]1) and Article 82[2]1) forwarded by a Member State do not comply with what is required pursuant to the regulatory technical standards of Para. [4] of this Article, the Commission may refer the matter to the ESMA.

The Commission shall notify ESMA at intervals of 3 months of:

- 1) all authorisations granted to AIFMs to manage AIFs pursuant to this Law,
- 2) all authorisations of AIFMs withdrawn pursuant to this Law.

Co-Operation in Investigation

Article 247

The Commission may request co-operation from the competent authorities of a Member State in the territory of which investigation of operations of an entity or performance of other supervision measures is required, within the framework of their duties of this Law.

Having received the request of the Commission referred to in Para. [1] of this Article, the competent authorities of the Member State shall:

- 1) carry out the investigation of operations or perform other supervision measures itself;
- 2) allow the Commission to carry out the investigation of operations or perform other supervision measures;
- 3) allow a third party designated by the Commission (a certified auditor or other practitioner) to carry out the investigation or to perform other supervision measures.

Where the competent authorities of a Member State are undertaking actions referred to in Para. [1] of this Article in that Member State, the Commission may request that the Commission employees participate in or assist with those actions, together with the staff of that competent authority.

Where the competent authorities of a Member State has requested co-operation, the Commission shall:

- 1) carry out the investigation of operations of an entity or other supervision measures that need to be taken in the Republic;
- 2) allow the competent authority of the Member State or a third party designated by it to carry out the investigation of operations of an entity or other supervision measures in the Republic;

3) allow a third party designated by the Commission (a certified auditor or other practitioner) to carry out investigation of operations of an entity or other supervision measures in the Republic.

At the request of the competent authorities of a Member State, the Commission shall allow the personnel of those competent authorities to participate in or assist with actions referred to in Para. [4] of this Article, together with personnel of the Commission.

The Commission shall retain overall control of the investigation of operations of an entity or other supervision measures, where the competent authorities of a Member State take any action referred to in Para. [4] of this Article in the Republic, and may request the competent authorities of the Member State that personnel of the Commission participate in or assist with those actions, together with personnel of those competent authorities.

Refusal of Co-Operation

Article 248

The Commission may refuse to exchange information referred to in Article 246[1] of this Law or to act on a request for cooperation referred to in Article 247[4] of this Law where:

- 1) supervision activities, on-site investigation or exchange of information might adversely affect the sovereignty, security or public order of the Republic;
- 2) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Republic;
- 3) final judgment has already been delivered in the Republic in respect of the same persons and the same actions.

The Commission shall inform the requesting competent authorities in the event it has refused to co-operate, and shall provide any and all available information concerning the reasons therefor.

Notification of Competent Authorities of Suspected Breach of Regulations

Article 249

Where the Commission has clear and demonstrable grounds to suspect that an AIFM not supervised by the Commission acts or has carried out, contrary to regulations transposing into the law of the Republic or other Member State, the provisions of the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs, it shall notify ESMA and the competent authorities of the

home and host Member States of the AIFM concerned thereof in as specific a manner as possible.

Where the Commission has received the notification referred to in Para. [1] of this Article from the competent authorities of a Member State, it shall take appropriate action, shall inform ESMA and the notifying competent authorities of a Member State of the outcome of that action and, to the extent possible, of significant interim developments.

Paras. [1] and [2] of this Article shall be without prejudice to other supervisory competences of the Commission pursuant to this Law.

Protection of Personal Data

Article 250

With regard to exchange and provision of data to competent authorities of other countries, and with regard to notification of competent authorities of other states, the Commission shall treat personal data pursuant to the law governing the protection of personal data.

The Commission shall retain the data referred to in Para. [1] of this Article for a maximum period of 5 years.

Disclosure of Information to Third Countries

Article 251

The Commission may transfer to a third country data and the analysis of data relevant for the performance of the duties and powers of that third country only where it deems that such transfer of data is required to meet the requirements of the EU regulations which prescribe exemptions, general operating conditions, depositaries, leverage, transparency, and oversight in connection with AIFs and that the third country ensures an appropriate level of protection of personal data and meets other requirements pursuant to regulations governing the protection of personal data. The third country shall not disclose the data to another country without the express written authorisation by the Commission.

The Commission shall only disclose the information received from a competent authority of a Member State to a supervisory authority of a third country where the Commission has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.

Exchange of Information Relating to the Potential Systemic Consequences of AIFM Activity

Article 252

The Commission shall communicate information to the competent authorities of other Member States where this is relevant for monitoring and responding to the potential implications of the activities of individual AIFMs or AIFMs collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which AIFMs are active.

The Commission shall communicate the information referred to in Para. [1] of this Article to the ESMA and the ESRB.

The Commission shall also communicate information about the activities of AIFMs supervised by the Commission to the ESMA and the ESRB at their request.

Once every year, or as necessary, the Commission shall communicate to the ESMA aggregate information about sanctions and measures imposed for non-compliance with this Law and the statutory instruments enacted pursuant to this Law for purposes of annual reporting by the ESMA.

Confidentiality Requirement

Article 253

The obligation of professional secrecy shall apply to personnel of the Commission, certified auditors, and other experts employed or otherwise engaged by the Commission in respect of information learnt in connection with supervised entities in the course of their official duties on behalf of the Commission.

The obligation of professional secrecy referred to in Para. [1] of this Article shall not apply to:

- 1) disclosure of confidential information for the purposes of criminal proceedings or pre-trial procedures, at the request or order of a competent court or authority responsible for combating corruption and organised crime, National Prosecutor's Office of Serbia, or Ministry of Interior where instructed to do so in writing by the State Attorney's Office of the Republic, or at the written request of a competent authority of the Republic or other country;
- 2) disclosure of confidential information where insolvency or liquidation proceedings have been opened against the supervised entity.

The provision and exchange of information by and between the Commission and the competent authorities of other Member States, ESMA, and the ESRB shall not be considered the disclosure of confidential information, and the Commission, the competent authorities of other Member States, ESMA, and the ESRB shall be required to treat such information as

confidential and may use it exclusively for the purpose for which it was given. The notification in which information is exchanged or provided may state that the information may not be made public without the express permission of the competent authority providing the information.

Where the Commission receives confidential information referred to in Para. [3] of this Article, such information may be used solely:

- 1) to verify compliance with conditions for authorisation assessed pursuant to this Law;
- 2) to perform supervision, especially verification of operations, administrative and accounting procedures, and internal control arrangements, and to impose supervisory measures;
- 3) in misdemeanour proceedings and in administrative disputes brought to contest procedural decisions of the Commission.

Dispute Settlement

Article 254

In case of disagreement between competent authorities of another Member State on an assessment, action or omission of one competent authority in areas of co-operation or co-ordination between competent authorities from more than one Member State, the Commission may refer the matter to the ESMA.

XIX. SANCTIONS

1. Criminal Offences

Unauthorised Provision of Services of AIFM and Depository

Article 255

Whosoever provides the services of an AIFM or depository without authorisation with the aim of procuring financial gain for themselves or another shall be punished by a fine or a term of imprisonment of up to one year.

Where the action referred to in Para. [1] of this Article has resulted in financial gain or damage to other persons amounting to over 1,500,000 dinars, the perpetrator shall be punished by both a term of imprisonment of up to three years and a fine.

2. Economic/Commercial Offences

Article 256

A fine of between 500,000 and 3,000,000 dinars as penalty for a commercial offence shall be imposed against an AIFM that:

- 1) provides services in contravention of the provisions of Article 9 of this Law;
- 2) holds an equity interest or participating in the management of other legal persons in contravention of the provisions of Article 11 of this Law;
- 3) invests all or part of the portfolio it manages in AIFs it manages without the prior authorisation of the members or shareholders in contravention of the provisions of Article 41 of this Law;
- 4) delegates functions in contravention of the provisions of Articles 55 to 57 and Article 59 of this Law;
- 5) transfers management rights to another AIFM in contravention of the provisions of Article 60 of this Law;
- 6) fails to apply with the Commission for approval to assume management pursuant to Article 62[2] of this Law;
- 7) markets shares of Member State AIFs before receiving the notification referred to in Article 63[4] of this Law, or in contravention of a prohibition by the Commission referred to in Article 63[5] of this Law;
- 8) performs a planned change in contravention of a prohibition by the Commission referred to in Article 63[9] of this Law;
- 9) markets shares of the Republic or Member State AIFs in another Member State before receiving the notification referred to in Article 64 of this Law;
- 10) performs a planned change in contravention of a prohibition by the Commission referred to in Article 64[14] of this Law;
- 11) starts providing services in another Member State before receiving the notification referred to in Article 65[7] of this Law;
- 12) performs a planned change in contravention of a prohibition by the Commission referred to in Article 65[10] of this Law;
- 13) markets shares of third country AIFs to investors in the Republic without meeting the requirements of Article 69 of this Law;

14) performs a planned change in contravention of a prohibition by the Commission referred to in Article 69[7] of this Law;

15) markets shares of third country AIFs before receiving the notification referred to in Article 70[5] of this Law;

16) markets shares of AIFMs from the Republic in a third country in contravention of the Commission's prohibition referred to in Article 71[3],[4] of this Law;

17) is a third country AIFM and markets shares of an AIF from the Republic before receiving the notification referred to in Article 83[3] of this Law;

18) is a third country AIFM and markets shares of an AIF from the Republic in contravention of the prohibition by the Commission referred to in Article 83[4],[9] of this Law;

19) is a third country AIFM of which the Republic is the Member State of reference and markets shares of an AIF before receiving the notification referred to in Article 84[6] of this Law;

20) takes any action referred to in Article 90 of this Law;

21) where funds have not been raised by the expiry of the initial offering period, does not reimburse investors the funds collected or does not refuse offers received from investors pursuant to Article 112[8] of this Law;

22) enters into a contract with an AIF without legal personality in contravention of Article 114[4] of this Law;

23) refuses to enter into an investment contract without reimbursing investors pursuant to Article 117[11] of this Law;

24) markets AIFs to retail investors without receiving prior authorisation to do so from the Commission in contravention of Article 135[1] of this Law;

25) fails to adopt and publish documentation in connection with an AIF it establishes or sets up and manages pursuant to Article 136 of this Law.

A fine of between 50,000 and 200,000 dinars shall also be imposed against the responsible officer of the AIFM as penalty for a commercial offence referred to in Para. [1] of this Article.

Article 257

A fine of between 500,000 and 3,000,000 dinars as penalty for a commercial offence shall be imposed against a depositary that fails to liquidate or dissolve an AIF pursuant to Article 61 of this Law.

A fine of between 50,000 and 200,000 dinars shall also be imposed against the responsible officer of the depositary as penalty for the commercial offence referred to in Para. [1] of this Article.

Article 258

A fine of between 500,000 and 3,000,000 dinars as penalty for a commercial offence shall be imposed against a legal person that:

- 1) sub-delegates delegated functions without meeting the requirements of Article 58 of this Law;
- 2) has close links with an AIFM and enters into a contract with an AIF managed by that AIFM in contravention of Article 114[4] of this Law.

The responsible person of the legal person shall be punished for actions referred to in paragraph 1 of this Article for an economic offence by a fine ranging from RSD 50,000 to 200,000.

3. Misdemeanours

Article 259

A misdemeanour fine of between 300,000 and 2,000,000 dinars as penalty for misdemeanour shall be imposed against an AIFM that:

- 1) provides ancillary services without being duly authorised to do so by the Commission pursuant to Article 12 of this Law;
- 2) fails to apply with the Commission for authorisation pursuant to Article 17[1] of this Law;
- 3) fails to submit the notification pursuant to Article 18 of this Law;
- 4) markets shares in an EuVECA or EuSEF in contravention of Article 19 of this Law;
- 5) invests its capital in contravention of Article 21 of this Law;
- 6) fails to provide the additional amount of own funds pursuant to Article 22 of this Law;

- 7) fails to notify the Commission of any material changes to information and conditions under which they were granted authorisation, as envisaged under Article 28 of this Law;
- 8) fails to address conflicts of interest pursuant to Article 40 of this Law;
- 9) fails to ensure compliance monitoring pursuant to Article 42 of this Law;
- 10) fails to manage risk pursuant to Article 44 of this Law;
- 11) fails to manage liquidity pursuant to Article 45 of this Law;
- 12) fails to employ appropriate business continuity measures pursuant to Article 46 of this Law;
- 13) establishes and operates remuneration policies in contravention of Article 47 of this Law;
- 14) fails to establish a remuneration committee pursuant to Article 48 of this Law;
- 15) fails to establish and maintain clear and appropriate procedures referred to in Article 49 and/or Article 50 of this Law;
- 16) fails to publish the information referred to in Article 52 of this Law on its website;
- 17) fails to keep books of account or prepare or submit to the Commission financial statements pursuant to Articles 53 and 54 of this Law;
- 18) fails to notify the depositary and supervisory boards of AIFs it manages and the Commission of the decision to cease providing services pursuant to Article 62[1] of this Law;
- 19) fails to initiate the liquidation or dissolution of AIFs pursuant to Article 62[3] of this Law;
- 20) fails to notify the Commission pursuant to Article 63[3] and/or [8] of this Law;
- 21) fails to notify the Commission pursuant to Article 64[3] of this Law;
- 22) fails to notify the Commission pursuant to Article 65[2] and/or [3] of this Law;
- 23) markets shares in third country AIFs without meeting the requirements of Article 68 of this Law;
- 24) fails to notify the Commission pursuant to Article 70[1] of this Law;
- 25) fails to notify the Commission pursuant to Article 71[2] and/or [5] of this Law;

- 26) fails to notify the Commission pursuant to Article 77[3] of this Law;
- 27) fails to notify the Commission pursuant to Article 83[1] and/or [7] of this Law;
- 28) fails to notify the Commission pursuant to Article 84[1] of this Law;
- 29) fails to manage its operations pursuant to Article 87 of this Law;
- 30) fails to notify the Commission pursuant to Article 96 of this Law;
- 31) charges members or shareholders of AIFs or the AIF fees not set in the operating rules of the AIF or prospectus of the AIF, where one is required to be published, in contravention of Article 97[1] and [2] of this Law;
- 32) charges fees or costs not determined pursuant to Article 99[2] of this Law to the AIF assets;
- 33) fails to notify the Commission of the funds raised within 3 days of the completion of the initial offering period pursuant to Article 112[7] of this Law;
- 34) fails to calculate the value of assets of AIFs pursuant to Articles 122 to 124 of this Law;
- 35) fails to suspend the issue or redemption of investment units pursuant to Articles 129 and 130 of this Law;
- 36) advertises AIFs in contravention of Articles 132 and 133 of this Law;
- 37) fails to notify the Commission of contracts entered into pursuant to Article 134[3] of this Law;
- 38) fails to provide the documentation referred to in Article 138[2] of this Law to an investor prior to entering into an investment contract;
- 39) failing to produce regular annual financial statements for each AIF it manages and each AIF it markets pursuant to Article 142[1] of this Law;
- 40) fails to make available the documents referred to in Article 143[1] of this Law wherever shares in AIFs are marketed;
- 41) fails to notify the Commission of the principal markets in which it markets shares of AIFs pursuant to Articles 145 and 146 of this Law;
- 42) fails to provide notifications pursuant to Article 149 of this Law;

43) acquires control over a non-listed company or an issuer without complying with Articles 150 to 152 of this Law;

44) fails to provide information pursuant to Article 153 of this Law;

45) fails to terminate a depositary contract and enter into a contract with a new depositary pursuant to Article 162[7] of this Law;

46) fails to bring investment of an AIF into compliance in the event the limits referred to in Article 175 of this Law are exceeded;

47) fails to assess the eligibility of semi-professional investors pursuant to Article 178 of this Law;

48) fails to take all measures necessary to have the shares of a closed-ended AIF subject to public offering listed on a regulated market within 30 days of the establishment of that AIF pursuant to Article 180[2] of this Law;

49) fails to ensure that the total exposure of an AIF subject to public offering to financial derivative instruments does not exceed 110 percent of the net value of the assets of the AIF pursuant to Article 182 of this Law;

50) invests the assets of AIFs subject to private placement in contravention of the provisions of Articles 185, 188, 189, and 191 to 195 of this Law;

51) fails to notify the Commission of each feeder AIF of a master AIF it manages pursuant to Article 211[1] and [2] of this Law.

A fine of between 10,000 and 150,000 dinars shall also be imposed against the responsible officer of the AIFM concerned as penalty for a misdemeanour referred to in Para. [1] of this Article.

Article 260

A fine of between 300,000 and 2,000,000 dinars as penalty for a misdemeanour shall be imposed against a depositary that:

1) fails to oversee the collection of fees charged to members of AIFMs pursuant to Article 97[3] of this Law;

2) acts in contravention of Article 99[3] of this Law without the permission of the AIFM;

- 3) acts in contravention of Article 129 in connection with the suspension of the issue and redemption of investment units in an AIF;
- 4) fails to ensure that an AIF's cash flows are efficiently and properly monitored, pursuant to Article 160[1] of this Law;
- 5) keeps cash not referred to in Article 160[2] of this Law in accounts opened in the name of the depositary acting on behalf of the AIF;
- 6) fails to maintain and keep updated its own records of the AIF's cash pursuant to Article 160[3] of this Law;
- 7) acts in contravention of Article 161 with regard to the safe-keeping of the assets of an AIF;
- 8) fails to transfer assets of an AIF pursuant to Article 162[8] of this Law in the event of withdrawal of operating licence or authorisation to provide depositary functions or initiation of insolvency or liquidation proceedings;
- 9) delegates functions in contravention of the provisions of Articles 163 to 165 of this Law;
- 10) fails to return to the AIF a financial instrument of identical type or the corresponding amount in the event of loss of a financial instrument of an AIF held in custody pursuant to Article 166[2] of this Law;
- 11) fails to make available to the Commission the disclosures and information referred to in Article 168 of this Law;
- 12) fails to appoint a certified auditor pursuant to Article 169 of this Law;
- 13) fails to treat information referred to in Article 170 of this Law as confidential;
- 14) fails to notify the Commission and the AIFM pursuant to Article 171[1] of this Law.

A fine of between 10,000 and 150,000 dinars shall also be imposed against the responsible officer of the depositary concerned as penalty for a misdemeanour referred to in Para. [1] of this Article.

Article 261

A fine of between 300,000 and 2,000,000 dinars as penalty for a misdemeanour shall be imposed against a legal person that:

- 1) uses the phrase 'alternativni investicioni fond' or an abbreviated version of that phrase or a phrase derived from that phrase in contravention of the provisions of Article 7 of this Law;

- 2) uses the phrase ‘društvo za upravljanje alternativnim investicionim fondovima’ or a similar phrase in contravention of the provisions of Article 8[10] of this Law;
- 3) acts in contravention of the provisions of Article 118 and 119 of this Law whilst maintaining the register of investment units of an AIF;
- 4) fails to deny an application for registration pursuant to Article 121 of this Law whilst maintaining the register of investment units of an AIF;
- 5) fails to prepare a compliance audit report pursuant to Article 169 of this Law when appointed as certified auditor by a depositary;
- 6) fails to comply with Article 218[1] and [2] of this Law whilst administering the dissolution of an AIF without legal personality;
- 7) fails to provide to the Commission the reports and information requested by the Commission pursuant to Article 228 of this Law.

A fine of between 10,000 and 150,000 dinars shall also be imposed against the responsible officer of the legal person concerned as penalty for a misdemeanour referred to in Para. [1] of this Article.

A fine of between 15,000 and 200,000 dinars as penalty for a misdemeanour referred to in Para. [1] of this Article shall be imposed against a sole trader.

Article 262

A fine of between 10,000 and 150,000 dinars as penalty for a misdemeanour shall be imposed against members of management of an AIFM, employees of an AIFM, and affiliates of AIFMs acting in contravention of Article 38 of this Law.

XX. TRANSITIONAL AND FINAL PROVISIONS

Article 263

Management companies of closed-ended or private funds within the meaning of the Investment Funds Law (RS Official Gazette, No 46/06, 51/09, 31/11 and 115/14) shall align their corporate bylaws and operations, and the operations of the funds they manage, with this Law, and apply with the Commission for authorisation pursuant to this Law and bylaws of the Commission, within 9 months of the effective date of this Law.

Persons trading under names that include the phrase ‘investicioni fond’ [‘investment fund’] without being duly authorised by the Commission shall align their corporate bylaws and

operations with the provisions of this Law, and apply with the Commission for authorisation within 9 months of the effective date of this Law.

Article 264

Procedures not completed as of the effective date of this Law shall be completed pursuant to the provisions of the Investment Funds Law (Official Gazette of the Republic of Serbia, No 46/06, 51/09, 31/11 and 115/2014).

Article 265

The Commission shall adopt its statutory instruments/bylaws for the implementation of this Law within six months of the effective date of this Law.

Article 266

The following provisions shall become effective as of the date of accession of the Republic of Serbia to the European Union: Article 1[2] 2) and 3), Article 2[1]7), 10), 14), 19) to 23), 25), 30), 31), 46), and 47); Article 6; Article 9[9]; Article 10, Points 3) and 4); Article 13[2] and [3]; Article 15[2] Points 5) and 6); Article 16[4], [5]; Article 19; Article 22[4] and [6]; Article 27[5]; Article 37[2]; Article 39[3]; Article 40[5]-[7]; Article 42[3]; Article 43[3]; Article 44[3] and [10]; Article 45[4]; Article 53[5]; Article 54[3]; Article 56[5]; Article 57[2]; Article 58; Article 59[3]; Articles 63-70; Article 71[1]2) and 3); Articles 72-86, Article 95[3]; Article 111[5]; Article 116[6]; Article 123[6]4); Article 124[4]; Article 129[3]; Article 130[4]; Article 131; Article 134[2]; Article 139[1]18) and 30); Article 142[2]; Article 144[4]; Article 145[3]-[5]; Article 146[1]1), [4], [6], and [7]; Article 147[3], and [5]-[12]; Article 148[12]; Articles 153-154; Article 155[2], [5], [9]2), and [10]-[12]; Article 160[1]2), [2]1), and [3]; Article 163[3], [4], and [6]; Article 166[4]2) and [7]; Article 175[3] and [4]; Article 186[1]2)(7) and (8) and [2]; Article 203[3]-[5]; Article 205[3]; Article 213[5]3); Article 217[1]2); Article 226[3]3)-8); Article 227[2]; Article 229; Article 232[1]5); Articles 233-235; Articles 238-241; Article 243; Articles 246-249; Article 250[2]; Articles 251-252; Article 253[3]-[4]; Article 254; Article 256[1]7)-15) and 17)-19); Article 258[1]1); Article 259[1]4), 20)-24), 26)-28), and 44); and Article 260[1]6).

Article 267

The provisions of Article 4[4]; Article 14[2]; Article 52; Article 55[2]; Article 60[1] and [2]; Article 98[4]; Article 101[1]; Article 105[4]1); Article 126; Article 133[1]; Article 135; Article 136[1]2) and 3); Article 139[5]; Article 140[1]; Article 143[2]; Article 176[1]1); Article 177[2]; Articles 179-184; Article 185[1]4); Article 207[2]; Article 211[5]; Article 221[7]1); Article 222[1]-[5] and [7]; Article 256[1]24); and Article 259[1]16), 48), and 49) of this Law shall become effective as of 1 January 2021.

Article 268

This Law shall enter into force on the eighth day following the date of its publication in the Official Gazette of the Republic of Serbia, and shall become effective upon the expiry of six months of its entry into force.