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# LAW ON THE INVESTMENT FUNDS

(Official Gazette of RM No. 12/2009, 67/2010, 24/2011 and 188/13)

## I. GENERAL PROVISIONS

### Subject of the Law

#### Article 1

(1) This Law shall regulate the foundation and operation of the investment funds and investment fund management companies, issuance and sale of shares and stocks, redeem of stocks, promotion of investment funds, activities performed by third parties on behalf of the investment funds and the operation of a depository bank.

(2) The provisions of the Law on Securities, the Law on Trade Companies, the Bankruptcy Law and the Law on the General Administrative Procedure shall be applied on issues not regulated by this Law.

### Definitions

#### Article 2

The terms used in this Law shall have the following meaning:

1. **Investment fund management company** is a joint stock company with head office in the Republic of Macedonia, with a permission from the Securities and Exchange Commission to perform activities concerning foundation and investment fund management;

2. **Basic capital** is the minimum amount of funds prescribed by this Law obligatory for the stockholders to register and pay to the investment fund management company;

3. **Value of the investment fund assets** is a sum of the value of the securities in the investment fund portfolio, the monetary deposits within banks and other assets of the fund;

4. **Net value of the investment fund assets** is the value of the assets less the amount of the fund's liabilities;

5. **Depository bank of the investment fund** is any bank that, for the needs of the funds, performs activities for preservation of the fund's assets, management of the separate accounts for the fund's assets and separation of the assets of each individual fund from the other funds' assets, as well as other activities in accordance with the provisions of this Law;

6. **Good reputation** is honesty, competence, hard work and possession of characteristics ensuring that the person's way of work will not affect in such way as to endanger the stability and safety of the investment fund and the interests of the investors in the fund;

7. **Investment funds** are joint monetary funds, intended for investing, collected from investors by open call or private call, and managed by the investment fund management company on behalf of the investors;

8. **Qualified participation in the investment fund management company** is:

- direct or indirect participation in an investment fund management company with 10% or more than

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the basic capital of that company,

- direct or indirect participation of 10% or more from the rights to vote of the total number of stocks with the right to vote in the management company or
- a right to acquire direct or indirect, significant influence on the management bodies in the investment fund management company where such participation exists;

**9. Person related to the investment fund management company is:**

- 1) stockholder or group of stockholders who act together, and own more than 10% of the basic capital of the investment fund management company or who although own percentage lower than the one stated, can influence the decisions made by that company;
- 2) natural person or legal entity that directly or indirectly owns more than 10% of the stocks with the right to vote in the investment fund management company or that, although owning percentage lower than the one stated, can influence the decisions made by that company and
- 3) natural person or persons able to directly or indirectly influence the decisions made by the investment fund management company, particularly:
  - members of the closer family (spouse or a person who lives longer time in a community that, according to the law regulating the marriage and the family relations, has legal status equal to the one of a marriage, children or adopted children and other persons being subject to guardianship),
  - members of the management and supervisory board and members of the closer family of those persons or
  - persons employed on the basis of an employment contract concluded under special conditions with the investment fund management company where they are employed, as well as members of the closer family of the employees;

**10. Persons related to the investment fund** are an investment fund management company, depository bank, lawyer, auditor and tax advisor that have established relations for providing services to the investment fund and other person that has concluded an agreement for providing services for the needs of the fund;

**11. Investor** is a holder of shares in the open-end investment fund, who is owner of stocks (stockholder) in a closed-end investment fund;

**12. Portfolio manager** is a person who, in accordance with the Law on Securities has obtained a permission from the Securities and Exchange Commission for operation as an investment adviser;

**13. Regulated market of financial instruments of the European Union member states** is a multilateral system operated or managed by a market operator, that is joining or assisting the joining of different interests of the third party when buying or selling financial instruments – in the system and in accordance with its nondiscriminatory rules – in such manner to result in an agreement, in regard with the financial instruments received for trade in accordance with its rules and/or systems;

**14. Regulated market of financial instruments of the non-European Union member states** is a market subject to prudent rules determined by the regulatory body of those states, being as strict as those prescribed by the European Union legislation;

**15. Regulated securities market in the Republic of Macedonia** are stock exchange market and trade over-the-counter, organized by the National Bank of the Republic of Macedonia in accordance with the Law on Securities;

**16. Instruments of the money market** are considered those classes of instrument usually used for trade on the money market, such as are the state bills, depository certificate and commercial papers, except for banknotes and coins and

**17. Subjects of securitization** are trade companies and financial holding companies whose function is redeem of low-liquid assets, being further used as basis for issuing liquid securities.

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## II. INVESTMENT FUNDS MANAGEMENT COMPANY

### 1. BASIC FEATURES OF THE INVESTMENT FUNDS MANAGEMENT COMPANY

#### **Activities of the investment funds management company**

##### **Article 3**

(1) The investment funds management company (hereinafter: management company) shall perform activities for foundation and management of investment funds, i.e. investment of funds on one's own behalf and on behalf of the shareholders in the open-end investment funds and on behalf of the stockholders in the closed-end investment funds, and shall also perform other activities determined by this Law.

(2) One investment fund management company can manage more investment funds.

#### **Limiting the operation of the investment funds management company**

##### **Article 4**

(1) The management company cannot have qualified participation in a brokerage house or bank that holds a permission to operate with securities in the Republic of Macedonia.

(2) The management company cannot have qualified participation in a depository bank. The operation of the management company and of the depository bank cannot be related in terms of organization and the same people cannot work in both places.

(3) The management company cannot acquire shares, i.e. stocks in the investment funds it manages.

(4) The management company cannot produce goods, provide services or perform any other activity, except for the one state in Article 6 of this Law.

#### **Basic capital**

##### **Article 5**

(1) The minimum nominal amount of the basic capital necessary for foundation of a management company shall amount Euro 125.000,00 in Denar counter-value, according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of submitting the application for issuance of permission for operation of the management company to the Securities and Exchange Commission (hereinafter: the Commission).

(2) In case when the value of the investment fund assets, i.e. the funds managed by the management company exceeds the amount of 100.000.000,00 Euros, the capital of the management company shall increase for at least 0,02% of the amount exceeding the limiting amount of the investment fund's assets value, but at most up to 10.000.000,00 Euros.

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(3) The management company has to maintain the minimum capital in an amount of one fourth of its anticipated annual fixed costs listed in the income statement for the previous year. In case when the management company starts operating for the first time, the calculation of the minimum capital shall be determined on the basis of the planned costs in accordance with its business plan.

(4) The Commission shall determine in detail the structure, calculation and manner of maintenance of the management company's funds referred to in paragraphs (1), (2) and (3) of this Article.

## **Subject of operation of the investment funds management company**

### **Article 6**

(1) Investment fund management activities performed by the management company shall be:

- 1) investment fund assets management;
- 2) advertising of the investment funds and sale of shares in the open-end investment funds, i.e. stocks in the closed-end investment funds and
- 3) administrative activities referring to:
  - keeping business books and accounts and preparing financial reports,
  - establishing and maintaining relations with the investors,
  - determining the value of the investment fund assets and calculation of the price of the share,
  - adjusting the operation of the management companies with the laws and other regulations,
  - announcing and notifying the stockholders and shareholders,
  - allocating the investment fund profit,
  - issuing and redeem of shares in the open-end investment funds and
  - keeping a register of the shareholders, i.e. stockholders.

(2) The management company with a permission from the Commission to operation can perform and work on management of the funds on behalf of an individual client – portfolio owner (hereinafter: individual client), as well as on investment advising of clients in accordance with law.

(3) A management company cannot obtain permission from the Commission only to perform the activities referred to in paragraph (2) of this Article.

## **Management of funds on behalf of an individual client**

### **Article 7**

(1) The activities for management of funds on behalf of an individual client shall be performed by the management company on the basis of a previously concluded agreement with the individual client.

(2) The management company shall perform the investment of funds in accordance with Article 66 of this Law.

(3) The agreement referred to in paragraph (1) of this Article shall be concluded in written form and shall particularly contain the following data:

- the amount of monetary fund entrusted by the client to the management company,
  - the investment policy of the client,
  - announcement of the client, stating that (s)he is well familiar with the conditions and undertaken risks from the involvement in the trade of financial instruments,
  - the type, contents and frequency of delivering reports to the client, regarding the activities performed by the management company,
  - the amount of the compensation for performing fund management activities on behalf of an individual client and the manner of calculating the same and
  - ability of the client to annul the agreement concluded with the management company.
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## **Transfer of part of the activities for investment fund management to a third party**

### **Article 8**

- (1) The management company cannot transfer the performance of the activities referred to in Article 6 paragraph (1) item 1 of this Law to a third party.
- (2) As an exception to paragraph (1) of this Article, a member of the management company, upon prior consent from the Commission, may transfer the performance of the activities referred to Article 6 paragraph (1) items 2 and 3 of this Law to a third party.
- (3) The Commission shall prescribe the manner, procedure and type of activities possible to be transferred by the management company to a third party.
- (4) The transfer of activities to third parties cannot affect the efficiency of the supervision over the management company and the investment fund, i.e. it cannot endanger the interests of the investors in the investment fund.

## **2. CONDITIONS AND MANNER OF ESTABLISHING INVESTMENT FUNDS MANAGEMENT COMPANY**

### **Request to issue permission for operation of investment funds management company**

#### **Article 9**

- (1) The management company shall be established from domestic and/or foreign natural persons and/or legal entities and cannot commence its operation prior to obtaining the permission for operation from the Commission, based on a previously submitted request for issuance of operating permission of the management company.
- (2) The management company cannot be entered in the Trade Register kept within the Central Register of the Republic of Macedonia, prior to obtaining permission for operation from the Commission.
- (3) The following shall be attached to the application referred to in paragraph (1) of this Article:
- management company status,
  - proof for paid basic capital to a temporary account in a bank,
  - proof for the origin of the funds paid as basic capital,
  - a business plan for foundation and operation of the management company for the first three years, which has to contain the planned dimension of the investment funds planned to be managed by the management company,
  - proofs for meeting the personnel, technical and organizational qualification for operating, determined by the Commission,
  - data on the founders, including data on their participation in the capital of other legal entities,
  - list of persons related to the management company,
  - an act for appointing a portfolio manager and permission for operation of the investment adviser of the Commission,
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- list of the management board members, i.e. executive members of the board of directors of the management company and corresponding documents referred to in Article 18 paragraph (1) of this Law,
  - an act for appointing an authorized auditor who shall perform audit of the financial reports of the management company and on the investment funds it will manage,
  - proof for paid compensation for issuance of operation permission for the management company, in accordance with the tariff of the Commission and
  - announcement for the correctness, truthfulness and lawfulness of the data submitted to the Commission.

(4) The Commission shall prescribe in detail the manner, procedure and necessary documentation for obtaining an operating permission for the management company.

(5) Persons who have failed to obtain permission from the Commission cannot perform the activities referred to in Article 6 paragraph (1) of this Law.

## **Approval of the request for issuance of an operating permission for the investment funds management company**

### **Article 10**

(1) The Commission shall adopt a decision for approving or rejecting the request referred to in Article 9 paragraph (1) of this Law for issuance of an operating permission for the management company, within 90 calendar days from the day of submitting the request.

(2) The Commission shall be obliged to provide written explanation in case of rejecting the request for issuance of an operating license for the management company.

(3) An appeal can be lodged to the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision rejecting the request for issuance of permission for operation of the management company adopted by the Commission, within 15 working days from the day of receipt of the decision.

(4) The appeal referred to in paragraph (3) of this Article shall not postpone the enforcement of the decision of the Commission.

## **Branch of foreign investment fund management company**

### **Article 11**

(1) The management company having obtained permission to operate in any member state of the European Union (hereinafter: EU) and in any member state of the Organization for Economic Cooperation and Development (hereinafter: OECD), can perform the same services on the territory of the Republic of Macedonia through its branch that has obtained an operating permission from the Commission.

(2) The foreign management company referred to in paragraph (1) of this Article, shall submit the following documents to the Commission, attached to the request for issuance an operating permission for its branch on the territory of the Republic of Macedonia:

- the original and translation of the original permission for operating of the management company in the country of origin,
  - the original and translation of the original document wherefore the regulator on the securities market in the country of origin approves the foundation of a branch of the management company in the Republic of Macedonia and
  - audited financial reports for the last three years.
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(3) Beside the documents listed in paragraph (2) of this Article, the management company founding a branch in the Republic of Macedonia, shall submit the following data to the Commission:

1) general data on the branch:

- company and head office of the branch where all the data related for the operation of the branch can be obtained,

- subject of operation of the branch and

- name of the person authorized to represent the branch and

2) data on the investment fund managed by the management company and data on the shares, i.e. stocks intended for sale by the management company in the Republic of Macedonia and through the branch:

- exact description of the planned business activities intended to be undertaken by the management company in regard to the sale of shares, i.e. stocks of the investment fund,

- prospect, status and annual reports for the last three years, for each investment fund it manages and

- announcement regarding the correctness, truthfulness and lawfulness of the data submitted to the Commission.

(4) The regulatory body of the EU or OECD member state, competent for control over the participants in the capital market, shall have the right to supervise the operation of the branch in the Republic of Macedonia.

(5) The regulatory body of the country of the registered head office of the foreign management company opening a branch in the Republic of Macedonia and the Commission, shall cooperate and exchange information for the purpose of efficient supervision and monitoring of the operation of the branch in the Republic of Macedonia.

(6) The Commission shall in detail prescribe the manner, procedure and necessary documents for foundation of a foreign management company branch in the Republic of Macedonia.

## **Approving the request for foundation of a foreign management company branch**

### **Article 12**

(1) The Commission shall adopt a decision for approving or rejecting the request for issuance of an operating permission for a foreign management company branch within 90 calendar days from the day of submitting the application referred to in Article 11 paragraph (2) of this Law.

(2) The Commission shall be obliged to provide written explanation in case of rejecting the request for issuance of an operating license for the foreign management company branch.

(3) An appeal can be lodged to the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision rejecting the request for issuance of permission for operation of the foreign management company branch adopted by the Commission, within 15 working days from the day of receipt of the decision.

(4) The appeal referred to in paragraph (3) of this Article shall not postpone the enforcement of the decision of the Commission.

## **Stockholders with qualified participation in the investment fund management company**

### **Article 13**

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(1) Any person intending to, directly or indirectly, gradually or at once, obtain stocks with total cumulative amount exceeding 10%, 20%, 30% and 50% of the total amount of issued stocks to the management company with a right to vote, regardless whether the stocks are acquired individually or jointly with other related persons, shall be obliged to submit a request to the Commission for obtaining consent for acquiring qualified participation.

(2) Stockholder with a qualified participation in a management company cannot be a person or legal entity controlled by a person:

1) who has been imposed a misdemeanor sanction – prohibition to perform profession, activity or duty, while the prohibition is in force,

2) against whom bankruptcy procedure has been initiated,

3) who has been imposed a secondary sentence

- prohibition on obtaining a performance license for the investment fund management company,

- revocation of the performance license for the investment fund management,

- temporary or permanent prohibition for the performance of the activities connected with investment fund management, and

- prohibition on founding new legal entities.

4) who does not have good reputation which might endanger the safe and stable operation of the management company, and

5) who does not abound to the provisions of this Law and the regulations adopted on the basis of this Law and/or has not implemented and does not implement and/or has acted or acts against the measures imposed by the Commission, herewith endangering the safety and stability of the securities market.

(3) In case of intent for additional acquiring of stocks by a person who has already acquired qualified participation in a management company, therefore exceeding the amount of stocks already having received consent from the Commission, the person shall be obliged to submit a request to the Commission for obtaining consent for additional acquiring of stocks above the amounts determined in paragraph (1) of this Article.

(4) As an exception to paragraphs (1) and (3) of this Article, a person that on the basis of a decision from a competent body in accordance with a law has gradually or all at once obtained stocks with total cumulative amount exceeding 10%, 20%, 30% and 50% of the total issued stocks to the management company with a right to vote, regardless whether it acquires the stocks individually or jointly with other related persons, shall be obliged to submit a request to the Commission for obtaining consent for the occurred change, within ten calendar days as of the finality, i.e. legal effectiveness of the decision.

(5) The transaction for acquiring the shares shall be completed within 90 calendar days as of the day of obtaining the consent from the Commission for acquiring qualified participation. Following the expiry of this deadline, a procedure for obtaining new consent shall be considered mandatory.

(6) When the person having obtained consent as referred to in paragraphs (1) and (3) of this Article, intends to decrease the participation, directly or indirectly, in such manner that the participation in the total number of stocks or total number of issued stocks with a right to vote in the management company decreases below 20%, 30% and 50%, it shall be obliged, at least five working days before realizing the decrease, to notify the Commission regarding the following:

1) the total number of stocks and the total number of issued stocks with a right to vote within the management company, it intends to sell;

2) the amount of decrease of its participation in the capital;

3) the total number of stocks and the total number of issued stocks with a right to vote in the management company possessed even after the decrease and

4) the identity of the person that shall acquire its stocks in the management company, should the identity be familiar.

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(7) One domestic and foreign natural person and/or legal entity and persons related to him/her can have qualified participation only in one management company on the territory of the Republic of Macedonia.

(8) In the cases referred to in paragraphs (1) and (3) of this Article, the brokerage houses, the branches of the foreign brokerage houses and the authorized banks shall be obliged to mandatory request the client to provide insight in and copy of the consent of the Commission for acquiring qualified participation, upon the receiving and enforcement of the order for buying stocks from the management company, as in accordance with paragraph (1) and (3) of this Article.

## **Request for obtaining consent for acquiring qualified participation in an investment fund management company**

### **Article 14**

(1) The request for obtaining consent for acquiring qualified participation in an investment fund management company shall contain:

- basic data for the person referred to in Article 13 paragraph (1) of this Law,
- the number of stocks and their percentage of participation in the total issued stocks of the management company with a right to vote, that the person referred to in Article 13 paragraph (1) of this Law possesses at the moment of submitting the request and
- the number of stocks and their percentage of participation in the total issued stocks of the management company with a right to vote, that the person referred to in Article 13 paragraph (1) of this Law intends to obtain on the basis of the request for obtaining consent.

(2) The person referred to in Article 13 paragraph (2) lines 1 and 2 of this Law, in addition to the request for acquiring qualified participation in the management company, shall submit the following:

- 1) proof in regard to Article 13 paragraph (2) lines 1, 2 and 3 of this Law;
- 2) proof for the origin of the funds for payment for the stocks whose acquiring seeks for consent;
- 3) if the person referred to in Article 13 paragraph (1) of this Law is a natural person, proof of his/her financial condition, and if the person referred to in Article 13 paragraph (1) of this Law is a legal entity:
  - excerpt of the register where the head office of the person referred to in Article 13 paragraph (1) of this Law is registered,
  - complete, audited financial reports for the last two years including the opinion of the authorized auditor and the notes to the financial reports,
  - list of persons in the legal entity who posses, directly or indirectly, more than 10% of the stocks, i.e. shares and
  - list of the members in the management body of the legal entity;
- 4) list of legal entities where the person referred to in Article 13 paragraph (1) of this Law possesses, directly or indirectly, more than 10% of the stocks, i.e. shares;
- 5) list of persons with whom the person referred to in Article 13 paragraph (1) of this Law has established and maintains significant business relations including the description of the said business relations;
- 6) description of the investment policy of the person referred to in Article 13 paragraph (1) of this Law in regard with the investments in financial institutions and
- 7) beside the documents listed in paragraphs (1) and (2) of this Article, the Commission can request additional documents, data and information and may conduct an interview with the person referred to in Article 13 paragraph (1) of this Law, i.e. the members of the management body of the person referred to in Article 13 paragraph (1) of this Law, for the purpose of determining the fulfillment of the criteria for qualified participation in the management company.

(3) The person referred to in Article 13 paragraph (1) of this Law, who intends to acquire stocks with total cumulative amount exceeding 50% of the total issued stocks to the management company with a right to vote, beside the documents referred to in paragraph (2) of this Article, shall be obliged to submit a personal development plan for the operation of the management company where it intends to acquire qualified participation, in addition to the request.

(4) If the person referred to in Article 13 paragraph (1) of this Law is a foreigner, while the acquiring of qualified participation in a management company in accordance with this Law by that person is an activity subjected to supervision from a competent body in the state of its registry, in addition to the request referred to in paragraph (1) of this Article consent or opinion of the competent body regarding the transaction for acquiring qualified participation in the management company shall be submitted, that is notification from the person referred to in Article 13 paragraph (1) of this Law that no consent is necessary for realization of the transaction in accordance with the legislation of the state where the person is registered.

(5) The Commission can prescribe the necessary documentation for acquiring qualified participation in the management company.

## **Deciding upon the request for obtaining consent for acquiring qualified participation in an investment fund management company**

### **Article 15**

(1) The Commission shall adopt a decision regarding the request for obtaining consent for acquiring qualified participation in a management company within 60 calendar days

(2) The Commission shall reject the request for obtaining consent for acquiring qualified participation in the management company from Article 14 of this Law, in case if:

- 1) the request does not contain the complete documentation;
- 2) the request contains incorrect and untrue data;
- 3) the available data and information in regard with Article 14 paragraphs (1) and (2) of this Law point that the person referred to in Article 13 paragraph (1) of this Law and/or the person related to him, as a consequence of the legal or financial condition, that is the manner of operating or the nature of his activities, indicates tendency of high risk possible to jeopardize the stability, security and reputation of the management company, i.e. its operating in accordance with the regulations and
- 4) there are firm grounds to suspect the legality of the origin of the money, the reputation or the true identity of the person referred to in Article 13 paragraph (1) of this Law and/or the persons related to him, as in accordance with this Law.

(3) A complaint can be lodged to the Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision rejecting the request for obtaining consent for acquiring qualified participation in a management company adopted by the Commission, within 15 working days as of the day of its acceptance.

(4) The complaint referred to in paragraph (3) of this Article does not postpone the enforcement of the decision from the Commission.

(5) In case when the grounds for rejecting the request referred to in paragraph (2) of this Article refer to the legal origin of the money, the Commission shall immediately notify the Office for Prevention of Money Laundering and Financing Terrorism.

(6) The Commission shall adopt a decision for revoking the consent for acquiring qualified participation, in case if:

- 1) the consent is obtained by listing untrue data;
- 2) the holder of the qualified participation or to him related persons, by undertaking certain actions or activities endanger the secure and stable operation of the management company;
- 3) the holder of the qualified participation or to him related persons, by performing certain actions or activities, enable the supervision over the management company or its implementation is significantly hindered and
- 4) in case of foreign person – holder of qualified participation: if regarding the regulations on force in the country of that person or the practice while applying those regulations, supervision cannot be implemented over the management company or its implementation is significantly hindered.

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## **Prohibition to acquire qualified participation in a management company without prior consent from the Commission**

### **Article 16**

(1) It shall be prohibited to acquire qualified participation in a management company against Article 13 paragraphs (1) and (3) of this Law.

(2) In case of acquiring qualified participation in a management company against Article 13 paragraphs (1), (3) and (4) of this Law, as well as in case of revoking the consent for acquiring qualified participation as referred to in Article 15 paragraph (6) of this Law, the Commission shall adopt a decision to confirm that the stockholder who although has acquired those stocks, it does not give him the right to vote and the right to dividend.

(3) With the decision referred to in paragraph (2) of this Article, the Commission shall order the stockholder who has acquired stocks against Article 13 paragraphs (1), (3) and (4) of this Law, as well as to the stockholder who has been revoked the consent for acquiring qualified participation as referred to in Article 15 paragraph (6) of this Law, to sell the acquired stocks or the stocks owned contrary to this Law, in certain time period which cannot exceed 180 days, except in the cases referred to in Article 13 paragraph (4) of this Law, when the Commission may determine even a longer time period.

(4) With the decision referred to in paragraph (2) of this Article, the Commission shall oblige the management company that has issued the stocks not to allow the stockholder to exercise the right to vote and to dividend resulting from the stocks referred to in paragraph (2) of this Article.

(5) The decision referred to in paragraph (2) of this Article is submitted to the authorized depository where the stocks of the management company are kept for the purpose of entering the limits of the stocks that come from the decision of the Commission referred to in paragraph (2) of this Article, on the account of the stockholder.

(6) In case if the management company acts against the obligation referred to in paragraph (4) of this Article, the Commission shall impose measures against the management company as prescribed in Article 131 or 23 of this Law.

(7) In the cases referred to in paragraph (2) of this Article, when holding an assembly of the stockholders in the management company, the total number of stocks with a right to vote resulting from the issued stocks of the management company shall decrease for the number of stocks to which the decision from paragraph (2) of this Article refers. The remaining number of stocks with a right to vote presents the total number of stocks with a right to vote in the management company.

(8) A complaint can be lodged to the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision of the Commission adopted on the basis of paragraph (2) of this Article, within 15 working days as of the day of its receipt.

(9) The complaint referred to in paragraph (8) of this Article does not postpone the enforcement of the decision from the Commission.

## **Statute of the investment fund management company**

### **Article 17**

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(1) The Statute of the management company shall be adopted by the stockholder's assembly of the management company.

(2) The Statute of the management company, beside the provisions of the statute from the Law on Trade Companies contains provisions on:

- the manner of investing the capital,
- founding and managing investment funds, on its part and on behalf of the open-end investment fund or on behalf or for the account of the closed-end investment fund and
- other activities significant for the operation of the management company.

(3) The Commission shall adopt a decision on the approval or rejection of the request for giving consent regarding the statute of the management company within 60 calendar days as of the receiving of the submitted request, and regarding its amendments within 30 calendar days as of the receiving of the submitted request.

(4) When the request for giving consent regarding the statute is submitted simultaneously with the request for issuing permission for operating of the management company, the Commission shall decide and adopt a decision for both simultaneously, within 90 calendar days as of the receiving of the request.

(5) The Commission shall be obliged to provide written elaboration in case of rejecting the request for giving consent regarding the statute or the amendments of the statute of the management company.

(6) A complaint can be lodged to the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision rejecting the request for giving consent regarding the statute of the management company adopted by the Commission, within 15 working days from the day of receipt of the decision.

(7) The complaint referred to in paragraph (6) of this Article does not postpone the enforcement of the decision from the Commission.

### **Conditions for appointing members of the management board, i.e. executive members of the board of directors**

#### **Article 18**

(1) The members of the management board, i.e. the executive members of the board of directors of the management company have to hold a university degree, wherefore at least two members of the management board, i.e. executive members of the board of directors should have at least three years of working experience acquired by performing activities in the field of finances or corporate law, as well as funds management, and they should have good reputation.

(2) Two members of the management board, i.e. two executive members of the board of directors of the management company have to be regularly employed in the company and both of them shall present and represent the company in the relations with third parties.

(3) The members of the management company, i.e. the executive members of the board of directors of the management company cannot transfer the right to representation of the management company to third parties.

(4) A member of the management board, i.e. an executive member of the board of directors of the management board cannot be a person that:

- a) is sentenced to imprisonment for crimes in the field of banking, finances, labor relations, property, bribery and corruption;
  - b) has been imposed a misdemeanor sanction – prohibition to perform profession, activity or duty in
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the field of law, banking, accountancy, insurance, funds management and investment, management of pension funds or other financial services, during the time the prohibition is on force;

c) has not obeyed the provisions of this Law and the regulations adopted on the basis of this Law and/or has not implemented or does not implement and/or acts or has acted against the measures imposed by the Commission, wherefore the security of the investors in the investment fund has been or is endangered;

d) is a member of a management body or is employed in another management body;

e) is a member of a management body or is employed in an organizational unit of the bank performing the activities of the depository bank;

f) is a functionary who is head of a state body or state administration body;

g) is related to the persons referred to in items d) and e) of this paragraph and

h) does not have good reputation which might endanger the secure and stable operating of the management company.

(5) The Commission shall prescribe in detail the necessary documentation which shall be submitted as evidence for fulfilling the conditions referred to in paragraphs (1), (2) and (4) of this Article.

### **Consent for appointing members of the management board, i.e. executive members of the board of directors of the investment fund management company**

#### **Article 19**

(1) The Commission shall adopt a decision on giving consent for appointing members of the management board, i.e. executive members of the board of directors of the management company within 30 calendar days as of the day of accepting the request for their appointing based on the submitted evidence for fulfilling the conditions referred to in Article 18 of this Law.

(2) When the request for giving consent regarding the appointing of members of the management board, i.e. executive members of the board of directors of the management company, is submitted together with the request for issuing a permission for operating of the management company, the Commission shall simultaneously decide and adopt a decision regarding the same within 90 calendar days as of the day of receiving the request.

(3) In the procedure for deciding on giving consent, the Commission shall interview the proposed members in the management board, i.e. executive members of the board of directors referred to in Article 18 paragraph (2) of this Law.

(4) The Commission shall prescribe the manner and procedure for giving consent on the election of members in the management board, i.e. executive members of the board of directors.

### **Withdrawing consent for appointing members of the management board, i.e. executive members of the board of directors**

#### **Article 20**

(1) The Commission shall withdraw the consent for appointing members of the management board, i.e. executive members of the board of directors of the management board when it determined that:

- the decision for giving consent is adopted on the basis of untrue and incorrect data,
- in the meantime they have ceased to fulfill the conditions referred to in Article 18 of this Law, and
- have violated the rights of the Code of Conduct, the scrupulous operating and the rules on risk management, or have in any other way endangered the interests of the shareholders, i.e. the stockholders of the investment funds, as well as the clients whose portfolio is managed by the management company.

(2) As of the day of submitting the decision for withdrawing the consent on appointing members of the management board, i.e. executive members of the board of directors of the management company by the Commission, the same cannot perform any function within the management company.

### 3. OBLIGATIONS OF THE INVESTMENT FUND MANAGEMENT COMPANY

#### **Manner of realizing the obligations of the investment fund management company**

#### **Article 21**

(1) The management company shall be obliged:

- during the performance of the activities referred to in Article 6 of this Law to be bound to the principle of conscientiousness and honesty,
- to be capable to fulfill the due obligations on time,
- on-time and complete fulfillment of the rights and obligations anticipated by this Law, the prospect and statute of the investment fund,
- to keep the data for the stockholders in the closed-end investment fund, i.e. the shareholders in the open-end investment fund, as well as the data regarding the payments in and out, as business secret and disclose them solely on basis of a court order, on a request of the Commission, on the request of certain share or stockholder, and also on a request of a depository bank,
- to prepare a rulebook in order to regulate the conflict of interests in investment funds it manages as well as the stockholders of the closed-end investment fund, i.e. the shareholders of the open-end investment fund, the conflict of interests regarding the management of the funds on behalf of an individual client, as well as regarding the performance of investment advising activity,
- the records of the financial instruments and the cash of each individual client shall be kept separate from its own accounts, as well as separate from the records on the assets of the investment funds it manages,
- in case if it has entrusted part of its obligations and activities to third parties, to monitor whether they, during their operating, adhere to the provisions of this Law, to the prospect and the Statute of the investment fund,
- to adopt a Code of Practice within the operation,
- to provide a system and supervising mechanisms that clearly point that on long-term basis the management company acts in accordance with this Law, the prospect and the Statute of the fund,
- to ensure that all the advertising and marketing contents, notifications and announcement for the stockholders, i.e. shareholders, are clear, correct and without wrong conclusions,
- to ensure the sale of the stocks and shares of the investment fund is performed in accordance with this Law,
- at any time to perform redeem of shares on behalf of the open-end investment fund, on a request of the shareholders in the fund,
- purchase assets exclusively on its own behalf and on behalf of the open-end investment fund, i.e. the closed-end investment fund it manages,
- to submit the depository bank a copy of all the original documents related to the transactions with the assets of the investment funds right after those documents are prepared or received,
- to keep the records of assets transactions for each individual investment fund separate from its own accounts, as well as separate from the records of transactions of other funds, as well as within the agreed time frames to confirm them with the depository bank,
- to keep the business books and the other documentation,

- to publish data on the investment funds it manages, as well as data on its operation in line with the procedure anticipated with the by-law referred to in paragraph (2) of this Article,
- to submit to the Commission regular reports in accordance with the procedures anticipated with the by-laws of the Commission,
- to notify the Commission on every change in accordance with the provisions of this Law, change of conditions based on which the permission for operation of the management company has been obtained, change in the members of the management board, i.e. the executive members of the board of directors of the management company, as well as every change of the Statute, the capital, the structure or the participation in the basic capital in regard to the condition approved by the Commission,
- to implement and keep records of its work,
- to enable the Commission insight in its complete records and ensure the Commission receives oral information,
- not to conclude an agreement that decreases or alters the liability of the management company, as determined by this Law,
- to ensure that its employees and each person, who has concluded a contract with the management company for sale of stocks or shares in the investment funds on its behalf, act in accordance with this Law,
- one member of the management bodies and one person from among the employees to be held liable for the coordination of the work of the management company with the provisions of this Law and the other regulations and rules of the self-regulated organizations, as well as for establishing cooperation with the Commission, for the purpose of implementing the notifications and the other corresponding activities requested in line with the provisions of this Law,
- to manage the investment fund in accordance with the investment goals of each individual fund it manages,
- to preserve the assets of the investment funds it manages, in a depository bank,
- to issue the depository bank orders for exercising the rights related to the investment fund assets and
- to ensure that the assessed value of the investment fund assets, as well as the price of the shares is correctly determined.

(2) The Commission shall prescribe the manner of operating of the management company in detail.

## **Risk management**

### **Article 22**

(1) The management company has to establish a system of risk management that shall at any time enable calculation and monitoring of the investing risk from the portfolios of the individual clients, as well as of the total portfolio of the investment fund.

(2) The system of risk management has to provide correct and independent determination of the values of the financial derivative instruments being traded at the regulated markets and the financial derivatives being traded over-the-counter.

(3) The management company notifies the Commission regarding each investment fund and individual client, as well as regarding the types of financial derivative instruments in the portfolio of the investment fund and the portfolios of the individual clients, related risks, quantitative limits and implemented methodology for calculating the risks related to the positions and transactions of those financial derivative instruments in accordance with the rules prescribed by the Commission.

(4) The exposure of the investment fund to individual financial instruments based on the financial derivative instrument cannot be against the limitations of the investments as prescribed by this Law, the prospect and the Statute of the fund.

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(5) When a security or an instrument of the money market contains in itself a built-in financial derivative instrument, the same shall be considered in accordance with the calculation of the exposure of the investment fund referred to in paragraphs (3) and (4) of this Article.

(6) The Commission shall prescribe in detail the methodology for calculating risks arising from the operation of the investment funds.

## 4. REVOKING THE PERMISSION TO OPERATE FROM THE INVESTMENT FUND MANAGEMENT COMPANY AND TRANSFER OF THE MANAGEMENT ACTIVITIES TO NEW INVESTMENT FUND MANAGEMENT COMPANY

### **Revoking the permission to operate from the investment fund management company**

#### **Article 23**

The Commission can adopt a decision for revoking the permission to operate from the investment fund management company, in case if that management company:

- does not start operating within one year as of obtaining the permission to operate the company,
- six or more months does not perform activities for founding and managing investment funds as in accordance with this Law,
- has obtained the permission to operate based on incorrect data, falsified documents or any other misleading data,
- no longer fulfills the conditions based on which the Commission had issued the permission to operate,
- seriously violates the provisions of this Law,
- does not remove the flaws and illegalities in its operation as determined by the Commission, within the period listed in Article 131 paragraph (1) of this Law.

### **Transfer of the investment fund management activities to a new investment fund management company**

#### **Article 24**

(1) In case when the Commission adopts a decision to revoke the permission to operate from the management company and in case of bankruptcy or liquidation of the management company, the investment funds management activities and the management of the portfolios of individual clients performed by this company shall be transferred to another management company.

(2) The Commission shall choose the management company to which the investment fund management activities in the cases referred to in paragraph (1) of this Article will be transferred.

(3) The Commission shall in detail prescribe the procedure for taking over the investment fund management activities performed by the management company from paragraph (1) of this Article.

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## 5. LIMITATIONS AND LIABILITY OF THE INVESTMENT FUNDS MANAGEMENT COMPANY

### **Prohibited activities and conflict of interests**

#### **Article 25**

(1) The management company must not:

- mediate in buying and selling securities,
- transfer or acquire securities or other assets of the investment fund on its own behalf or on behalf of related persons,
- buy assets which has neither been anticipated in the Statute nor the prospect, with the finances of the investment fund,
- perform transactions against the limitations of investing in the investment fund it manages, determined by this Law,
- transfer assets of the closed-end investment fund and the assets created by the open-end investment fund without compensation,
- acquire and transfer assets on behalf of the investment fund it manages for price less favorable than the market price or the assessed value of the assets being subject,
- borrow funds on its behalf or on behalf of the open-end investment fund unless for the purpose of using those funds to redeem shares in the open-end investment funds under a condition that the monetary funds available in the portfolio of the fund are insufficient for that purpose, wherefore, in case of such loan the total amount of the liabilities subject to paying of the assets being built by the open-end investment fund towards all the lease or credit contracts cannot exceed 10% of the net value of the assets of the open-end investment fund at the moment of loaning, and in a time period not longer than three months,
- approve loans from the assets of the investment fund and call as guarantor on behalf of third parties,
- use the assets of the investment fund as guarantee when performing the obligations of the management company or obligations of third parties, nor use it for performance of activities under favored conditions by its employees or their related persons,
- agree sale, buying or transfer of assets between two investment funds managed by the same management company under conditions different from the market conditions or under conditions when one of the investment funds is put in less favorable position than the other,
- undertake obligation regarding the funds that at the moment of taking over those obligations are not owned by the investment fund,
- acquire or transfer shares in an open-end investment fund it manages, on its behalf,
- issue securities to open-end investment funds,
- invest the assets of the investment fund in securities or other financial instrument it issues,
- sale securities for the account of the shareholders in the open-end investment fund, or on behalf or for the account of the stockholders in the closed-end investment fund, if the securities at the moment of concluding the transaction are not included in the fund's assets and
- during its operating acts against the interests of the share or stockholders.

### **Liability of the investment fund management company**

#### **Article 26**

(1) The management company is liable for performing the investment fund management activity in accordance with the provisions of this Law, the Statute and the prospect of the fund. The company shall be liable for the damage caused to the shareholders in the open-end investment fund, i.e. the stockholders in the closed investment fund, for acting against the provisions of this Law, the Statute and the prospect of the fund.

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(2) The management company with its complete assets is liable for the legal matters concluded on its behalf and for the account of the shareholders in the open-end investment fund and the legal matters concluded on behalf and for the account of the stockholders in the closed-end investment fund.

## **Submission of financial reports to the Commission**

### **Article 27**

(1) The management company shall be obliged to submit the following to the Commission:

- a) audited annual financial reports for the company and the investment funds it manages, at latest by 30th April the current year for the previous year;
- b) audited semi-annual financial reports for the company and the investment funds it manages, at latest by 31st August the current year for the first six months of the same year and
- c) quarterly reports on each individual investment fund separately, at latest by the fifteenth day in the month for the previous quarter, containing data on:
  - the securities consisting the assets of the investment fund being traded, according to the type of security and the issuer,
  - the condition of the monetary deposits containing the assets of the investment fund, according the financial institutions where the deposits are,
  - dates of transactions for the funds that consist the assets of the investment fund and the prices by which the transactions have been performed,
  - brokerage commissions, compensations for the depository bank and other costs regarding the transactions and
  - value of the investment fund assets, the number of shares and their individual value in the condition of the last working day in the quarter for which the report is being submitted, i.e. the number of recorded stocks.

(2) The Commission shall prescribe the cases when the management companies are obliged to submit reports even for deadlines shorter than the ones determined in paragraph (1) of this Article.

## **Organizational, technical and staff training**

### **Article 28**

(1) The management company shall have proper organizational, technical and staff training for performing its activities.

(2) Regarding the organizational structure, the management company shall be organized in a manner so as to provide professional, transparent, efficient, continued and lawful performance of the activities of the company.

(3) Regarding the technical training of the management company shall have proper premises and equipment for performing its activities.

(4) Regarding the staff training, the management company shall have at least one portfolio manager employed in order to manage at most two investment funds, one person employed to be responsible for control of the coordination of the operation of the management company with the regulations, as well as one appointed internal auditor.

(5) The Commission shall in detail prescribe the organizational, technical and staff training of the company.

## **Preparation of financial reports**

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## **Article 29**

- (1) The financial reports of the management company shall be prepared in accordance with the international standards on financial notifying.
- (2) The financial reports referred to in paragraph (1) of this Article shall be subject to audit by an authorized audit company or authorized sole auditor.
- (3) The same audit company can perform at most five in row audits of the annual financial reports of one management company and of the investment funds it manages.

## **Register of shares and stocks**

### **Article 30**

The management company shall be obliged to keep in an electronic media the documents and data that refer to the shareholders, i.e. stockholders of the investment funds it manages.

## **III. PRIVATE INVESTMENT FUNDS MANAGEMENT COMPANY**

### **Foundation of private investment funds management company**

#### **Article 31**

- (1) The private investment funds management company (hereinafter: private funds management company) is founded as limited liability company or joint stock company in accordance with the Law on Trade Companies, with a sole subject of operating foundation and management of private funds on its own behalf and on the account of those holding documents for shares in the fund.
- (2) The private fund management company shall be founded with basic capital of Euro 50.000 in Denar counter-value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of the payment, if the company manages one private fund. If the private funds management company is founded for managing several private funds the basic capital shall be increased for Euro 25.000 in Denar counter-value per each following fund.
- (3) One private fund management company can manage several private funds.
- (4) The private fund management company shall be obliged to submit the content of the private fund prospect to the Commission.
- (5) The private funds management company can hold documents for share in any private fund it manages.
- (6) The provision of Part II Investment funds management company and Part IV Depositary bank, of this Law, shall not be applied on the private funds management company.

### **Statute of the private investment funds management company**

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## **Article 32**

The Statute of the private funds management company, except for the provisions of the Statute of the Law on Trade Companies shall also contain provisions on:

- the manner of investing in the personal property,
- foundation and management of private funds, on its behalf and for the account of the private fund and
- other activities significant for the operation of the private funds management company.

## **Operating of the private funds management company**

### **Article 33**

(1) The private funds management company shall be obliged to keep the operation of the private fund assets with the attention of a good owner and exclusively in the interest of the shareholders in the private fund, based on the Statute of the private fund and the provisions of this Law.

(2) The founders of the private funds management company, the members of the management board and the supervisory board of the company and the employees in the company or the persons who perform constant or temporary activities for the company based on special contract, shall be obliged not to disclose the activities of the company, in accordance with law and with the statute of the private funds management company.

(3) The data of the holders of documents on shares, payments in and out, are business secret and can be disclosed only based on court order and on a request of the Commission.

## **Keeping and displaying the assets of the private investment funds management company**

### **Article 34**

(1) The assets of the private funds management company shall mandatory be kept and displayed separate from the assets of the fund it manages.

(2) The debts of the private funds management companies resulting from the financial transactions related fund`s own assets, cannot be settled with the finances from the private fund.

## **Entry of the private investment funds management company in the private trade**

### **Article 35**

(1) The private funds management company shall enter the private trade on its behalf and for the account of the holders of documents for share in the private fund.

(2) Claims based on costs for performing activities for the account of the holders of documents for share in the private fund, shall be settled by the company with the assets of the private fund in accordance with the provisions of the Statute of the private fund.

(3) It shall be mandatory to publish the amount of the costs referred to in paragraph (2) of this Article in the prospect of each individual private fund.

## **Liability of the private investment funds management company**

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## **Article 36**

(1) The private fund management company is responsible for performing the management activity of the private fund in accordance with the provisions of this Law and the Statute of the fund. The private fund management company shall be liable for the damage caused to the holders of documents for shares in the private fund, for acting against the provisions of this Law and the Statute of the private fund.

(2) The private funds management company shall be held liable with all of its assets for the legal matters concluded on its behalf and for the account of the holders of documents for share in the private fund.

(3) Third parties cannot settle personal claims towards the private funds management company with the assets of the private fund.

## **Costs for managing the private investment fund**

### **Article 37**

The following costs cannot be borne by the assets of the private fund:

- 1) compensation for management;
- 2) costs for publishing a prospect;
- 3) costs for registration of the private fund;
- 4) costs for redeem and payment of documents for share;
- 5) costs for keeping accountancy records of the private fund;
- 6) costs for preparing audit reports of the private fund and
- 7) other costs determined by the Statute and the prospect of the private fund.

## **IV. DEPOSITORY BANK**

### **Subject of operating of the depository bank**

#### **Article 38**

(1) The depository bank of the investment fund (hereinafter: depository bank), shall keep the assets of the investment fund and shall control whether the investment fund has at its disposal assets from the fund in accordance with this Law and with the Statute of the fund.

(2) Only a bank with head office on the territory of the Republic of Macedonia that, in accordance with the Banking Law has obtained consent from the National Bank of the Republic of Macedonia for performing the activity bank – custodian of assets, can be elected depository bank.

(3) In case if the investment fund possesses assets outside the boundaries of the territory of the Republic of Macedonia, the depository bank shall elect a sub-depository bank for safeguarding those assets, which shall be a bank or specialized depository institution with a license to operate outside of the Republic of Macedonia, and is authorized for such activity in accordance with the laws of the state where it shall safeguard the assets of the investment fund. The elected sub-depository bank has to have rating recommendable for investing in line with the well known international credit rating agencies.

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(4) The Commission shall in detail prescribe the rating of the sub-depository bank.

## **Election and change of depository bank**

### **Article 39**

(1) The depository bank shall be elected by the management company.

(2) Approval from the Commission shall be necessary regarding the election of the depository bank and further regarding any change of the depository bank.

(3) The management company shall submit the request to the Commission in order to obtain approval regarding the election of the depository bank.

(4) The following shall be submitted in addition to the request referred to in paragraph (3):

- contract concluded between the management company and the depository bank for performing activities by the depository bank (hereinafter: depository contract),
- consent for commencing the performance of the activity bank – custodian of assets, issued by the National Bank of the Republic of Macedonia, in accordance with the Banking Law and
- consent for appointing members of the management board of the depository bank, issued by the National Bank of the Republic of Macedonia, in accordance with the Banking Law.

(5) The Commission shall adopt a decision on approving or rejecting the request referred to in paragraph (3) of this Article for issuing an approval regarding the election of depository bank within 60 calendar days as of the receiving of the request.

(6) The Commission shall be obliged to give written explanation in case of rejecting the request for issuing an approval for electing the depository bank.

(7) A complaint can be lodged to the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision rejecting the request for issuing approval regarding the election of the depository bank adopted by the Commission, within 15 working days as of the day of receipt of the decision.

(8) The complaint referred to in paragraph (7) of this Article does not postpone the enforcement of the Commission's decision.

(9) The Commission shall in detail prescribe the form and contents of the request for obtaining approval regarding the election of the depository bank.

## **Acting in the interest of the investors**

### **Article 40**

The depository bank and the management company shall act individually and independently and exclusively in the interest of the investors in the investment funds.

## **Rights and obligations of the depository bank**

### **Article 41**

The depository bank shall perform the following activities:

- safeguard the assets of the investment funds,

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- control whether the issuance and redeem of share for the account of the fund at the open-end fund is performed in accordance with this Law and with the rules of the fund,
  - control whether the calculation of the net value of the stocks or shares in the investment fund is in accordance with this Law, the detailed regulations adopted on the basis of this Law and with the prospect and the Statute of the fund,
  - execute the orders from the management company in regard with the transactions with securities and other assets consisted in the portfolio of the investment fund, under the condition that they are not against this Law, the regulations adopted by the Commission, the prospect and the Statute of the fund,
  - ensure that the securities transactions will be settled, i.e. the due monetary claims will be paid within the lawful and agreed deadlines,
  - notify the management company regarding the activities that refer to the investment fund assets and executes its orders,
  - charge all the incomes and other rights that are due for the benefit of the investment fund, and that results from its assets,
  - ensure that the incomes of the investment fund are used in accordance with this Law, with the prospect and with the Statute of the fund, and the costs paid by the fund are in accordance with the provisions of this Law and with the conditions from the prospect and the Statute of the fund,
  - performs other activities anticipated in the depository contract between the management company and the depository bank,
  - keep records of the operation being performed as depository bank for each investment fund individually and regularly coordinates it with the records of the management company,
  - reports each violation of the provisions of this Law to the Commission and
  - ensure access to the data and accounts related to the investment fund and its assets for the auditors and other persons authorized for performing insight, including the Commission.

## **Responsibility of the depository bank**

### **Article 42**

The management company, the shareholders of the open-end investment fund and the stockholders of the closed-end investment fund, shall hold liable the depository bank for the damaged caused due to not performing or incorrect performing of the activities anticipated in the depository contract or this Law.

## **Keeping of the data on the investment funds as business secret**

### **Article 43**

The depository bank shall be obliged to keep, as business secret, the data regarding the shareholders, i.e. the stockholder, as well as the payments in and out which are available to it in accordance with the provision from this Law.

## **Manner of operating of a depository bank**

### **Article 44**

(1) The activities of the depository bank, performed by the bank for the management company, shall be separate from the other activities of the bank.

(2) The depository bank, performing activities for the investment fund, shall keep the assets of each fun on separate account, including the securities, bank accounts and other assets.

(3) The depository bank cannot use the assets of the investment fund for performing transactions for its own account or for the purpose of acquiring any kind of personal benefit or benefit for the

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employees, unless it is in the best of interest of the shareholders or stockholders in the investment funds.

(4) The assets of the investment funds at the depository bank is not included in the assets of the depository bank within liquidation or within a bankruptcy mass, and cannot be used for enforcing the claims of the bank.

## **Termination of the performance of the activities of a depository bank**

### **Article 45**

(1) If one of the parties signatory of the depository contract referred to in Article 39 paragraph (4) line 1 of this Law, with the intent to annul a contract shall be obliged within 90 calendar days prior to the annulment of the contract to notify the other signatory party.

(2) The contract being annulled shall be considered annulled as of the moment of concluding a contract with new depository bank after the expiry of the deadline referred to in paragraph (1) of this Article.

(3) The depository bank shall notify the Commission regarding the annulment of the depository contract and the reasons for its annulment.

## **Transfer of the investment fund assets to another depository bank**

### **Article 46**

If the depository contract is annulled, the depository bank shall be obliged within eight working days as of the day of the annulment of the depository contract, to transfer the whole assets of the investment fund to the depository bank with which the management company concludes new depository contract. The depository bank shall hand in the trade books, the records as well as all other documents and materials, in written or electronic form depending on the manner of keeping the abovementioned data being significant to the operation of the fund for which, until that moment, it has performed activities as depository bank.

## **V. INVESTMENT FUNDS**

### **1. GENERAL PROVISIONS**

#### **Foundation and register of investment funds**

### **Article 47**

(1) Investment fund shall be founded by joining monetary funds, intended for investment from domestic and/or foreign natural persons and/or legal entities, through an open call or a private offer, that for the account of the investors are being managed by the management company, i.e. the private funds management company, wherefore it applies the principle of risk diversification.

(2) Investment fund can be founded as open-end investment fund, closed-end investment fund and private investment fund.

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(3) The open-end and closed-end investment fund are founded and managed by the management company, whereas the private investment fund is founded and managed by the private funds management company.

## **Registering investment funds**

### **Article 48**

(1) The funds shall be entered in the Register of Investment Funds in the Republic of Macedonia (hereinafter: Register of Funds).

(2) The Register of Funds shall be kept by the Commission.

(3) The Commission shall in detail regulate the form, the contents and the manner of keeping the Register of Funds.

(4) The entry of the investment fund in the Register of Funds shall have legal effect against third parties as of the day following the day of the entry in the Register of Funds.

## **Manner of registering the entry of the investment fund in the Register**

### **Article 49**

(1) The application for entry in the Register of Funds shall be submitted to the Commission by the management company together with the request to issue an approval for the operation of the investment fund.

(2) The Commission shall decide upon the entry of the investment fund in the Register of Funds at the same time as for the issuance of approval for operating of the fund.

## **Investment fund identification number**

### **Article 50**

(1) Upon the issuance of the approval for operating of the investment fund and its entry in the Register of Funds, the Commission shall determine an identification number for each fund.

(2) The identification number of each investment fund shall be determined upon the entry of the fund in the Register of Funds, and has to be unique, unchangeable and unrepeatable.

(3) The Commission shall prescribe the manner of determining the investment fund identification number.

## **Rights from shares and stocks in the investment funds**

### **Article 51**

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The rights deriving from shares and stocks in the investment funds are:

- right to vote in the assembly of the closed-end investment fund,
- right to being informed,
- right to a dividend or part of the profit,
- right to sale shares of the fund, i.e. obligation to redeem shares and
- right to pay out part of the liquidation mass.

## **Statute of the investment fund**

### **Article 52**

(1) The Statute of the open-end or closed-end investment fund shall regulate the legal relations between the management company and the shareholders at the open-end investment fund, i.e. with the stockholders at the closed-end investment fund.

(2) The Statute of the open-end, i.e. the closed-end investment fund, has to contain at least the following data:

- title of the investment fund and the type of fund,
- data of foundation of the investment fund, as well as the duration of the fund in case it has been founded for certain period,
- the place where one can get semi-annual and annual reports, the Statute and the prospect of the investment fund, as well as additional information regarding the fund,
- minimum amount of finances supposed to be collected, as well as the items supposed to be taken over in case the said amount is not ensured,
- rights derived from shares or stocks,
- in case of closed-end investment fund, information regarding the stock exchange market i.e. markets where the stocks of the fund will be rated,
- description of the investment goals of the investment fund, the manner of accomplishing the goals and the risk from investing and from the structure of the fund,
- the lowest amount of the investment in the investment fund, the manner of entry, as well as the manner of redeeming shares at the open-end investment fund,
- name of country, local self-government unit or international organization in whose securities more than 35% of the investment fund assets will be invested,
- notice that investment goal is to replicate the index, in case if the investment fund tends to replicate each index of stocks or index of debtor's securities,
- the manner and time of calculating the net value of the investment fund assets,
- in case of open-end investment fund: the time, manner and frequency in the calculation of the sale price when issuing new shares or redeeming the existing, as well as the manner of publishing the prices, circumstances which may result in termination of the issuance or redeem of shares, description of the amount to be paid for the allowed compensations and costs for issuance and redeem of shares,
- in case of closed-end investment fund: the amount, type and limit of costs for establishing which might be borne by the investment fund,
- the annual compensation and costs for managing and operating borne by the investment fund and description of their influence on the future incomes of the investors,
- data regarding the manner of calculating and paying out part of the profit of the shareholders and the dividend to the stockholders,
- duration of the fiscal year,
- date of adopting the Statute,
- other provisions prescribed with the Law on Trade Companies which refer to the closed-end investment funds and
- data on the management company.

(3) The management company shall submit a request to the Commission for obtaining consent to the Statute of the investment fund and its amendments.

(4) The Commission shall adopt a decision on approving or rejecting the request for obtaining consent to the Statute of the investment fund within 60 calendar days as of the day of accepting the submitted request, and to its amendments within 30 calendar days as of accepting the submitted request.

## **Prospect of the investment fund**

### **Article 53**

(1) The prospect of the investment fund is a call for buying shares in the open-end investment fund, i.e. stocks in the closed-end investment fund.

(2) Beside the elements from the Law on Securities, the prospect has to contain detailed information regarding the goals of the investment fund, the investment policy and the risk profile, as well as other information referring to the investment fund and possible to affect the decision of the investor to acquire shares, i.e. stocks in the investment fund, that is:

- title, head office and type of investment fund,
- date of organizing, i.e. establishing the investment fund,
- the period of existence of the investment fund, in case the fund is organized for certain period,
- the place where one can find semi-annual and annual reports, the Statute and prospect of the investment fund, as well as additional information on the fund,
- the minimum amount of finances necessary to be collected for the establishment of the investment fund, as well as the activities that will be undertaken should the said amount not be ensured,
- title and head office of the audit company or the authorized sole auditor,
- rights to shares or stocks,
- prepositions by which it is allowed to initiate liquidation of the investment fund,
- investment goals and planned structure of the investment fund portfolio,
- type of assets in which the investment fund invests,
- allowed investments in time and optional contracts and other financial derivative instruments, as well as the influence of such transactions on the level of risk of the investment fund,
- investment policy of the investment fund, including the possibility to use contracts for financial derivative instruments and similar instruments and techniques for securing from risk,
- name of the country, local self-government unit or international organization in whose securities more than 35% of the investment fund assets will be invested,
- the minimum amount of individual investments in the investment fund, the manner of registration of the shares or stocks, as well as the manner and conditions for redeem of shares at the open-end fund,
- the manner and time of calculating the net value of the investment fund assets,
- in case of open-end investment fund: the time, manner and frequency of the calculation of the prices for sale of new shares or redeem of the existing, as well as the manner of publishing those prices, the circumstances which may result in termination of the issuance or the redeem, description of the amount for paying the allowed compensation and costs for issuance and redeem of shares,
- in case of closed-end investment fund: the amount, type and limit of costs for establishing that may be borne by the fund,
- the annual compensation and costs for management and operation which are borne by the investment fund and description of their influence on the future incomes of the investors,
- data on the manner of calculating and manner of paying out the shares in the profit or the dividend of the stockholders of the investment fund or shareholders,
- basic data on the tax regulations being applied on the investment fund should they be significant to the stock or shareholders,
- duration of the fiscal year,
- date of issuance of the prospect,
- data on the management company and
- head office and address of the depository bank.

(3) The Commission shall in detail prescribe the form and contents of the prospect of the open-end and closed-end investment fund.

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## **Approving and publishing the prospect**

### **Article 54**

- (1) The Commission shall within 60 calendar days as of the day of submitting the request, approve the prospect of the investment fund, prior to opening the public offer of shares i.e. stocks, as well as all the amendments of the prospect.
- (2) The shares, i.e. stocks of the investment fund cannot be offered for sale before the Commission approves the prospect.
- (3) The Commission shall approve the short version of the prospect only for the needs of the open-end investment fund, under condition that the short version of the prospect states the existence of the prospect, as well as notice that the same can be received upon a request from the investor.
- (4) The management company shall be obliged within seven days from the day of receiving the approval from the Commission regarding the publishing of the prospect, to publish the prospect or the short version of the prospect in minimum two daily newspapers published in the Republic of Macedonia.
- (5) Each amendment of the prospect of the investment fund has to be approved by the Commission.
- (6) The Commission shall not approve any amendment to the prospect or the Statute of the investment fund which may be against the interests of the investors.
- (7) The Commission shall in detail prescribe the form and the content of the short version of the prospect.

## **Advertising the investment funds**

### **Article 55**

- (1) The management company may advertise the investment funds it manages in the mass media or in any other manner.
- (2) The management company shall be obliged to submit the content of the advertisement to the Commission prior to publishing it. In case if after five working days from the submission of the advertisement content, the Commission does not prohibit its publication, the management company can publish it. The management company shall bear the costs to prove that the Commission has received the advertisement content.
- (3) The management company shall be responsible for the completeness and correctness of the information that will be published as advertising promotion of the investment fund.
- (4) The content of the advertisement for the investment fund cannot cede from the contents of the Statute and the prospect of the fund.
- (5) The management company has to keep a copy of each published advertisement.

## **Basic principles for publishing advertisements for investment funds**

### **Article 56**

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When publishing advertisements for the investment fund and its managing company, the following principles shall be followed:

- their propaganda purpose must not be covered or misdisplayed,
- it must display complete, correct and true description of the investment fund being promoted, as well as the related risks,
- it must publish complete, clear and unambiguous data in order not to be misleading for the investors,
- it is forbidden to publish false directions, especially in regard to the expertise of the responsible persons and the scope of operation of the investment fund and management company, as well as the ownership and the number of shares or stocks in the fund and
- it must ensure that the content and the form of the advertisement does not bend, cover, or reduce the significance of any announcement, warning or other facts that have to be published in accordance with this Law.

## VI. OPEN-END INVESTMENT FUND

### 1. GENERAL PROVISIONS

#### **Concept for open-end investment fund**

##### **Article 57**

(1) Open-end investment fund (hereinafter: open-end fund) presents separate assets, without the capacity of legal entity, whose shareholders have the right to proportional part of the fund's profit and who at any time have the right to request payment of the share, wherefore they will step out of the fund.

(2) Buying of shares shall be performed exclusively by paying monetary funds, whereas the buyer of shares founds an agreeable relation with the management company which bonds to manage the paid monetary funds, as part of the joint assets in accordance with the conditions listed in the prospect.

(3) The title of the open-end fund shall contain the words "open-end fund", i.e. the abbreviation "o.f."

#### **Commencement of the operation of the open-end investment fund**

##### **Article 58**

(1) The open-end investment fund shall commence its performance of activities for collecting monetary funds, by public call for registering shares in the open-end fund after acquiring the approval for organizing open-end fund from the Commission. The public call shall be published in two daily newspapers published on the territory of the Republic of Macedonia.

(2) Within two months from the publishing of the public call referred to in paragraph (1) of this Article, the open-end fund shall collect monetary assets in the amount of at least Euro 300.000,00 in Denar counter-value, according to the middle exchange rate of the National Bank of the Republic of Macedonia, on the day when the complete monetary assets are collected.

(3) In case the monetary amounts are not ensured in the amount and deadline determined in paragraph (2) of this Article, the depository bank shall be obliged within eight days after the expiry of the given deadline to refund the collected assets to the investors.

#### **Maintaining the net value of the assets**

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## **Article 59**

(1) The open-end fund shall at any moment, on its account, maintain the value of the assets of the fund in the amount as determined in Article 58 paragraph (2) of this Law.

(2) In case if the value of the assets of the investment fund goes lower than the amount listed in Article 58 paragraph (2) of this Law, but not more than 2/3 of that amount, the management company shall be obliged to immediately notify the Commission and within three months to provide the necessary minimum.

(3) If after the expiry of the deadline of three months the investment fund does not own the necessary minimum amount of assets, the fund shall be liquidated or merged with another fund, in accordance with this Law.

(4) In case if the value of the assets of the open-end fund goes lower than 2/3 of the amount listed in Article 58 paragraph (2) of this Law, the fund shall be immediately liquidated.

## **Organizing an open-end investment fund**

### **Article 60**

(1) For the purpose of organizing an open-end fund, the management company shall adopt a statute, prepare a prospect of the fund and conclude a contract with a depository bank, as in accordance with this Law.

(2) The management company shall submit to the Commission a request for acquiring approval to organize an open-end fund, containing:

- title and head office of the management company,
- number and date of the decision issued from the Commission for approving the request for operating of the management company,
- title of the open-end fund,
- statute and prospect of the open-end fund,
- contract of the management company and the depository bank,
- title and head office of the audit company or the authorized auditor – sole proprietor and
- proof for paid compensation to the Commission for acquiring approval for organizing the open-end fund.

(3) The necessary documentation shall be submitted in addition to the request referred to in paragraph (2) of this Article.

(4) The management company can commence the collection of monetary funds through a public offer of shares upon acquiring the approval for organizing the open-end fund.

(5) The Commission within 60 days as of the day of submitting the request shall adopt a decision to approve the organizing of the open-end fund.

(6) The Commission shall in detail prescribe the form and contents of the request for acquiring approval for the organizing of the open-end fund and the necessary documents submitted in addition.

## **Costs borne by the investors in the open-end investment fund**

### **Article 61**

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(1) The compensations charged to the investor in the open-end fund are:

- entry compensation deduced from the amount for payment at the moment of the sale of shares,
- exit compensation deduced from the net value of the assets of the open-end fund per share at the moment of redeem,
- costs for printing forms for registering shares and
- other operative costs determined by the statute and the prospect of the fund.

(2) The entry and exit compensation referred to in paragraph (1) lines 1 and 2 of this Article can amount at most 5% of the value of the payment in, i.e. payment out of the share in/from the open-end fund.

(3) The costs referred to in paragraph (1) lines 3 and 4 of this Article can be at most in the amount of the actual costs.

(4) It is not allowed to charge compensation related to the incomes of the open-end fund.

(5) The compensations referred to in paragraph (1) of this Article are separate from the price of the share, and those are incomes of the management company, determined in accordance with the Statute and the prospect of the management company.

(6) The exit compensation is not charged in case of liquidation of the open-end fund regardless of the reasons for the liquidation.

(7) In case of announcing the introduction or increase of the exit compensation, the same is not charged until acquiring an approval from the Commission to change the prospect determining the introduction and increase of the amount of the exit compensation.

(8) The entry and exit compensation is not charged also in case of affiliation or merging of the open-end fund with another fund, i.e. when dividing the open-end fund.

(9) The decision of the management company not to charge the entry and/or exit compensation, as well as the reasons for not paying shall be clearly stated in the prospect of the open-end fund.

## **Costs borne by the open-end investment fund**

### **Article 62**

(1) The compensation charge from the open-end fund shall be compensation for managing of the management company, and shall be calculated on the basis of daily net value of the open-end fund according to the following formula:

Realized annual compensation for managing  $\times 1/365$

(2) The funds realized from the compensation referred to in paragraph (1) of this Article shall be considered income of the management company.

(3) Other costs borne by the open-end fund are:

- 1) costs paid to the depository bank;
- 2) costs regarding the buying and selling of the open-end fund assets;
- 3) costs for keeping a register of shares, including the costs for issuing certificate for transaction or state of a share, as well as costs for paying out the profit share;
- 4) costs for annual auditing;
- 5) costs for processing, printing and posting the semi-annual and annual reports for the shareholders;
- 6) costs for paying out the property tax and the profit tax of the open-end fund;
- 7) costs for publishing the prospect and other prescribed publications;

- 8) costs for monthly compensations to the Commission and  
9) other costs determined with the statute and the prospect of the open-end fund.

(4) The compensation for the management of the company referred to in paragraph (1) of this Article can annually amount at most up to 3% of the total value of the open-end assets.

(5) The management company cannot charge any other compensation for performing the open-end fund management activities, except for the compensation referred to in paragraph (1) of this Article.

(6) The open-end fund cannot be charged any costs related to the advertising and sale of shares of the fund. These costs are borne by the management company from the incomes of the management company.

## **Calculation of the total costs index of the open-end investment fund**

### **Article 63**

The total amount of all the costs being borne by the open-end fund shall be states in percentage as total costs index, while for each previous year it is calculated with the following formula:

$$\frac{\text{Total compensation for managing + total amount of the costs from Article 62 paragraph (3) items 3, 4, 5, 7 and 9 of this Law}}{\text{Average annual net value of the assets of the fund}} \times 100$$

## **Maximum amount of the total costs index of the open-end investment fund**

### **Article 64**

(1) The total costs index of the open-end fund cannot exceed 3.5% of the total annual net value of the assets of the fund. After the annual calculation period ends, the Commission shall every year publish comparative indexes of the total costs of all the investment funds.

(2) All costs derived during the year, and exceeding the allowed index of 3.5% are borne by the management company.

## **2. INVESTMENT OPERATION**

### **Open-end investment fund management**

#### **Article 65**

The management and conduct of the activities of the open-end investment fund are exclusively performed by the management company having acquired permission to operate from the Commission.

### **Allowed investments**

#### **Article 66**

- (1) The open-end assets can only consist of:  
1) transferable securities and instruments on the money market which:  
a) are being traded on regulated markets in the Republic of Macedonia;



- b) are being traded on regulated markets in the EU member states and OECD member states and
- c) are accepted for official rating on the stock exchange markets of non-EU and non-OECD member states, under condition that the statute and the prospect of the open-end fund does not anticipate such investment;
- 2) newly issued transferable securities under condition that:
- a) in the prospect for their issuance it has been determined that there is an obligation for the issuer to include them in the official ranking on a stock exchange market or some other regulated market, which has permission to operate received from an appropriate regulatory body;
- b) the investing in that stock exchange market or in some other regulated market it has been anticipated with the prospect and the statute of the open-end fund and
- c) within a period of one year to be accepted in the ranking;
- 3) shares or stocks of the investment fund registered in the Republic of Macedonia or member states or non-EU and non-OECD member states, under condition that:
- a) the investment funds have acquired an approval for their organizing from a regulatory body of their country of origin and be submitted to supervision which is equal to the one prescribed with the EU legislation, as well as to have provided cooperation between the regulatory bodies to a satisfactory level;
- b) the level of protection of the investors and the obligation to notify and inform the investors in such funds to be in accordance with the provisions of this Law, particularly in regard to the limitations of the investments, as well as those funds to be authorized by the Commission or by other appropriate regulatory bodies of the member states or non-EU and non-OECD member states;
- c) the prospect and the statute of the open-end fund anticipate that at most 10% of the fund assets can be invested in shares and stocks of other funds and
- d) to publish semi-annual and annual reports for their operation;
- 4) deposits in authorized banks in the Republic of Macedonia, which are due within a period not longer than one year;
- 5) periodical and optional contracts and other financial derivative instruments being traded on the regulated markets referred to in paragraph (1) item 1 of this Article and/or derivative financial instruments being traded over-the-counter, under condition that:
- a) they refer to financial instruments allowed to invest in, in accordance with this Article, the financial indexes, the interest rate, the foreign exchange rates or currencies where the open-end fund can invest, in accordance with the prospect and the statute;
- b) the contracting parties in the transactions with financial derivative instruments being traded over-the-counter to be institutions that are subjected to prudent supervision of the regulatory body of the Republic of Macedonia or of the EU and OECD member states authorized by the Commission or by the appropriate regulatory bodies in the EU and OECD member states;
- c) they are subjected to a valid and confirmed everyday assessment of the value, and may at any time be sold, liquidated according to their assessed value to the open-end fund;
- d) such instruments are exclusively used for decrease or limitation of the risk from investing or increasing the income, i.e. the decreasing the costs of the open-end fund without any increase of the risk, i.e. they should not change the investment strategy of the fund, the purposes and limitations defined with this Law and the prospect and/or statute of the fund and
- e) the prospect of the open-end fund has to state whether it is possible to invest in such instruments, whether they will be used for the purpose of protecting from risk and/or for the purpose of achieving the investment goals of the fund, and what is the influence of those instruments upon the riskiness of the fund;
- 6) the instruments on the money market which are not being traded on the regulated markets, under condition that:
- a) they are issued by or the Republic of Macedonia, the local self-government units or the National Bank of the Republic of Macedonia, the EU member states, the European Central Bank and the European Investment Bank guarantee for them or
- b) they are issued by the issuers with whose securities it is being traded on the regulated markets referred to in paragraph (1) point 1 of this Article or
- c) they are being issued by the institutions being subject to supervision from a regulatory body of the EU member states or are being issued by institutions subjected to supervision equal to the one prescribed by the EU legislation or
- d) are being issued by other parties that the Commission has approved under condition that the investments in such instruments to be equally secure as the security provided when investing in the instruments referred to in paragraph (1) item 6 sub-items a), b) or c) of this Article, and under condition that their issuer is trade company whose capital and reserves exceed 10 million Euro and

that prepares and publishes financial reports in accordance with the international notification standards or to be within a composition of a group of related companies that includes one or several persons whose actions are ranked on the stock exchange market, yet are financing that group, or to be a trade company whose subject of operating is financing special securitization subjects which for that purpose use banking credit line and

7) money on the account.

(2) The Commission shall in detail prescribe the allowed investments in the open-end fund.

## **Limitations of the investments and exceeding the limited investments**

### **Article 67**

(1) The investing of the open-end fund assets are subjected to the following limitations:

1) at most 10% of the net value of the open-end fund assets can also be invested in other transferable securities and instruments on the money market, except in transferable securities and instruments on the money market listed in Article 66 paragraph (1) items 1 and 2 of this Law;

2) at most 10% of the net value of the open-end fund assets can be invested in transferable securities and instruments on the money market of one and the same issuer, but if the value of the transferable securities or instruments on the money market are from one issuer and consist the value of the fund's asset, the total value of those investments cannot exceed 40% of the net value of the fund's asset, unless:

a) in transferable securities or instruments on the money market whose issuer or guarantee is the Republic of Macedonia or the local self-government units in the Republic of Macedonia, the EU and OECN member states or the local self-government units of the EU and OECD member states, where one can invest without limitations under condition that:

- the states, the local self-government units or the international organizations in whose securities and instruments on the money market more than 35% of the net value of their assets can be invested, are clearly listed in the prospect, the statute and the promotional material of the fund,
- the open-end fund asset consists of at least six different securities or instruments on the money market and

- the value of no single security or instrument on the money market referred to in item 2 sub-item a) of this paragraph does not exceed 30% of the net value of the open-end fund assets;

b) in bonds issued with an approval from the Commission, issued by banks registered in the Republic of Macedonia or OECD member-states, and which are under supervision by the appropriate regulatory body in which at most 25% of the net value of the open-end fund assets can be invested. The amounts that result from the emission of these bonds, have to be invested by the issuer in funds by which, during the whole period of validity of the bonds, the claims against the payers can be covered, and which in case of insolvency of the issuer, will be used as priority to pay out the capital and the interest rate. In case if more than 50% of the net value of the fund's assets is invested in such bond of a single issuer, the total value of those investments cannot exceed 80% of the net value of the fund's assets;

c) for the persons who form related companies in accordance with the Law on Trade Companies and this Law, are considered as single issuer in accordance with Article 66 of this Law and the provisions of this Article, wherefore at most 20% of the net value of the open-end fund assets can be invested in securities or instruments on the money market, whose issuers consist related companies in line with the Law on Trade Companies and

r) if the investment policy of the open-end fund is replicating the structure of a determined index of stocks of debtor securities, the Commission can allow investing at most up to 20% of the net value of the fund's assets in stocks or securities from a single issuer, if:

- the structure of the index is sufficiently diversified,
- the index presents proper benchmark for the market it refers to and
- the index is published on the web-site of the stock exchange market, where the same is being calculated, and which in stocks or debtors securities of single issuer to be able to invest up to 35% of the net value of the fund's assets, if that is necessary for the replication of that index. The investing of up to 35% in the net value of the fund's asset in stocks or debtors securities of a single issuer, is allowed for only one issuer, and that fund has to clearly state in the prospect and statute of the fund

that its investment goal is to replicate the index;

3) transferable securities or instruments on the money market referred to in item 2 sub-items a) and b) of this paragraph are not included in the limitations of up to 40% referred to in item 2 of this paragraph;

4) the limitations referred to in item 2 of this paragraph do not refer to:

a) deposits and

b) financial derivative instruments being traded on other regulated markets (markets over-the-counter);

5) at most 20% of the net value of the open-end fund assets can be invested as deposit in one single bank referred to in Article 66 paragraph (1) item 4 of this Law;

6) The exposure towards one person based on financial derivative instruments agreed with that person on other regulated markets cannot exceed:

a) 10% of the net value of the assets should it be a bank referred to in Article 66 paragraph (1) item 4 of this Law and

b) 5% of the net value of the assets should it be some other legal entity;

7) the total value of the investments in the transferable securities or instruments on the money market whose issuer is one single person, and the value of the deposits invested at that person, and the exposure based on the financial derivative instruments being traded on other regulated markets agreed with that person cannot exceed 20% of the net value of the open-end fund assets, unless in transferable securities or instruments on the money market as listed in item 2 sub-item a) of this paragraph;

8) the limitations prescribed in paragraph (1) items 1, 2, 3, 4, 5 and 6 of this Article cannot be combined, and those investments in transferable securities or instruments on the money market whose issuer in one single person, in deposits at that person, and the exposure based on financial derivative instruments agreed with that person in not case can exceed the total 35% of the net value of the fund's assets;

9) 20% at most of the net value of the open-end fund assets can be invested in shares or stocks of one single investment fund;

10) the investments in shares or stocks of the investment funds are not included in the calculations for the limitations referred to in items 1, 2, 3, 4, 5 and 6 of this Article;

11) the open-end fund cannot be owner of:

a) more than 10% of the stocks with the right to vote from one single issuer;

b) more than 10% of the stocks without the right to vote from one single issuer;

c) 10% of the debtors securities issued by one single issuer;

d) 25% of the shares in single investment funds;

e) 10% of the instruments on the money market from one single issuer with the exception that the limitations of this paragraph are not applied to debtors securities and instruments on the money market whose issuers are the Republic of Macedonia, the local self-government units of the Republic of Macedonia, the member-states of the EU and OECD, the units of the local self-government of the member-states, the non-EU and non-OECD member states and

f) the limitations referred to in item 11 sub-items c), d) and e) of this paragraph cannot be considered at the moment of investing in case if then it is not possible to calculate the total number or value of the instruments in circulation;

12) the total exposure of the open-end fund to the financial derivative instruments in any case cannot be more than the net value of the funds assets, and

13) the open-end fund cannot invest in precious metals and securities or other instruments issued on the basis of precious metals.

(2) In case the open-end fund assets are invested in shares or stocks of other investment funds, in the prospect of the fund has to list the maximum compensation for managing which can be charged from the fund's assets being intended to invest in, while in the annual reports of the fund it has to clearly state the maximum total compensation for managing which has been charged to the fund and to the other fund in which the previous has invested as percentage of the fund's assets being invested in shares or stocks of the other investment fund.

(3) In case if the fund's asset is being invested in shares of investment funds being directly or indirectly managed by one single management company or other management company to which the first one is related through mutual management or control, or through significant direct or indirect

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participation in the capital for such investments borne by the fund, the management company may not charge entry or exit compensations.

(4) For the purpose of protecting the interests of the investors in the investment funds, the Commission can introduce additional limitations regarding the investments from this Article, in case of global financial crisis and disrupting the function of the securities market of the Republic of Macedonia, upon prior consent from the Ministry of Finance.

## **Exceeding the limitations**

### **Article 68**

(1) In case of exceeding the limitations referred to in Article 67 of this Law, which are consequence of the transactions concluded by the management company, that at the moment of their conclusion have exceeded the stated limitation, the management company shall be obliged to immediately synchronize the investments. In case if damage has been caused, the management company shall be obliged to immediately compensate it for the open-end fund.

(2) The limitations of the investments referred to in Article 67 of this Law can be exceeded in the first six months of the organizing of the open-end fund wherefore the principles of diversification of risk and protection of the investor's interests shall be obeyed.

(3) The Commission shall in detail prescribe the limitations of the investments at the open-end fund.

## **VII. CLOSED-END INVESTMENT FUND**

### **1. GENERAL PROVISIONS**

#### **Term and foundation of a closed-end investment fund**

##### **Article 69**

(1) Closed-end investment fund (hereinafter: closed-end fund) is a joint stock company founded for the purpose of collecting monetary funds through public offers of stocks and investing those funds, applying the principle of risk diversification thereof.

(2) The provisions of the Law on Trade Companies and the Law on Securities shall be applied to the closed-end fund, unless otherwise regulated by this Law.

#### **Founding a closed-end investment fund**

##### **Article 70**

(1) Closed-end fund shall be founded and managed by the management company.

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(2) For the foundation of the closed-end fund, the management company shall adopt a statute, shall prepare a prospect of the fund and shall conclude a contract with a depository bank in accordance with this Law.

(3) The management company shall submit to the Commission a request for acquiring an approval to found a closed-end fund, which has to contain the following data:

- company and head office of the management company, and name and surname of the persons authorized to represent the same,
- number and date of the issued permission of the Commission for foundation of the management company,
- company and head office of the closed-end fund,
- name and surname, place of residence, citizenship and personal identification number of the natural persons, or number of passport of the persons members of the supervisory board of the closed-end fund,
- data regarding the education of the members of the supervisory board of the closed-end fund and
- company and head office of the depository bank and name and surname of the persons authorized to represent the same.

(4) The following documents shall be attached to the request referred to in paragraph (3) of this Article:

- statute of the closed-end fund,
- prospect of the closed-end fund,
- decision to appoint the members of the first supervisory board,
- draft contract with the depository bank and excerpt of the depository bank in the trade register being kept in the Central Register of the Republic of Macedonia,
- concluded contract between the founders of the closed-end fund and the management company and excerpt for the management company from the trade register being kept in the Central Register of the Republic of Macedonia,
- proof for paid compensation for acquiring an approval to found the fund and for its entry in the Register of Funds in the Republic of Macedonia and
- other additional documentation.

(5) The Commission shall in detail prescribe the form and content of the request to acquire an approval to found a closed-end fund, and the additional documentation.

## **Deciding upon the request for giving consent to found a closed-end investment fund**

### **Article 71**

(1) The Commission shall adopt a decision to approve or reject the request for issuing the approval to found a closed-end fund based on the documentation submitted in addition to the request.

(2) The Commission shall adopt the decision referred to in paragraph (1) of this Article within 60 calendar days from the day of submitted the request.

(3) The Commission shall issue an approval to found a closed-end fund after all the conditions for founding a closed-end fund, in accordance with Article 70 of this Law, are fulfilled.

(4) The decision referred to in paragraph (1) of this Article, shall be published by the Commission in the "Official Gazette of the Republic of Macedonia".

## **Basic capital of closed-end investment fund**

### **Article 72**

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(1) The basic capital of closed-end fund cannot be less than Euro 300.000 in Denar counter-value, according to the middle exchange rate of the National Bank of the Republic of Macedonia, on the day when the monetary funds are fully collected.

(2) The closed-end fund shall be obliged to maintain the net value of the fund's assets in the amount which cannot be lower than the amount of the funds referred to in paragraph (1) of this Article.

## **Stocks of the closed-end investment fund**

### **Article 73**

(1) The closed-end fund issues regular stocks which are unlimitedly transferable.

(2) The closed-end fund cannot issue other types and classes of stocks, or any other kinds of securities except for the stocks referred to in paragraph (1) of this Article.

(3) The stocks of the closed-end fund shall be paid with monetary funds, on the account of the depository bank and have to be paid in the complete amount before the entry of the closed-end fund in the trade register, being kept by the Central Register of the Republic of Macedonia, i.e. before the entry of the increase of the basic capital of the closed-end fund in the trade register.

(4) The closed-end fund cannot acquire its own stocks.

(5) Each legal matter by which the closed-end fund has acquired its own stocks is without legal effect.

(6) The value according to which the stocks of the closed-end fund are entered and paid in upon its foundation shall be equal to their nominal value.

(7) The sale value of the stocks issued upon the foundation of the closed-end fund, i.e. upon the second and each following emission, shall depend on the relation between the offer and demand and shall be determined on the securities market.

(8) The stocks of the closed-end fund have to be traded on the securities market in the Republic of Macedonia.

## **Registering the closed-end investment fund stocks**

### **Article 74**

(1) The registering of the stocks, based on the invitation for registering, the prospect and the payment in, cannot commence before the Commission issues an approval for foundation of the closed-end fund.

(2) The registration and the payment of stocks are performed at the management company.

(3) Upon the registry of the stocks, the registrar shall announce that (s)he:  
- is introduced to and agrees with the statute and the prospect of the closed-end fund and  
- authorized the depository bank on his behalf and for his account to exercise the rights resulting from the stocks.

(4) In case if the closed-end fund upon its foundation suffers damage from the registrar who fails to pay the registered stocks, it is the management company that shall be liable for such damage.

(5) The closed-end stocks shall be kept in the securities depository.

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## Costs for founding a closed-end investment fund

### Article 75

(1) The costs and compensations for foundation of the closed-end fund may be charged on the fund's assets, should it be determined so with the prospect and the statute of the fund. The amount of the costs and compensations for foundation of a closed-end fund which may be charged from the fund's assets shall be displayed in the prospect as percentage that cannot exceed 3,5% of the total monetary funds paid in the fund upon its establishment.

(2) The costs and compensations for the foundation of the closed-end fund, exceeding the percentage determined within the prospect and the statute of the fund shall be borne by the management company.

(3) In case if upon the foundation of a closed-end fund, the necessary amount for founding the fund, as in accordance with Article 72 of this Law is not collected, the costs for the foundation of the fund shall be borne by the management company, while the paid in monetary investments are completely returned to the investors.

## Costs borne by the closed-end fund

### Article 76

(1) Costs borne by the closed-end fund shall be:

- 1) compensation to the management company;
- 2) compensation to the depository bank;
- 3) compensation and costs for the members of the supervisory board;
- 4) costs and commissions related to the acquisition or sale of the closed-end fund's assets;
- 5) costs for keeping a register of stocks, being kept by the Central Securities Depository, including as well costs for issuing a certificate for transaction, as well as costs for paying out a dividend;
- 7) costs for holding a general assembly, except the costs for extraordinary assembly, called up by the management company;
- 8) costs for processing, printing and posting semi-annual and annual reports for the stockholders;
- 9) the compensations for the Commission in regard to the issuance of approvals;
- 10) taxes that the fund is obliged to pay for its assets and profit;
- 11) costs for publishing the prospect and for other publications and
- 12) other costs determined by law.

(2) The compensation for the management company, referred to in paragraph (1) item 1 of this Article, cannot be defined in such a manner so as to depend on the incomes of the closed-end fund.

(3) The costs borne by the closed-end fund's assets have to be envisaged within the prospect.

## Calculation of the total costs index of the closed-end investment fund

### Article 77

The total amount of the costs being borne by the closed-end fund, shall be stated as total costs index, yet for each previous year it is being calculated by the following formula:

Total compensation for managing + total amount of the costs referred to in Article 76 paragraph  
(1) items 2, 3, 4, 5, 6, 7, 8, 9 and 11 of this Law x  
100

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Average annual net value of the fund's assets

## **Maximum extent of the total costs index of the closed-end investment fund**

### **Article 78**

(1) The total costs index of the closed-end fund cannot exceed 3,5% of the average annual net value of the fund's assets. Upon the completion of the annual calculation period, the Commission shall every year announce comparing total costs indexes of all the closed-end funds.

(2) All the costs during the year exceeding the allowed index of 3,5%, shall be borne by the management company.

## **Closed-end investment fund management**

### **Article 79**

(1) The management company manages the closed-end fund, in accordance with this Law and the Statute of the closed-end fund.

(2) Closed-end fund management body is the management body of the management company in accordance with the provisions of the contract concluded between the management company and the fund, and with this Law.

(3) The Commission shall in detail prescribe the content of the contract referred to in paragraph (2) of this Article.

## **Closed-end investment fund bodies**

### **Article 80**

Closed-end fund bodies are the supervisory body and the assembly.

## **Supervisory Board**

### **Article 81**

(1) The Supervisory Board of the closed-end fund shall consist of at least three members.

(2) At most 1/3 of the total number of members of the Supervisory Board of the closed-end fund can be employed in the management company or be related persons to the management company.

## **Limitations in the election of Supervisory Board members**

### **Article 82**

The following cannot be elected members of the closed-end fund Supervisory Board:

- member(s) of Management or Supervisory Board of a management company, depository bank, brokerage house, bank with permission to operate with securities and branch office of foreign brokerage house, insurance companies and private pension funds, in the period when the Commission has revoked their permission to operate, as well as in period of three years as of the revoking of the approval,

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- person, i.e. persons who have been imposed misdemeanor sanction – prohibition to perform activity in regard to the operation with securities, while the prohibition is valid,
- person, i.e. persons sentenced by a legally valid court verdict for punishable crimes against the assets, the payment operation and the business operation and
- person, i.e. persons sentenced for a misdemeanor prescribed within the Law on Securities.

## **Mandate of the Supervisory Board members**

### **Article 83**

The members of the closed-end fund Supervisory Board shall be appointed with a mandate of four year, with the right to be elected for another mandate.

## **Obligation to publish the total amount of compensations and other costs for the Supervisory Board members**

### **Article 84**

(1) The total amount of compensations and other costs for the Supervisory Board members, as well as the number and market value of all the stocks of the fund owned by each member of the Supervisory Board, shall mandatory be published in the annual financial report of the closed-end fund.

(2) The members of the Supervisory Board are not allowed to accept rewards from the issuers of securities where the closed-end fund invests, except for the compensation one is entitled to, based on one's engagement in the closed-end fund.

## **Authorizations of the Supervisory Board**

### **Article 85**

(1) The members of the closed-end fund Supervisory Board, beside the authorizations envisaged in Article 380 of the Law on Trade Companies, according to this Law shall to authorized to the following:

- mutual representation of the fund in the relations with the management company,
- give consent for concluding contracts with (legal entities and natural) persons providing services to the closed-end fund,
- supervision of the realization of the contract referred to in line 2 of this paragraph, whereas the Supervisory Board has the right to abolish the contract in case of not performing the obligations,
- supervision of the coordination in the operation of the closed-end fund with the provisions of this Law, with the prospect of the fund, as well as with the purposes and limitations in the investments,
- give consent to the decision by which it is being proposed to the closed-end fund assembly to decide regarding the issuance of stocks and the status changes of the fund and
- adoption of the financial reports of the closed-end fund, upon a proposal from the management company.

## **Concluding contract with another management company**

### **Article 86**

(1) In case of revoking the permission to operate of the management company, or in case if another circumstance occurs that will disable the future management of the closed-end fund, the Supervisory Board shall be obliged within 60 calendar days from the day of seizing the permission to operate of

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the management company, to conclude the contract referred to in Article 79 paragraph (2) of this Law with a new management company.

(2) If the Supervisory Boards fails to act in accordance with paragraph (1) of this Article, it shall be obliged to call up assembly of the closed-end fund.

## **Concluding contract with another depository bank**

### **Article 87**

(1) In case of revoking the permission to operate from the depository bank of the closed-end fund, or in case a circumstance occurs that will disable the future performance of the agreed activities of the depository bank, the Supervisory Board shall be obliged within 60 calendar days as of the day that circumstance had occurred, to sign contract with another depository bank.

(2) In case if the Supervisory Board does not act in accordance with paragraph (1) of this Article, it shall be obliged to call up assembly of the closed-end fund.

## **Assembly of closed-end investment fund**

### **Article 88**

The provisions of Chapter IV, Section 5, Sub-section 4 of the Law on Trade Companies shall be applied regarding the competence, calling and holding of the closed-end fund assembly, unless otherwise determined with this Law.

## **Decisions adopted by the assembly of the closed-end investment fund**

### **Article 89**

The Assembly with the majority of presented votes which cannot be less than 3/4 of the total number of stocks of the closed-end fund shall adopt decisions in regard to:

- the increase of the annual compensation, above the amount listed in the prospect on force,
- change of the investment goals of the closed-end fund,
- status changes of the closed-end fund and
- continuation of the deadline for duration of the closed-end fund.

## **Allowed investments**

### **Article 90**

(1) The closed-end fund assets can consist of:

- 1) securities;
- 2) shares of investment funds registered in the Republic of Macedonia, in EU or OECD member-states;
- 3) deposits in authorized banks in the Republic of Macedonia falling due in a deadline not longer than one year;
- 4) periodical and optional contracts and other financial derivative instrument being traded on the regulated securities market and/or derivative financial instruments being traded over-the-counter, under condition that:
  - a) they refer to financial instruments being allowed to invest in, in accordance with his Article,

financial indexes, interest rates, foreign exchange rates or currencies in which the closed-end fund can invest in accordance with the prospect and statute of the fund;

b) the contracting parties in the transactions with the financial derivative instruments being traded over-the-counter to be institutions subjected to prudent supervision of the regulatory body of the Republic of Macedonia or the EU and OECD member-states and are authorized by the Commission or the appropriate regulatory bodies in the EU and OECD member-states;

c) they are subjected to a credible and realistic assessment on everyday basis, as well as to be able to be sold at any moment for their market value upon an initiative of the closed-end fund;

d) the instruments to be used exclusively for decreasing or limiting the risk from investing, i.e. they do not alter the investment strategy of the closed-end fund, the purposes and limitations defined by this Law and the statute and the prospect of the fund and

e) in the prospect of the closed-end fund to state whether it is forbidden to invest in such instruments, whether they will be used in order to be protected from risk or in order to achieve the investment goals of the fund, as well as their influence on the fund's risk and

5) money in the accounts in banks in the Republic of Macedonia.

(2) The Commission shall in detail prescribe the allowed investments in the closed-end fund.

## **Limitations of the investments of the closed-end investment fund**

### **Article 91**

(1) The investments of the closed-end assets shall be subjected to the following limitations:

1) at most 15% of the net value of the closed-end fund's assets can be invested in securities or instruments on the money market of one single issuer, unless:

a) in securities or instruments on the money market whose issuer is or whose guarantee is the Republic of Macedonia or the units of the local self-government and the EU and OECD member-states where it is possible to invest without any limitations, if:

- the prospect and the statute of the closed-end fund clearly list the states, the units of the local self-government and the international organizations in whose securities and instruments of the money market more than 35% of the net value of the fund's assets can be invested,

- the closed-end fund's assets is consisted at least of six different securities or instruments on the money market and

- the value of no single security or instrument on the money market referred to in sub-item a) of this paragraph exceeds 30% of the net value of the fund's assets and

b) if the investment policy of the closed-end fund is replicating the structure of certain index of stocks or debtor's securities, the Commission can allow investing up to 20% of the net value of the fund's assets or debtor's securities of one single issuer, in case if:

- the structure of the index is sufficiently diversified,

- the index presents proper benchmark for the market it refers to and

- the index is published on the website of the stock exchange market where it is being calculated, while in stocks of debtor's securities of one single issuer to be possible to invest even up to 35% of the net value of the fund's assets, if that is necessary for the replication of the said index. The

investing of up to 35% of the net value of the fund's assets in stocks or debtor's securities of one single issuer, is allowed solely for one issuer, while that fund has to clearly state in the prospect and the statute that its investment goal is to replicate the index;

2) persons that form related companies in accordance with the Law on Trade Companies and this Law, shall be considered as an issuer in accordance with Article 90 of this Law and with the provisions of this Article, whereas at most 20% of the net value of the closed-end fund's assets can be invested in securities or instruments on the money market whose issuers are persons that form related companies in accordance with the Law on Trade Companies;

3) the limitations referred to in item 1 of this Article do not refer to:

a) deposits and

b) financial derivative instruments being traded on other regulated markets (markets over-the-counter);

4) at most 20% of the net value of the closed-end fund's assets can be invested as deposit in one, same bank referred to in Article 90 paragraph (1) item 3 of this Law;

5) the exposure against one person based on financial derivative instruments agreed with that person, on other regulated market cannot exceed:

a) 10% of the net value of the assets if it refers to a bank from Article 90 paragraph (1) item 3 of this Law and

b) 5% of the net value of the assets if it refers to some other legal entity;

6) the total value of the investments in securities or instruments on the money market whose issuer is one person and the value of the deposits invested at that person and the exposure based on the financial derivative instruments being traded on other regulated markets agreed with that person, cannot exceed 20% of the net value of the closed-end fund`s assets;

7) the limitations prescribed in paragraph (1) items 1, 2, 3, 4 and 5 of this Article cannot be combined and such investments are transferable securities or instruments on the money market whose issuer is one persons, in deposits at that person, and the exposure based on the financial derivative instruments agreed with that person, in no case can that exceed the total of 35% of the net value of the fund`s assets;

8) 20% at most, of the net value of the closed-end fund`s assets can be invested in shares of one and same investment fund;

9) the investing in shares or stocks of an investment fund cannot exceed 25% of the net value of the assets of each individual fund, in which it is being invested;

10) the closed-end fund in its possession cannot have more than 25% of the stock with right to vote of one single issuer, or the bonds of one and same issuer;

11) the total exposure of the closed-end fund against the financial derivative instruments cannot exceed 10% of the net value of the fund`s assets and

12) it is impossible to invest in limited liability company or in non-transferable securities.

(2) If the closed-end fund`s assets is being invested in shares of investment funds that directly or indirectly are managed by one single management company, or other management company to whom the first one is related by joint management or control, or by significant direct or indirect participation in the capital, for such investments borne by the fund, the management company can omit charging exit or entry compensations.

(3) If the closed-end fund`s assets are invested in shares of other investment fund, the prospect of the fund has to state the maximum amount for managing which can be charged from the fund`s assets where one intends to invest, while the annual reports of the fund have to clearly state the maximum total compensation for managing having been charged from the fund and from the other fund it has invested in, stated as percentage of the fund`s assets investing in shares or stocks of the other investment fund.

(4) If the fund intends to invest more than 40% of the net value of the asset in securities that are not traded on official stock exchange market, it is mandatory for the title of the fund to contain the words "closed-end fund for investing in securities not being traded on official stock exchange market."

(5) The Commission shall in detail prescribe the limitations in the investments of the closed-end fund.

(6) For the purpose of protecting the interest of the investors in the investment funds, the Commission can introduce additional limitation in regard to the investing of this Article, in case of global financial crisis or disturbance of the functioning on the securities market in the Republic of Macedonia, upon prior consent from the Ministry of Finance.

## **Exceeding the limitations**

### **Article 92**

(1) The limitations of the investments referred to in Article 91 of this Law shall not be applied if it refers to transferable securities or instruments on the money market that the closed-end fund acquires by increasing the basic capital of the funds of the management company.

(2) The limitations of the investments listed in Article 91 of this Law can be exceeded in the first year upon the foundation of the closed-end fund, whereas the principles of risk diversification and the protection of the investor's interests shall be obeyed.

(3) In case of exceeding the limitations referred to in Article 91 of this Law, that are a consequence from the price movement on the market, the management company tends to protect the interests of the stockholders. The management company is at the same time obliged to coordinate the investments of the closed-end fund within one year from the day the exceeding has occurred, hereby bearing in mind the risk of the occurred limitations in the investments to be decreased to the lowest possible measure.

(4) In case of exceeding the limitations referred to in Article 91 of this Law, which are consequence from the transactions being concluded by the management company, and that at the moment of their conclusion have exceeded the stated limitations, it is the management company that is obliged to coordinate the investments. In case if damage has occurred, the management company shall be obliged immediately to compensate the caused damage to the closed-end fund.

## VIII. PRIVATE INVESTMENT FUND

### **Term of private investment fund**

#### **Article 93**

(1) Private investment fund (hereinafter: private fund) shall refer to special assets, without the capacity of legal entity, formed for the purpose of collecting monetary funds through private offer for selling documents for shares in the fund, whose means are being invested in accordance with the purposes of the investment determined in the prospect of the private fund. The owners of documents for shares, beside the right to share in the profit of the private fund, can also request payment of the share and in that manner to step out of the fund, in a manner and under conditions determined in the prospect of the fund.

(2) The private fund shall be registered in the Register of Funds of the Republic of Macedonia.

### **Foundation and operation of private investment fund**

#### **Article 94**

(1) Private fund shall be founded only for certain period, which cannot be less than eight years.

(2) The quantity of the private fund shall be at least Euro 500.000 in Denar counter-value. Quantity of the fund shall refer to the registered maximum obligation for payment to all the investors on all basis, for the total time of existence of the fund.

(3) The minimum undertaken agreed obligation for investing of each individual investor in the private fund cannot be less than Euro 50.000 in Denar counter-value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of the payment, which the investor is obliged to realize on call from the private fund management company, in accordance with the provisions of the prospect.

(4) The maximum number of investors in the private fund is 20 investors.

(5) A private fund shall be founded and managed by the private fund management company.

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(6) For the purpose of founding a private fund, the private fund management company shall adopt a statute and prospect of the fund.

(7) The private fund can run into debts without limitations.

(8) The provisions from Chapter V Articles 52, 53, 54, 55 and 56 and the provisions of Chapters VI, VII, IX, X, XI, XII, XIII and XIV of this Law shall not be applied on the private fund.

## **Statute of the private investment fund**

### **Article 95**

The statute of the private fund shall regulate the operation of the private fund, the legal position of the owners of the documents for shares in the private fund, the legal relations of the private fund with the private fund management company, as well as other issues of interest for realization of the purposes of the fund, in particular:

- 1) the title of the private fund, the firm of the private fund management company;
- 2) the purposes of the private fund;
- 3) the intention and principles of investing the means;
- 4) the type and main elements of the documents for shares;
- 5) the procedure and conditions for issuing and selling documents for shares;
- 6) the rules for calculating and using the income from the private fund;
- 7) the rules for determining the net value of the private fund's assets;
- 8) the manner of calculating the amount of the compensations and costs of the private fund management company or third parties, borne by the private fund's assets;
- 9) the manner of paying out the profit of the owners of documents for shares;
- 10) the amount of the registered maximum obligation, and the rights and obligations of the private fund management company;
- 11) the manner and procedure of informing the owners of documents for shares;
- 12) the manner of allocating the profit of the private fund and
- 13) the period of foundation of the private fund.

## **Prospect of the private investment fund**

### **Article 96**

The prospect of the private fund shall contain the data referred to in Article 95 of this Law, as well as detailed information and data regarding the purposes and the policy of the private fund and other information referring to the private fund, and which may affect the decision of the investor for investing in the fund.

## **Private investment fund management**

### **Article 97**

The private fund management company shall manage the private fund on its behalf and for its account, in accordance with the management contract concluded with the private fund, the prospect and the statute of the private fund.

## **Financial reports of the private investment fund**

### **Article 98**

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(1) The private fund management company shall prepare audited annual financial reports for each private fund it manages.

(2) The private fund management company shall be obliged to submit to the investors of the private fund the audited annual financial reports for each fund it manages, within three months from the adoption of the annual financial statement of the private fund.

(3) The financial reports can be prepared in accordance with the international accountancy standard.

## **IX. DETERMINATION OF THE VALUE OF THE ASSETS AND PRICE OF SHARES AND STOCKS IN THE INVESTMENT FUNDS**

### **Time periods when the value of the investments fund assets is being determined**

#### **Article 99**

(1) The management company shall be obliged, for the open-end fund, to determine the value of the fund's assets, all the obligations and compensations incurred before the determination of the net value of the assets per share, i.e. the price of the share.

(2) The value of the net assets of the open-end fund shall be calculated every day at a time determined within the prospect. The management company shall be obliged the next working day to notify the Commission regarding the value of the open-end fund's assets, the condition of the compensation and the obligations, the price of the open-end fund shares on the day of the calculation.

(3) The value of the net assets of the closed-end fund shall be calculated once a month, at a time determined within the prospect.

(4) The Commission for securities shall in detail prescribe the methodology for assessing the net value of the fund's assets, as well as the frequency of its determination.

### **Responsibility for calculating the value of the investment fund's assets, i.e. the price of shares or stocks**

#### **Article 100**

(1) The value of the assets of the open-end and closed-end fund, i.e. the price of shares or stocks shall be calculated by the management company.

(2) The calculation of the value referred to in paragraph (1) of this Article shall be controlled and confirmed by the depository bank that, at the same time is responsible for the correctness of the calculations being submitted to the Commission. The depository bank shall sign and keep one sample of the document for determined value of the investment fund's assets in which it provides insight for the Commission.

(3) The auditor of the investment fund shall be obliged to perform control of the application of the principles and the methodology for determining the value of the fund's portfolio, the correctness of the manner for determining the price of the stocks or shares, and the other compensations and costs anticipated in the prospect or the statute of the fund.

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## **Principles and methodology for determining the value of the investment fund`s assets**

### **Article 101**

(1) The determination of the value of the fund`s assets, in regard to the securities including the stocks of the closed-end fund as well, shall be performed on the basis of the market value formed on the regulated market.

(2) In case of determining the value of the securities for which there is not market price that meets the conditions referred to in paragraph (1) of this Article, the price of the last transaction performed in that investment period shall be considered.

(3) In case of deposits and cash, short-term claims and liabilities, incomes and costs for the future period, for determination of the value of the investment fund`s assets, the nominal value increased for the calculated interest rate shall be applied.

(4) For the determination of the value of the periodical and optional contracts for activities for which the market price cannot be determined, the Commission shall prescribe the methods for calculating the value of the assets.

(5) Upon the determination of the value of the open-end fund`s assets, the price of the shares shall be applied.

(6) The foreign currency assets shall be calculated in Denars according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of determining the value of the investment fund`s assets.

(7) In case of other types of assets for which there is no market price, fair value of the assets shall be assessed. The procedure for determining the fair value of the asset includes methods of discounted monetary value compared to a similar asset for which the market price is known, method of assessing the options or other method prescribed by the Commission.

(8) The principles and the methodology for determining the value of the assets shall be stated in the prospect and the statute of the investment fund and shall be properly applied to each calculation of the value of the fund`s assets.

(9) The Commission shall prescribe the principles and the methodology for determining the value of the closed-end and open-end fund`s assets, as well as the manner of forming the market price of the open-end fund`s shares, i.e. the stocks of the closed-end fund, whereby applying the different methods for calculating the value of the assets of the individual types of funds.

## **Net value of the investment fund asset and the value per stocks, i.e. shares of the fund**

### **Article 102**

(1) At the open-end fund the value of the fund`s assets is the value of the fund`s asset decreased for the obligations. The net value per share is net value of the fund`s asset divided by the number of shared of the fund at the moment of calculating the net value of the fund`s assets.

(2) The net value of the closed-end fund`s asset is the value of the fund`s asset decreased for the obligation. The net value per stock of the fund is the net value of the fund`s assets, equally

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distributed to each issued stock of the fund at the moment of calculating the net value of the fund`s asset.

## **Starting offer and determining the price of shares or stocks of the investment fund**

### **Article 103**

(1) The duration of the starting, i.e. initial offer of shares at the open-end fund, i.e. stocks at the closed-end fund cannot be longer than 60 calendar days. During this period the total amount of the collected monetary fund shall be kept as a deposit and cannot be invested until the fund exceeds the lowest value of the fund`s asset as determined by this Law.

(2) The price of the stock during the initial, i.e. first issuance of stocks at the closed-end investment fund is the nominal price of the stock. The price of the latter issuances is the market price of the stocks.

(3) During the initial, i.e. starting offer at the closed-end fund the price of the issuing of shares shall be determined by the management company and shall be published in the prospect of the fund. After the starting offer of shares, the price of the shares of the open-end fund is the single price equal to the net value of the fund`s asset per share, which is calculated on the basis of the market price of all the securities from the fund`s portfolio.

## **Price of the shares in the open-end investment fund**

### **Article 104**

(1) The sale and redeem of the shares at the open-end fund shall be performed in working days for a price calculated in accordance with the Article 103 paragraph (3) of this Law and with the prospect of the fund whereas the company shall charge and calculate the entry and exit compensation.

(2) The sale, i.e. redeem of the shares in the open-end fund is not permitted to be performed for an amount less or more than the currently valid price per share. The price of the share can vary depending on the change of the net value calculated in a manner prescribed by the Commission.

(3) The price for shares of the open-end fund shall be calculated when the net value of the fund`s asset is divided by the number of the issued shares, wherefore the net value of the fund`s asset is calculated in accordance with Article 102 of this Law, and the number of issued shares is equal to the number of shares at the moment of calculating the price, considering all the sales and redeems performed at the moment of the last calculation until the moment the new price is calculated.

## **Sale of shares in the open-end investment fund**

### **Article 105**

(1) The sale of shares of the open-end investment fund shall be performed in a price agreed with the prospect of the fund and determined on the day when the payment of in the account of the fund is performed, increased by the entry compensation in case if the same is being charged.

(2) The payment of the open-end fund shall be performed exclusively in monetary funds.

## **Redeem of shares in the open-end fund**

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## **Article 106**

(1) The redeem of shares in the open-end fund shall be performed according to the price that is corresponding to the value of the share determined on the first day following the assessment upon the submission of the request for share redeem.

(2) The funds from the share redeem shall be paid on the account of the owner of the redeemed shares within seven calendar days from the receiving of the request for redeem.

## **Verification for sale and redeem of shares**

### **Article 107**

(1) The verification for sale and redeem of shares shall be issued by the management company, and upon the request from the investor, at latest within five days after the payment in the open-end fund, i.e. the payment out by the fund, is completed.

(2) The verification for sale and redeem of the shares referred to in paragraph (1) of this Article, shall contain:

- title of the investment fund,
- data for the shareholders,
- data for the authorized attorney-in-fact,
- date of the confirmation for buying a share,
- the price of the documents for a share,
- compensation for issuing the documents for share,
- number of received documents for shares,
- company and head office of the management company,
- place and date of issuing the confirmation and
- signature of an authorized person from the management company.

## **Incorrect calculation of the price of shares in the open-end investment fund**

### **Article 108**

In case if the price of the shares in the open-end fund is incorrectly calculated for more than 1% in regard to the value as a result from applying the manner of Article 102 of this Law, the Commission shall impose the management company and the depository bank for such incorrect calculation to:

- pay the difference in the price of each investor to whom during the redeem of shares, lower price per share in regard to the correct value resulted by applying the manner referred to in Article 102 of this Law, has been paid and
- recognizes proportional part of the additional shares for damage compensation to each investor to whom during the shares redeem, higher price per share in regard to the correct value resulted by applying the manner referred to in Article 102 of this Law, has been calculated.

## **Termination of the sale and redeem of shares in the open-end fund and their duration**

### **Article 109**

(1) The sale and redeem of shares in the open-end fund can be terminated in case if the management company and the depository bank consider it impossible to determine the correct price of the assets

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from the fund's portfolio, due to which the sale and redeem of shares in the interest of the holders or potential shareholders terminates.

(2) The management company shall report the termination of the sale and redeem of shares to the Commission and publish it in at least two daily newspapers in the Republic of Macedonia. The management company can perform redeem and sale of shares upon obtaining consent from the Commission and notifying the holders of documents for shares regarding the same.

(3) The Commission can impose the management company and the depository bank to temporarily terminate the sale and redeem of shares, in case it acknowledges or has reasonable grounds to doubt that the investors are suffering damage due to the incorrectness of the calculation of the price of shares in the open-end fund.

(4) The termination of the sale and redeem of shares referred to in this Article shall be completed after the management company and the depository bank assesses that it is possible to determine the correct price of the assets of the open-end fund's portfolio, and at latest within 28 days from the beginning of the cessation, unless the Commission agrees to continue the stipulated deadline. The notification for continuing the sale and redeem of shares in the open-end fund is necessary to be published in minimum two daily newspapers in the Republic of Macedonia.

(5) During the termination of the sale and redeem of shares, the management company can continue accepting requests for sale and redeem of share which shall be realized upon the closure of the termination of the redeem or sale of shares, wherefore the persons issuing orders shall be aware that their orders will not be executed in the deadlines anticipated in the prospect and statute of the open-end fund.

(6) The Commission shall in detail prescribe the procedure for termination and continuation of the sale and redeem of shares in the open-end fund.

## **X. PUBLISHING AND NOTIFYING THE SHAREHOLDERS AND STOCKHOLDERS IN THE INVESTMENT FUNDS**

### **Publishing the prices of stocks and shares in the investment funds**

#### **Article 110**

(1) The determined price of shares in the open-end fund shall be published whenever there is a buying or selling of the shares in the open-end fund, and at least twice a month, while the price of the stock in the closed-end fund has to be published at least once a year.

(2) The publishing referred to in paragraph (1) of this Article shall be performed on the website of the management company, listed in the prospect of the investment fund.

(3) The Commission shall in detail prescribe the contents and time of publishing the stocks and shares in the investment fund.

### **Publishing the net value of the assets per share, i.e. stock in the investment funds**

#### **Article 111**

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The management company shall be obliged to publicly announce the net value of the asset per share in the open-end fund and the net value of the stock in the closed-end fund immediately after their calculation, in accordance with Article 110 paragraph (2) of this Law.

## **Notifications to the shareholders and stockholders**

### **Article 112**

(1) The investors in the investment funds shall have delivered audited semi-annual and annual reports, on their request.

(2) The reports referred to in paragraph (1) of this Article shall be available to the investors in the investment fund on the points listed in the prospect of the investment fund.

## **Deadlines for preparing and contents of the semi-annual and annual audited reports**

### **Article 113**

(1) The semi-annual reports for the management company and all the funds it manages shall be submitted to the Commission within two months from the completion of the semi-annual accounting period.

(2) Audited annual reports for the management company and all the funds it manages shall be submitted to the Commission within four months from the completion of the accounting year.

## **Contents of the financial reports at the open-end investment fund**

### **Article 114**

(1) The semi-annual and the audited annual reports of the open-end fund shall contain:

- a) report for the assets and obligations (balance statement) for the current accounting period, compared to the previous accounting period;
- b) report for the total income for the current accounting period, compared to the previous accounting period;
- c) data on the portfolio, allocated according to type and liquidity of the assets and key changes of the portfolio in the current period;
- d) index of the total incomes for the accounting period;
- e) data on every authorized participant in the trade with securities, who through the investment fund has realized more than 10% of its transactions in the current calendar year by listing:
  - the total value of all the transactions performed by an authorized participant and stated as percentage of the total value of all the transactions of the investment fund in that year and
  - commission paid to the authorized participant, stated as percentage of the total value of the transactions performed with its mediation;
- f) list of movements of the value of the open-end assets;
- g) number of issued shares at the beginning and at the end of the accounting period and
- h) price per share at the beginning and at the end of the accounting period.

(2) Beside the data referred to in paragraph (1) of this Article, the audited annual report of the open-end fund shall also contain:

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- a) the highest and lowest value of the open-end fund`s assets and price per share in the fund from the current period for the past five calendar years;
- b) report of the management body with an explanation for the achieved business result of the open-end fund, change in the portfolio and planned strategy of investments in the following period and
- c) comparable list of the operation in the past three calendar years by showing the following data until the end of each business year:
  - total net amount of the portfolio`s assets,
  - net amount of the asset of the open-end fund per shares,
  - indexes of the total costs and
  - allocation of incomes, i.e. profit paid per share in the current year.

(3) The Commission shall in detail prescribe the accounting plan, the contents of the separate accounts in the open-end fund accounting plan, as well as the form and content of the financial reports of the open-end funds.

## **Contents of the financial reports at the closed-end investment fund**

### **Article 115**

- (1) The semi-annual and audited annual reports of the closed-end fund shall contain:
- a) report on assets and obligations (balance statement) for the current accounting period compared to the previous accounting period;
  - b) report on the total income for the current accounting period, compared to the previous accounting period;
  - c) data on the portfolio, allocated according to the type and liquidity of the assets and key changes in the portfolio in the current period;
  - d) index for the total costs for the accounting period;
  - e) data on each authorized participant in the trade with securities, through which the investment fund has realized more than 10% of its own transactions in the current calendar year by stating:
    - the total value of all the transactions performed by each authorized participant, stated as percentage of the total value of all the transactions of the investment fund in that year and
    - commission paid to the authorized participant, stated in percentage of the total value of the transactions performed with its mediation and
  - f) the highest and lowest price per share in each of the previous three business years.
- (2) Beside the data referred to in paragraph (1) of this Article, the audited annual report of the closed-end fund shall also contain:
- a) the highest and lowest value of the closed-end assets and price per stock in the fund from the current period for the past three calendar years;
  - b) report of the management body with elaboration for the achieved business result of the closed-end fund, change of the portfolio and planned strategy of investments for the following period and
  - c) comparative list of the operating in the past three calendar years by showing the following data, at the end of each business year:
    - total net value of the assets from the portfolio,
    - net value of the closed-end fund`s assets per stocks,
    - indexes of the total costs and
    - allocation of the incomes, i.e. the profit paid per stock in the current year.
- (3) The Commission shall in detail prescribe the accounting plan, the content of the separate accounts in the accounting plan of the closed-end funds, as well as the form and content of the financial reports of the closed-end funds.

## **XI. REGISTER OF SHARES IN OPEN-END INVESTMENT FUND**

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## **Responsibility for keeping a register of shares in an open-end investment fund**

### **Article 116**

The management company shall be obliged to keep a register of shares in the open-end investment fund.

## **Manner of entry in the register of shares in the open-end investment fund**

### **Article 117**

(1) The rights from the shares in the open-end fund shall be acquired by entry in the register of shares in the open-end investment fund being managed by the management company.

(2) The management company shall once a year submit a report to the shareholders in the open-end fund, regarding the statement and trade with shares in the fund, which they hold.

(3) The management company shall be obliged to submit a report, on the request of the shareholders or their authorized representative and on their expense, regarding the statement and the trade with shares of the open-end fund, which they hold.

(4) The management company shall be obliged to enable the depository bank and the Commission, insight in the register of shares in the open-end investment fund.

## **Transfer of shares of open-end investment fund to another person**

### **Article 118**

(1) The shares in the open-end investment funds cannot be freely transferred, unless on the basis of inheritance or contract on donation. Such transfer shall have legal effect after its entry in the register of shares in the open-end investment fund and in the management company.

(2) The management company shall be obliged to keep the documents regarding all the entries in the register of shares in the open-end fund during the period when complaint can be lodged for annulment of the entry in the register of shares, in case f such complaint is submitted the same shall be kept until a legally valid court decision is adopted.

(3) The Commission shall in detail prescribe the form, contents and manner of keeping the register of shares in the open-end investment fund, as well as the publication of the data from the register.

## **XII. MERGING AND LIQUIDATION OF THE INVESTMENT FUNDS**

### **Merging of open-end investment funds**

#### **Article 119**

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(1) Two open-end funds can merge in case if:

- the management company has adopted a decision for their merging,
- the Commission gives prior approval for their merging and
- the depository banks of the open-end funds being merged give consent for their merging.

(2) When one open-end fund merges with another, the first fund is liquidated and the funds from its account are transferred to the account of the second fund.

(3) Merging cannot be performed:

- between open-end and closed-end fund,
- of funds with different investment policies and
- if the investors would be damaged from the merging, based on the evaluation from the Commission.

(4) The Commission shall in detail prescribe the procedure for merging of the open-end funds.

## **Liquidation of open-end investment funds**

### **Article 120**

(1) The liquidation of the open-end fund shall be implemented by the management company, except in the cases when the management company is in bankruptcy or the Commission has permanently revoked its permission to operate.

(2) In case if it is impossible to implement liquidation of the open-end fund by the management company due to the reasons referred to in paragraph (1) of this Article, the liquidation shall be implemented by the depository bank.

(3) If the depository bank of the open-end fund is in bankruptcy or the National Bank of the Republic of Macedonia has temporarily or permanently revoked the permission to operate from the depository bank of the open-end fund, the liquidation shall be implemented by a liquidator of the open-end fund, appointed by the Commission.

(4) The Commission shall in detail prescribe the procedure, the costs and the deadlines for liquidation of the open-end funds.

## **Rights, obligations and responsibility of the liquidator**

### **Article 121**

(1) The liquidator shall be obliged within seven days from the adoption of the decision for liquidation, to notify the Commission and all the investors in the open-end fund, in case when the management company or the depository bank is in the role of a liquidator.

(2) The liquidator appointed by the Commission shall be obliged within seven days from the days of its appointment, to notify all the investors in the open-end fund regarding the liquidation of the open-end fund.

(3) Upon the adoption of the decision for liquidation, any sale or redeem of shares in the open-end fund shall be prohibited, except for the requests having been received upon the determination of the last price and before the adoption of the decision for liquidation, wherefore the transactions with the fund's assets can be performed exclusively for the needs of the fund's liquidation.

(4) As of the day of adopting the decision for liquidation, i.e. the day of appointing the liquidator of the open-end fund, no compensations shall be charged, except for the compensation for the

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depository bank, the costs for the liquidation procedure and its auditing and the costs for submitting the semi-annual and audited annual reports for the investors in the fund, incurred during the liquidation procedure of the fund.

(5) The liquidator shall be obliged to submit to the Commission, a final report for the liquidation and for the implementation of the liquidation.

### **Closing of the liquidation procedure of the open-end investment fund**

#### **Article 122**

In the procedure for implementing the liquidation of the open-end fund, the whole assets of the fund shall be sold, and the obligations of the fund which are due till the day of adopting the decision for liquidation shall be settled.

### **Allocation of the remaining net value of the assets of the open-end investment fund**

#### **Article 123**

The remaining net value of the open-end fund's assets shall be allocated to the shareholders proportionally to their shares in the fund, after implementing the procedure referred to in Article 121 of this Law.

### **Merging and liquidation of the closed-end investment fund**

#### **Article 124**

The merging and liquidation of the closed-end fund shall be implemented in accordance with the provisions of the Law on Trade Companies.

## **XIII. SALE OF SHARES, I.E. STOCKS IN THE INVESTMENT FUNDS**

### **Authorized persons for sale of shares, i.e. stocks in the investment fund**

#### **Article 125**

(1) The sale of shares in the open-end, i.e. stocks in the closed-end fund shall be performed by the management company.

(2) Beside the management company, the sale of shares, i.e. stocks in investment fund can be performed by legal entities that conclude mediation contract with the management company, that is:

- authorized bank in accordance with the Banking Law,
- brokerage house with a permission obtained from the Commission and
- branch of a foreign brokerage house that has obtained a permission to operate from the Commission.

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## **Termination of the performance of activities for sale of shares, i.e. stocks in the investment funds**

### **Article 126**

(1) The legal entities referred to in Article 125 paragraph (2) of this Law cannot perform activities to sell shares in the open-end, i.e. closed-end fund during a period when they have been revoked the permission to operate.

(2) The legal entities referred to in Article 125 paragraph (2) of this Law, shall immediately notify the management company they have concluded sale contract with regarding the revoking of the permission to operate.

## **Manner and conditions for the sale**

### **Article 127**

The legal entities referred to in Article 125 paragraph (2) of this Law, authorized for sale of shares, i.e. stocks in the investment funds, shall be obliged to:

- enable insight for the investors in all the relevant documents and data, the prospect, the reports, the prices and possibly other data necessary for the investors when making decisions for investing,
- check whether the Forms of the request for redeem are correctly filled in,
- early submit the orders for sale and redeem of the management company,
- use exclusively the prospect, the reports and the advertising materials approved by the management company for the promotion and making available data of the investment fund,
- not to give false data or data that may be misleading for the investors, referring to the investment fund, or data for the purposes of the investments, the risks, the price, the incomes or any other data related to the fund or to the management company, or data that cede from the contents of the prospect, the statute of the reports of the fund,
- be liable in front of the management company for the mistakes or failures or its employees for each disobeying of this Law,
- introduce the potential investors to the amount of the commission for completing the sale of shares or stocks in the investment fund, that is as percentage of the entry compensation, the annual compensation for managing or the exit compensation,
- ensure that the proposed investment fund or funds are corresponding to the need of the interested parties and
- act in accordance with this Law.

## **Compensation for persons authorized for sale of stocks or shares in the investment funds**

### **Article 128**

The legal entities referred to in Article 125 paragraph (2) of this Law shall receive compensation for the work exclusively from the management company.

## **XIV. CONTROL AND SUPERVISION**

### **1. Control by the Securities Commission**

#### **Article 129**

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(1) The Commission shall control the operation of the management company, the open-end and closed-end funds and the depository bank in the part of operating of the investment funds.

(2) The regulatory body from the EU or OECD member states, competent for controlling the participants on the capital market, may request the Commission to implement a procedure for control over the operation of the branch for the purpose of accelerating and simplifying the procedure for control in accordance with the principles of efficiency, economy and acting within the anticipated deadline. Under the same conditions, persons may also be authorized by the regulatory body of the EU or OECD member states to participate in the control procedure.

(3) The Commission can, without any limitations, control the business books and other documents of the management company, the investment funds and the depository banks in the part of operating of the investment funds.

## **Manner of controlling**

### **Article 130**

(1) The Commission can perform regular and extraordinary control.

(2) According the manner of performance, the control can be indirect and direct.

(3) The indirect control embraces continuous monitoring and checking of the data from the reports, notifications, business records and other documents the management company, the open-end and closed-end funds and the depository bank in the part of operating of the investment funds, are obliged to submit to the Commission in accordance with this Law.

(4) The direct control shall be implemented by performing direct insight in the data of the regular operation in the premises of the participant in the securities market subjected under control, for the purpose of determining the lawfulness of its operation. The direct control can be performed with or without prior announcement, upon their evaluation and as a part of the regular operation of the Commission.

(5) The costs for the control shall be borne by the management company.

(6) The Commission shall in detail prescribe the manner and procedure for performing the control referred to in paragraph (3) of this Article.

## **Measures of the Commission**

### **Article 131**

(1) If during the control referred to in Article 129 of this Law the Commission determined irregularities within the operation or in the keeping of the business books, it shall adopt a decision to impose the management company, i.e. the depository bank, to remove the determined irregularities and unlawfulness within a determined deadline, and no longer within a period of 30 calendar days.

(2) The management company, i.e. the depository bank shall be obliged within the deadline referred to in paragraph (1) of this Article, to remove the irregularities and therefore inform the Commission by submitting proofs that the lacks and irregularities have been removed or corrected.

(3) Except for the measure referred to in paragraph (1) of this Article, the Commission can adopt a decision for temporary prohibition for the management company or the depository bank to operate in the segment of the investment fund operations.

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(4) Complaint can be lodged to the State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance against the decision of the Commission referred to in paragraph (3) of this Article, within 15 working days as of the receipt of the decision.

(5) The complaint referred to in paragraph (4) of this Article shall not postpone the enforcement of the decisions from this Article.

## **Public reprimand for the investment fund management company**

### **Article 132**

(1) The Commission can adopt a decision for imposing a public reprimand to the management company and to the executive member of the board of directors, i.e. to the president of the management board of the management company.

(2) When deciding about the pronouncing of a public reprimand, the Commission shall consider the graveness of the violation and the circumstance whether the management company of the executive member of the board of directors, i.e. the president of the management board of the management company, has already been pronounced a public reprimand.

(3) The Commission shall publicly announce the disposition of the decision upon its finality, in minimum two daily newspapers in the Republic of Macedonia.

## **Public reprimand of a depository bank**

### **Article 133**

(1) The Commission can adopt a decision on pronouncing a public reprimand to the depository bank in the part of operating with the investment funds and to the director in the organizational part of the bank that provides the service custodian of assets.

(2) When deciding to pronounce a public reprimand, the Commission shall consider the graveness of the violation and the circumstance whether the depository bank in the part of operating with the investment funds or the director of the organizational part in the bank providing the service custodian of assets, have already been pronounced a public reprimand.

(3) The Commission shall publicly announce the disposition of the decision upon its finality, in minimum two daily newspapers in the Republic of Macedonia.

## **Obligations to notify**

### **Article 134**

(1) The management companies and the depository bank shall be obliged to submit reports about their work to the Commission, on regular basis.

(2) The Commission may temporarily revoke the permission for operating of the management company and the approval for the election of the depository bank, due to not obeying the obligation referred to in paragraph (1) of this Article.

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(3) The Commission shall in detail prescribe the mandatory contents, the form and the deadlines for submitting the reports regarding the operating of the investment funds, the management companies and the depository bank.

## **2. Supervision**

### **Authorizing for supervision**

#### **Article 135**

(1) The Commission shall be obliged to perform supervision for the purpose of determining whether the management company, depository bank and closed-end fund have violated this Law and the by-laws adopted on the basis of this Law.

(2) The supervision shall be performed by authorized persons employed in the Commission.

## **XV. MISDEMEANOR PROVISIONS**

### **Misdemeanor body**

#### **Article 136**

(1) For the misdemeanors determined in Articles 138, 138-a, 139, 139-a, 140, 140-a, 140-b, 140-c, 141, 142, 142-a, 142-b, 143, 144 and 145 of this Law, the misdemeanor procedure shall be conducted and the misdemeanor sanction shall be imposed by the Securities and Exchange Commission (hereinafter: Misdemeanor body).

(2) The misdemeanor procedure referred to in paragraph (1) of this Article, before the Misdemeanor body shall be conducted by the Commission for deciding upon misdemeanors (hereinafter: Misdemeanor Commission).

(3) For the election and work of the Misdemeanor Commission, the provisions of the Law on Securities referring to the misdemeanor body, shall be applied.

### **Mediation**

#### **Article 137**

(1) For the misdemeanors determined in Articles 138, 138-a, 139, 139-a, 140, 141, 142, 142-a and 142, the persons authorized by the Commission for performing control and supervision, within the framework of their authorizations, can offer the perpetrator of the misdemeanor mediation and reaching consent for paying the fine, paying the other costs or removing the consequences from the misdemeanor.

(2) For the mediation procedure, the provisions of the Law on Securities referring to the mediation procedure shall be applied.

### **Settlement and payment order**

#### **Article 137-a**

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(1) With regard to the misdemeanors determined by this Law, the persons authorized by the Commission for conducting control, upon establishing the misdemeanor, shall be obliged to propose to the perpetrator of the misdemeanor a settlement procedure, before they file a motion for a misdemeanor procedure.

(2) The settlement procedure shall be mandatory.

(3) If the authorized person referred to in paragraph (1) of this Article establishes a misdemeanor, it shall be obliged to prepare minutes containing all the relevant elements of the act that give the legal characteristics of the misdemeanor, the time, the place and the manner of committing the misdemeanor, the description of the act and the persons found at the place.

(4) If the perpetrator of the misdemeanor confesses the misdemeanor, the authorized person referred to in paragraph (1) of this Article shall immediately give it a payment order and shall additionally note that in the minutes referred to in paragraph (3) of this Article.

(5) The authorized person referred to in paragraph (1) of this Article shall be obliged to propose to the perpetrator of the misdemeanor to sign the minutes.

(6) If the perpetrator of the misdemeanor pays the fine within a period of eight days as of the day of receipt of the payment order, it shall pay only half of the fine.

(7) Costs for the procedure shall not be paid for the procedure that ends by giving a payment order.

(8) Upon expiry of the period of eight days stipulated for paying the payment order, in case the order is not paid, the person authorized by the Securities and Exchange Commission shall file a motion for initiation of a misdemeanor procedure with the Misdemeanor Commission of the Securities and Exchange Commission.

(9) The authorized person referred to in paragraph (1) of this Article shall be obliged to keep separate records of the conducted settlement procedures.

## **Article 138**

(1) Fine in the amount of Euro 4.000 to 5.000 in Denar counter-value shall be imposed for misdemeanor on the management company, if it:

- 1) acts contrary to paragraph 4 of this Law;
- 2) does not act in accordance with paragraph 5 of this Law;
- 3) transfers the performance of activities referred to in Article 6 paragraph (1) item 1 of this Law, to third parties;
- 4) does not require a consent from the Commission in accordance with Article 8 paragraph (2) of this Law;
- 5) starts performing activities related to the investment fund management before obtaining permission to operate from the Commission, in accordance with the provisions referred to in Article 9 paragraph (1) of this Law;
- 6) performs acts and activities prohibited in accordance with the provisions of Article 25 paragraph (1) of this Law;
- 7) elects a depository bank where the assets of the investment funds are to be kept, without a prior approval for election by the Commission in accordance with Article 39 of this Law;
- 8) offers stocks or shares in the investment fund before it obtains approval for publishing the prospect by the Commission in accordance with Article 54 of this Law;
- 9) acts contrary to Article 59 of this Law;
- 10) conducts the investments in assets on behalf of the open-end assets contrary to Article 66 of this Law;
- 11) does not follow the limitations of the investment determined in Article 67 of this Law, and it is not the case referred to in Article 68 paragraph (2) of this Law;

- 12) conducts the investments in assets on behalf of the closed-end assets contrary to Article 90 of this Law;
- 13) does not follow the limitations in the investments determined in Article 91 paragraph (1) of this Law, and it is not the case referred to in Article 92 paragraph (2) of this Law;
- 14) performs sale of shares in the fund contrary to the provisions referred to in Article 105 of this Law;
- 15) performs redeem of shares in the fund contrary to the provisions of Article 106 of this Law;
- 16) acts contrary to the provisions referred to in Article 109 of this Law;
- 17) does not submit a report in accordance with the provisions of Article 113 of this Law, and
- 18) does not prepare the reports in accordance with the provisions of Articles 114 and 115 of this Law.

(2) Fine in the amount of Euro 1.000 to 2.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanors referred to in paragraph (1) of this Article.

(3) As for the misdemeanors referred to in Articles 9 paragraph (1), 25 paragraph (1) and 54 of this Law, the Commission can impose a misdemeanor sanction prohibition for performing the profession, activity or duty on the responsible person in the legal entity.

### **Article 138-a**

Fine in the amount of Euro 2.000 to 4.000 in Denar counter-value shall be imposed for misdemeanor on the management company, if it:

- 1) does not conclude a written contract with the client in accordance with Article 7 of this Law;
- 2) the members of the management company, i.e. the executive members of the board of directors of the management company transfer the right to representation of the management company to third parties in accordance with Article 18 paragraph (3);
- 3) does not follow the procedure for the duties related to the work, in accordance with the provisions referred to in Article 21 of this Law;
- 4) does not establish a system of risk management in accordance with Article 22 of this Law;
- 5) does not submit the reports to the Commission in accordance with Article 27 of this Law;
- 6) does not keep in an electronic media the documents and data that refer to the shareholders, i.e. stockholders of the investment funds it manages in accordance with Article 30 of this Law;
- 7) does not notify the depository bank regarding the annulment of the depository contract within the time period determined in Article 45 paragraph (1) of this Law;
- 8) initiates promotional activities without prior submission of the contents of the advertisement to the Commission, in accordance with the Article 55 paragraph (2) of this Law;
- 9) acts contrary to the provisions referred to in Article 56 of this Law;
- 10) except the entry and exit compensation and the costs for printing forms for registering shares in accordance with Article 61 of this Law, charges other costs not being determined with the statute and the prospect of the fund;
- 11) charges the entry and exit compensation against the provisions referred to in Article 61 of this Law;
- 12) charges compensation against the provisions of Article 62 of this Law;
- 13) debits costs on the account of the open-end fund, which are not included in the provisions referred to in Article 62 of this Law;
- 14) the index of the open-end fund's total costs exceeds the limit determined in Article 64 of this Law;
- 15) calculates the compensations for organizing the closed-end fund against the provisions referred to in Article 75 of this Law;
- 16) pays costs, other than the ones listed in Article 76 paragraph (1) of this Law, from the assets of the closed-end fund;
- 17) the total costs index of the closed-end fund exceeds the limit determined in Article 78 of this Law;
- 18) acts contrary to paragraph 99 of this Law;
- 19) does not meet the principles and methodology for determining the value of the of the assets in accordance with Article 101 of this Law;
- 20) does not act in accordance with the provisions referred to in Article 111 of this Law;

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21) does not submit a report to the stockholders and investors in accordance with the provisions referred to in Article 112 of this Law, and  
22) does not submit the reports for its operating to the Commission on regular basis, in accordance with the provisions referred to in Article 134 paragraph (1) of this Law.

(2) Fine in the amount of Euro 500 to 1.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanors referred to in paragraph (1) of this Article.

### **Article 138-b**

The management company that has perpetrated the misdemeanor referred to in Article 138 paragraph (1) shall be imposed a misdemeanor sanction – temporary prohibition for performing the activity to organize and manage the investment funds in a duration of at least ten and 30 days at the most.

### **Article 139**

(1) Fine in the amount of Euro 4.000 to 5.000 in Denar counter-value shall be imposed for misdemeanor on the private fund management company, if it founds a fund contrary to Article 94 of this Law.

(2) Fine in the amount of Euro 1.000 to 2.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanor referred to in paragraph (1) of this Article.

### **Article 139-a**

(1) Fine in the amount of Euro 2.000 to 4.000 in Denar counter-value shall be imposed for misdemeanor on the private fund management company, it fails to submit the annual audited financial report of the private fund to the investors in the fund, referred to in Article 98 of this Law.

(2) Fine in the amount of Euro 500 to 1.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanor referred to in paragraph (1) of this Article.

### **Article 140**

(1) Fine in the amount of Euro 4.000 to 5.000 in Denar counter-value shall be imposed for misdemeanor on the legal entity that:

- 1) has acquired qualified participation in the management company against Article 13 paragraphs (1) and (3) of this Law and
- 2) has not acted in accordance with Article 16 paragraph (3) of this Law.

(2) Fine in the amount of Euro 1.000 to 2.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanor referred to in paragraph (1) of this Article.

### **Article 140-a**

(1) Fine in the amount of Euro 2.000 to 4.000 in Denar counter-value shall be imposed for misdemeanor on the legal entity, if it fails to notify the Commission in accordance with Article 13 paragraph (6) of this Law.

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(2) Fine in the amount of Euro 500 to 1.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanor referred to in paragraph (1) of this Article.

### **Article 140-b**

Fine in the amount of Euro 500 to 1.000 in Denar counter-value shall be imposed for misdemeanor on the natural person, that:

- 1) has acquired qualified participation in the management company against Article 13 paragraphs (1) and (3) of this Law and
- 2) has not acted in accordance with Article 16 paragraph (3) of this Law.

### **Article 140-c**

Fine in the amount of Euro 1.000 to 1.500 in Denar counter-value shall be imposed for misdemeanor on the natural person, it fails to notify the Commission in accordance with Article 13 paragraph (6) of this Law.

### **Article 141**

Fine in the amount of Euro 2.000 to 4.000 in Denar counter-value shall be imposed for misdemeanor to a brokerage house, branch of foreign brokerage house and authorized bank, should they act against the provisions referred to in Article 13 paragraph (8) of this Law.

### **Article 142**

(1) Fine in the amount of Euro 4.000 to 5.000 in Denar counter-value shall be imposed for misdemeanor on the depository bank, if:

- 1) it keeps assets of the investment fund without a prior approval for election by the Commission in accordance with Article 39 of this Law;
- 2) it fails to conduct one of the activities determined in Article 41 of this Law;
- 3) it fails to manage the assets of the investment fund in accordance with Article 44 of this Law,
- 4) it fails to act in accordance with the provisions referred to in Article 46 of this Law, and
- 5) it fails to act in accordance with the provisions referred to in Article 109 of this Law.

(2) Fine in the amount of Euro 1.000 to 2.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanor referred to in paragraph (1) of this Article.

### **Article 142-a**

(1) Fine in the amount of Euro 2.000 to 4.000 in Denar counter-value shall be imposed for misdemeanor on the depository bank, if:

- 1) it fails to act in accordance with the provisions referred to in Article 43 of this Law, and
- 2) it fails to notify the management company about the intention to cease the depository contract within the deadline referred to in Article 45 paragraph (1) of this Law.

(2) Fine in the amount of Euro 1.000 to 2.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanor referred to in paragraph (1) of this Article.

### **Article 142-b**

(1) Fine in the amount of Euro 4.000 to 5.000 in Denar counter-value shall be imposed for misdemeanor on the legal entity- closed-end fund, if it:

- 1) does not maintain the net value of the fund's assets in accordance with Article 72 of this Law;
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- 2) acts contrary to Article 73 paragraph (2) of this Law;
  - 3) commences the registration of stocks in the fund without obtaining an approval for foundation by the Commission in accordance with Article 74 of this Law, and
  - 4) acts contrary to Article 103 paragraph (1) of this Law.

(2) Fine in the amount of Euro 1.000 to 2.000 in Denar counter-value shall be imposed on the responsible person in the legal entity for the misdemeanor referred to in paragraph (1) of this Article.

(3) As for the misdemeanor referred to in Articles 74 of this Law, the Commission can impose a misdemeanor sanction prohibition for performing the profession, activity or duty on the responsible person in the legal entity.

### **Article 142-c**

The depository bank having perpetrated a misdemeanor referred to in Article 142 paragraph (1) of this Article, shall be imposed a misdemeanor sanction – temporary prohibition to perform activities as a depository bank for the investment funds in a duration of at least ten and at most 30 days.

### **Article 143**

(1) Fine in the amount of Euro 4.000 to 5.000 in Denar counter-value shall be imposed for misdemeanor to the legal entity that on behalf of the management company has been authorized to perform sale of stocks or shares, should it act against the provisions of Article 127 of this Law.

(2) Fine in the amount of Euro 1.00 to 2.000 in Denar counter-value shall be imposed for the misdemeanors from paragraph (1) of this Article, to the responsible person in the legal entity as well.

### **Article 144**

Fine in the amount of euro 500 to 1.000 in Denar counter-value shall be imposed for misdemeanor to an auditor in the open-end fund, in case if he fails to check the operating in accordance with Article 100 paragraph (3) of this Law.

### **Article 145**

Fine in the amount of Euro 500 to 1.000 in Denar counter-value shall be imposed for a misdemeanor to a member of the supervisory board of the closed-end fund, in case if he fails to sign a contract in accordance with Article 87 of this Law.

## **Time barring for initiating and carrying out a misdemeanor procedure**

### **Article 146**

(1) The misdemeanor procedure cannot be initiated upon expiry of two years as of the day the misdemeanor is committed.

(2) The misdemeanor procedure cannot be carried out upon expiry of three years as of the day the misdemeanor is committed.

(3) The time barring of the misdemeanor prosecution shall start running as of the day the misdemeanor is committed.

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(4) The time barring shall not run for the time when the prosecution, in accordance with law, cannot commence or continue.

(5) The time barring shall cease when any procedural action is taken for the purpose of prosecuting the misdemeanor perpetrator.

(6) The time barring shall cease when the perpetrator commits serious or more serious misdemeanor in the time when the time barring runs.

(7) After each cessation, the time barring shall start running again.

(8) The misdemeanor prosecution shall by all means become time barred upon expiry of four years, as of the day the misdemeanor is committed.

### **Time barring of the misdemeanor sanctions enforcement**

#### **Article 146-a**

(1) The imposed misdemeanor sanction cannot be enforced upon expiry of one year as of the day of the legal validity of the decision on the misdemeanor.

(2) The time barring of the misdemeanor sanction enforcement shall start running as of the day when the decision on the misdemeanor becomes legally valid.

(3) The time barring shall not run in the time when, in accordance with law, the enforcement cannot be carried out.

(4) The time barring shall cease when any action of the competent body is taken for the purpose of misdemeanor sanction enforcement.

(5) After each cessation, the time barring shall start running again.

(6) The misdemeanor sanction shall by all means become time barred upon expiry of two years as of the day the decision on the misdemeanor becomes legally valid.

## **XVI. TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 147**

The trade companies founded until the day this Law enters into force, that in the title of the company or the activity contain the words "investment fund", as well as words derived from the words "investment fund", shall be obliged to coordinate their operation with the provisions of this Law which refer to the form, organization, amount of the basic capital, capital and activity, and also the manner of managing and representing the investment funds, within six months from the day this Law enters into force.

#### **Article 148**

The initiated procedures for foundation of management companies and investment funds until the day this Law enters into force, in accordance with the provisions from the Law on Investment Funds ("Official Gazette of the Republic of Macedonia" number 7/2000 and 29/2007).

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## **Article 149**

(1) The management company and the investment funds founded until the day this Law enters into force, shall be obliged to coordinate their operation with the provisions of this Law within one year as of the day of its entry into force.

(2) If the management companies and the investment funds referred to in paragraph (1) of this Article do not coordinate their operating in accordance with the provisions of this Law, the operating permission issued by the Commission shall cease to be valid within one year from the day this Law enters into force.

(3) The Commission shall within three months from the day this Law enters into force, to determine identification number for each fund that until the day this Law enters into force had received an approval for organizing or founding and shall coordinate the data on this funds which are being entered in the Register of Funds in accordance with this Law.

## **Article 150**

(1) The provisions referred to in Articles 27 paragraph (1) item b and 113 paragraph (1) of this Law shall be applied as of January 1st, 2011.

## **Article 151**

(1) Liquidation procedure shall be initiated for those investment funds founded until the day this Law enters into force, that within one year from the day this Law enters into force, do not act in accordance with the provisions of Article 149 of this Law. The liquidation procedure shall be initiated by the Commission, ex officio.

(2) The liquidation of the investment funds referred to in paragraph (1) of this Article shall be implemented in accordance with the provisions of Articles 120, 121, 122, 123 and 124 of this Law.

## **Article 152**

(1) The Commission shall adopt the regulations anticipated with this Law within one year as of the day this Law enters into force.

(2) Until the day the regulations referred to in paragraph (1) of this Article enter into force, the existing regulations shall be applied.

## **Article 153**

As of the day this Law enters into force, the Law on Investment Funds ("Official Gazette of the Republic of Macedonia" number 7/2000 and 29/2007) shall cease to be valid.

## **Article 154**

This Law shall enter into force on the eight day of its publication in the "Official Gazette of the Republic of Macedonia".

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