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(Official Gazette of RM 9/2000)

## LAW ON INVESTMENT FUNDS

### I. GENERAL PROVISIONS

#### Article 1

This Law shall govern the conditions for establishment of investment funds and investment fund management companies and their operation, the selection of a depository bank and control of their operations.

#### Article 2

(1) Only trade names or trade name extensions of investment fund management companies and investment funds established in compliance with this law may contain, solely for the purpose of describing their principal activities or for advertising reasons, the words: "investment fund", "open-ended fund", "closed-ended fund", "investment fund management company" or any other words which may lead one to believe that they indicate these particular forms of business activity.

(2) Pursuant to this law, natural persons or legal entities who collect money from investors through public announcement in order to invest them in securities, i.e. in shares, bonds, treasury notes - commercial notes, treasury bills, certificates of deposit, and joint venture certificates, so that they can make profit on the basis of entrepreneurship efforts of other parties, irrespective of whether or not their trade names contain the words described in paragraph 1 of this article or other words with the same or similar meaning, shall be deemed investment funds.

#### Article 3

**The Securities and Exchange Commission shall approve the establishment of investment funds and investment fund management companies.**

### II. INVESTMENT FUND

#### *Notion and Management of Investment Funds*

#### Article 4

(1) Investment funds (hereinafter: funds) are established for the purpose of pooling of monetary assets for investment purposes, collected from investors through public announcement and managed on behalf of investors by an investment fund management company.

(2) Investment funds may be established as open-ended or closed-end funds.

(3) Investment funds shall be established and managed by fund management companies (hereinafter: companies) in accordance with the fund Charter and the provisions of this Law.

## Establishment of Investment Funds

### Article 5

- (1) Open-ended funds shall be established by way of a public announcement for the sale of unit certificates.
- (2) Closed-end funds shall be established by way of a public announcement for the sale of shares.
- (3) A public announcement shall represent an open call to purchase units and subscribe for shares in open-ended and closed-end funds respectively.
- (4) The Securities and Exchange Commission (hereinafter: the Commission) shall determine the content of public announcements.**
- (5) Funds described in paragraphs 1 and 2 of this article shall be invested in securities and in cash deposits and the principles of profitability, liquidity and risk sharing shall be observed.

## Charter of a Fund

### Article 6

- (1) A fund's Charter shall regulate the activities of the fund and the legal status of the owners of units of an open fund or the shareholders of a closed-end fund, the legal relations of the fund with the fund management company and the depository bank, and other issues of interest necessary to accomplish the objectives of the fund.
- (2) The Commission shall approve the Charter of a fund and its amendments and addenda. The Commission shall decide on the approval of the Charter within 60 days from the day of receipt of a full request for the approval of the Charter and within thirty (30) days on the amendments and addenda. If the Commission fails to decide on the request for approval of the Charter within the determined period, the Charter shall be deemed approved.
- (3) The decision of approval of the Charter and its amendments and addenda shall be published in the "Official Gazette of the Republic of Macedonia".
- (4) A fund's Charter shall include provisions for:
  1. the trade name of the fund, the trade name of the fund management company and the trade name of the depository bank;
  2. the objectives of the fund;
  3. the investment objectives and principles;
  4. the type and main elements of the units or shares;
  5. the procedure and the conditions for issuance and/or sale of units or shares;
  6. the rules for computation and utilisation of revenues;
  7. the venue at which financial reports can be obtained;
  8. the rules for determining the net-value of the fund's assets,
  9. the method of calculating the issue and sale prices of units and shares;
10. the method of calculating the compensation fees and the expenses for the fund management company, the depository bank or third parties paid out of the fund's assets;
11. the legal status of unit or share holders;
- 12. the venue and the method of payment of proportion of the profits to unit holders or dividend to share holders;**
13. the amount of the basic capital and the rights and obligations of the fund management company;
14. the rights and obligations of the depository bank;

15. the method and the procedure for disseminating information to unit or share holders;

**16. the portion of the payments made by the unit or share holders to be used for covering the expenses for issuing unit or share certificates and the method of calculating these expenses;**

17. the report on the fund's development and structure and the venue and method of releasing this information;

18. the method of dividing the fund's profits;

19. the possibility to conclude option and term contracts and the application of similar risk hedging instruments and techniques;

20. the life of the fund.

(5) The Commission may from time to time set the rules for defining the narrow content of the items in paragraph 4 of this article.

## **Prospectus of a Fund**

### **Article 7**

(1) The Prospectus of the fund (hereinafter: the Prospectus) shall contain the information required in Article 6, detailed information and data on the fund's objectives and policy, as well as other information regarding the fund and able to affect the potential investor's investment decision. The Commission shall define the closer content of the prospectus by issuing rules.

(2) The prospectus and every amendment and addenda shall be approved by the Commission. The Commission shall give their opinion on the prospectus within sixty (60) days and on the amendments and addenda within fifteen (15) days from the day the request for approval was filed.

(3) The decision of the Commission approving the prospectus and every amendment and addenda shall be published in the "Official Gazette of the Republic of Macedonia".

(4) Fund management companies shall enter into the content of the prospectus each change that may affect investors' decisions, following the Commission's approval.

**(5) It is prohibited to enter into the prospectus false and inaccurate information which may mislead investors.**

## **Financial reports**

### **Article 8**

(1) Fund management companies shall prepare and distribute audited annual financial reports for each fund under their management.

(2) Fund management companies shall file with the Commission and distribute to members of the fund audited annual financial reports for all the funds under their management within three months following the adoption of the financial statement.

(3) One auditor or an auditing company may prepare four consecutive financial reports for one investment fund. One auditor or an auditing company may, in the course of one calendar year, prepare financial reports of no more than three funds.

**(4) Fund management companies shall also prepare quarterly financial reports for each fund under their management and shall file with the Commission and distribute these reports to members of the fund within two months following the end of the quarter.**

(5) The Commission creates a list of certified auditors who may audit the financial statements of investment funds and fund management companies.

## **Contents of a Fund's Financial Reports**

### **Article 9**

(1) Annual Financial Reports shall contain data on:

1. fund assets:
  - securities,
  - bank deposits,
  - other assets,
  - total assets,
  - liabilities, and
  - net asset value;
2. the number of unit certificates or shares issued;
3. the value of a single unit or share;
4. the security portfolio structure:
  - securities that are listed on the Stock Exchange;
  - securities that are traded on other regulated markets;
  - newly issued securities, if the issue terms include an obligation that an application for listing of the security on a Stock Exchange, money market or other regulated markets shall be filed.
5. For each type of security its share of total assets of the fund shall be presented, as well as data on structural changes in the security portfolio that have occurred during the period covered by the report.
6. the changes in revenues and expenses of the fund for the reporting period:
  - revenues from investments;
  - other revenues;
  - management expenses;
  - depository bank fees;
  - other expenses and fees;
  - net income;
  - distribution of the net income to unit certificate owners or the dividend to shareholders, as well as the reinvested profits;
  - **other changes related to the assets and liabilities of the fund.**
7. comparative analysis of activities for the last three years, whereby for the end of each financial year the following is reported:
  - total net asset value of the portfolio,
  - net asset value per unit,
  - market value of the shares of closed-ended funds
8. other data and information that provide investors with an accurate picture of the situation, development of the activity and performance results of the fund.

(2) The Commission may prescribe by regulation additional information to be included in the financial reports. Financial reports must be prepared to International Accounting Standards.

## **Reporting Obligation**

#### **Article 10**

**Fund management companies shall report to the Commission each development that would be significant to a reasonable investor's investment decision within three days of such development occurring. They shall distribute such reports to members of the fund at the same time the report is delivered to the Commission.**

#### **Delivery of the Prospectus and the Financial Statements**

#### **Article 11**

**Investors intending to purchase share certificate or subscribe for and purchase shares shall receive the prospectus free of charge at least 7 days before such purchase or subscription, an annual financial report verified by a certified auditor and quarterly financial reports of the fund released subsequent to the release of the prospectus and any report of a development of the type described in Article 10 that occurred subsequent to the preparation of the prospectus. If a development described in Article 10 occurs after the delivery of the prospectus, they shall also receive the report regarding such development.**

#### **Fund's Assets**

#### **Article 12**

- (1) Fund assets shall be composed of securities, cash deposits and other assets.
- (2) Securities shall be traded pursuant to the Law of Issuance and Trading with Securities.
- (3) Fund's assets shall be acquired in accordance with the provisions of this Law and the Charter of the fund.

#### **Securities Invested in by Funds**

#### **Article 13**

Securities invested in by the funds shall include:

1. securities listed or traded on a Stock Exchange or sold on the money market or other regulated market.
2. newly issued securities, if the issue terms include an obligation that an application for listing of the security on a Stock Exchange, money market or other regulated markets shall be filed.

#### **Investment Restrictions**

#### **Article 14**

- (1) Funds shall not invest more than 20% of their asset value in securities of one issuer. As an exception, funds may invest without any restrictions their total net asset values in debt securities issued by the Republic of Macedonia.
- (2) Funds may acquire a maximum of 20% of the total number of shares issued by a single issuer.
- (3) Funds may acquire a maximum of 15% of the total nominal value of the debt securities issued by a single issuer.**
- (4) Funds may acquire no more than an aggregate of 15% of the total number of shares issued by a single issuer and 10% of the total nominal value of the debt securities issued by a single issuer.**

**(5) Bank deposits and other monetary assets of a fund may not exceed 25% of the value of the fund assets.**

(6) Funds shall not invest in securities issued by the selected depository banks or affiliates of foreign depository banks or deposit funds in such institutions.

(7) Funds shall not invest in securities issued by other funds.

(8) Funds may exceed the limits imposed by paragraph 4 in cases of market turbulence, but must comply with such maximum once normal trading conditions return.

(10) The Commission with special rules shall set the conditions and the procedure for the manner of complying with the limits of investments in cases of a merger or integration of two or more funds, or a merger or integration of two or more issuers in which the fund has invested.

### **Borrowing**

#### **Article 15**

**For the purpose of meeting its liquidity needs, an investment fund may borrow on short term amounts of up to 5% of its assets value and any borrowings over 5% shall require a Commission approval.**

### **Calculating the Asset Value of a Fund**

#### **Article 16**

(1) The depository bank shall calculate the asset value of a fund on the basis of the value of fund's securities and its deposits in financial institutions, as well as the value of other assets, after subtracting the liabilities, using the methodology of valuation prescribed by the Commission.

### **Mandatory Disclosures**

#### **Article 17**

**(1) Fund management companies shall publish in one daily newspaper on each fund under their management:**

1. the public announcement;
2. within 1 day of its filing with the Commission, the financial statement of the fund,
3. daily, the value of the fund assets and of a single unit of the fund,
4. immediately, the suspension of redemption of unit certificates or payments for them.

(2) Daily, bid and offer and last and average traded prices of unit certificates, in the case of open-ended funds, or of shares, in the case of closed-ended funds, are announced on the Stock Exchange.

(3) Fund management companies shall publish in one daily newspaper on a regular basis and at least twice a month the issue and redemption prices of units of the funds under their management.

(4) Fund management companies shall, with no delay, also publish in the "Official Gazette of the Republic of Macedonia" and in one daily newspaper suspension of the redemption of units and their payments.

### **III. OPEN-ENDED FUND**

#### *The notion*

#### **Article 18**

(1) An open-ended fund is a separate property with no status of a legal entity, whose owners of unit certificates have the right to a proportionate part of the fund profits and the right to demand redemption of their unit certificates.

(2) Open-ended funds shall be registered in the registry administrated by the Commission and may commence their activities on the day of entry in the registry.

#### **Establishment of Open-ended Funds**

#### **Article 19**

(1) Fund management companies shall establish open-ended funds by adopting a Charter and preparing a Prospectus of the funds and by drawing a contract with a depository bank in accordance with the provisions of this law.

(2) Companies shall file a request with the Commission for approval of establishment of funds which includes:

1. name and address of the fund management company;
2. name of the open-ended fund; and

**3. reference number and date of the approval issued by the Commission for establishment of the company.**

(3) Companies shall file a request with the Commission for approval of establishment of funds along with:

1. the Charter and the Prospectus of the fund,
2. the agreement with the depository bank,
3. evidence that the company fulfils the operational requirements defined by this Law,
4. specimen of unit certificates, and
5. evidence that the fee for obtaining the approval for establishment has been paid.

(4) Companies may commence collection of cash assets through public sale of unit certificates after they have obtained approvals for establishment of funds.

(5) The Commission shall announce the approval for establishment of the fund in the "Official Gazette of the Republic of Macedonia".

#### **Charter of Open-ended Funds**

#### **Article 20**

In addition to the elements mentioned in Article 6 of this Law, the charter of an open-ended fund shall contain the following data:

1. the amount of expenses deducted when unit certificates are bought and when they are redeemed;
2. the conditions and the venue for payment of unit certificates at their redemption.

#### **Prospectus of Open-ended Funds**

### **Article 21**

In addition to the elements mentioned in Article 7 of this Law, the Prospectus of an open-ended fund shall contain the following data:

1. the procedure and conditions for redemption of and payment for unit certificates as well as the conditions under which the redemption and the payment can be suspended;
2. the determination of unit certificates price at their redemption,
3. the expenses incurred for redemption of and payment for the unit certificates,
4. the manner, place and frequency of publishing the prices and expenses,
5. the procedure and the place where the payment for unit certificates that are submitted for redemption is made.

### **Rights and Obligations of Owners of Unit Certificates**

#### **Article 22**

(1) Unit certificate owners shall become owners of portions of the fund's assets in proportion to the percentage of the purchased number of unit certificates.

(2) Unit certificates guarantee the rights of the unit certificates owners in relation to the fund. Unit certificates confer the following rights:

1. pro rata share of the fund's net earnings,
  2. redemption of unit certificates by the company, on owner's request;
  3. the right to a proportional share of the remainder of the bankruptcy estate.
- (3) Unit certificates are non-transferable except in events defined by the law.
- (4) Unit certificates may be issued for one or more units in a same fund and they must reflect the entire asset base of the fund. Unit certificates shall not confer different rights for individual owner of certificates.
- (5) The liability of owners of fund unit certificates shall be limited to the value of units they own. Fund management companies shall not be authorised to assume liabilities for the owners of fund unit certificates.

### **Contents of Certificates of Units in a Fund**

#### **Article 23**

Certificates of units in a fund shall contain:

1. a designation that it is a unit in an open-ended fund;
2. the name of the fund, the name and address of the fund management company;
3. the serial number of the unit certificate;
4. the number of units that the certificate represents;
  5. the name of the owner of the unit certificate, and a notice of the document's non transferability;
6. the obligations of the fund management company;
7. rights of the owner of the unit certificate;
8. the place and date of issue; and
9. the signatures of authorised persons from the fund management company and from the depository bank.

### **Issuance of Unit Certificates**



#### **Article 24**

- (1) Fund management companies may issue unit certificates after obtaining an approval from the Commission.
- (2) The sale price of unit certificates includes the amount for covering the expenses for issuance determined in the charter.
- (3) Unit certificates may be sold only for cash.
- (4) Unit certificates are handed upon payment of the full sale price. The money paid are included without delays in the assets of the fund after deduction of expenses mentioned in paragraph 2 of this Article. If unit certificates are issued and the value is not included in the fund's assets, the fund management company must compensate for the amount that is not included.
- (5) The fund management company shall maintain record of unit certificates issued.

#### **Redemption of Fund Unit Certificates**

#### **Article 25**

- (1) Each owner of unit certificates of the fund has a right to require redemption of the certificate as a way of exiting the fund. The price, which corresponds to the value of the unit, must be paid without deductions, unless such deductions are not strictly provided for in the Charter.
- (2) Documents of units in an open-ended fund are redeemed at a price equivalent to the value of the unit determined on the first day of estimation following the day of submission of the requirement of redemption of unit certificate.
- (3) Fund management companies may temporarily suspend redemption of certificates to protect the interests of unit certificate owners. The issue of new unit certificates is not allowed for the duration of the suspension. The company may suspend the redemption of unit certificates only after it has obtained an approval issued by the Commission and must inform in writing the owners of unit certificates thereof.
- (4) The Commission may order a fund management company to suspend the redemption of unit certificates and impose a temporary ban on issuance of new unit certificates if it will thus protect the interests of owners of fund unit certificates.
- (5) Owners of unit certificates may not exercise their right to redeem unit certificates within one year from the first public announcement for purchase of fund unit certificates, except in justified cases provided for in the Charter of the fund.
- (6) The company shall pay for the fund unit certificates within seven days from the day it has received the request for redemption.

#### **Distribution of Profits**

#### **Article 26**

- (1) The depository bank shall pay the income to the owners of unit certificates in proportion to their share of the assets of the fund at an order given by the fund management company. The income is paid out in accordance with the Charter of the fund.
- (2) The dividends or part of the dividends may be automatically reinvested at a written request made by the owners of unit certificates.

#### **Cancellation of Management and Dissolution of a Fund**

#### **Article 27**

(1) Fund management companies may cancel the management of a fund with a notice period of 6 months. The term starts from the day when the cancellation is announced in the "Official Gazette of the Republic of Macedonia". The company shall inform in writing all owners of unit certificates about the cancellation.

(2) In addition to cases defined by the law, the right of the fund management company to manage the fund shall also be suspended when the Commission cancels the Approval for conducting activities of the fund management company.

(3) If a fund management company terminates its activities, the depository bank cancels the contractual relationship with the company on behalf of the owners of unit certificates.

(4) With an approval from the Commission, the depository bank may also cancel the agreement if the fund management company is unable to fulfil its obligations, and in particular:

1. if 3 months after the announcement of the first public call for purchase of unit certificates of the open-ended fund the total amount of money raised and paid in stands below 2.000.000 DM in denar countervalue.

2. if the asset value of an open-ended fund has remained below 2.000.000 DM in denar countervalue for periods with aggregate duration of 6 months.

(5) If due to the cancellation or withdrawal of the approval, the fund management company loses the right to manage the fund, then the right to dispose of the assets of the fund shall be transferred to the depository bank until the date of transfer of the Fund into another company within 6 months.

(6) In cases explained in paragraphs 1 to 4 of this Article the depository bank shall dissolve the fund and distribute the assets to the owners of unit certificates within six (6) months from the day of cancellation. In the same period, with the approval from the Commission, the depository bank may cancel the dissolution of the fund in accordance with the Charter of the fund and assign the right to manage the fund to some other fund management company.

(7) Owners of unit certificates do not have the right to require dissolution of the fund.

### **Announcement of the Decision for Dissolution of a Fund and Legal Consequences**

#### **Article 28**

(1) The depository bank must without delay announce a decision for dissolution of an open-end fund in the "Official Gazette of the Republic of Macedonia" and in one daily newspaper, and also inform in writing all owners of unit certificates of the open-end fund.

**(2) Starting from the day when the decision for dissolution of the open-end fund is announced, the owners of unit certificates in the fund shall not be entitled to require a unit to be paid by redemption of unit certificates.**

(3) Issuance of unit certificates in the fund shall be forbidden as of the day the decision for dissolution of the open-ended fund has been made.

### **Conversion of Assets into Cash and its Distribution**

#### **Article 29**

Following the decision for dissolution of the open-ended fund, the depository bank shall convert all assets of the fund into cash. The depository bank shall pay out of this cash the fund management company for the expenses incurred for the management of

the fund, cover its own expenses incurred for the dissolution of the fund, which may not all together exceed 2% of the cash assets collected, and distribute the remainder amongst the owners of unit certificates in the open-end fund, in proportion to the share of fund assets that they represent. The Commission shall supervise and approve the manner of distribution of cash assets.

## **CLOSED-END FUND**

### *Notion*

#### **Article 30**

**(1) A closed-end fund is a joint-stock company established with a sole purpose of pooling money by way of public offer of its own shares and investing this money in securities.**

(2) The provisions of the Commercial Enterprise Law are applied to a closed-end fund unless otherwise provided for in this Law.

### **Establishment of a Closed-end fund**

#### **Article 31**

1. Closed-end funds shall be established and managed by fund management companies.
2. For the purposes of incorporating a closed-end fund, the fund management company shall adopt a Charter, prepare a Prospectus of the fund and enter into an agreement with a depository bank pursuant to the provisions of this Law.

(3) Fund management companies shall submit a request with the Commission for approval to incorporate a closed-end fund which shall contain:

1. name and address of the fund management company,
2. name and address of the closed-end fund,
3. number and date of the issued Commission approval for establishment of the fund management company,
4. first and family names, and address and the unique identification number for the natural persons who are the first members of the supervisory board and the first members of the managing board of the closed-end fund.
5. description of the qualifications of the first members of the supervisory board and all directors of the closed-end fund.

(4) The Request mentioned in paragraph 3 of this Article is shall be sent along with:

1. the fund's Charter;
2. the public offer and Prospectus of the fund;
3. the Decision for appointment of the members of the first supervisory board and the written statements of acceptance of the nominations by the members of the first supervisory board;
4. the agreement with the depository bank;
5. an excerpt from the court registry of the fund management company;
6. specimen of shares or share certificates, in compliance with the Law on Issuance and Trading of Securities, and subscription forms;
7. an evidence that the fee for obtaining the approval for establishment has been paid;
8. other documents, as may be requested by the Commission.

(5) The Commission shall publish the approval for establishment of a close-ended fund in the "Official Gazette of the Republic of Macedonia".

### **Article 32**

SEC also issues a permission for establishment of a closed-end fund, having assessed the elements prescribed in Article 31 Paragraphs 3 and 4, the supply and demand of finances, as well as the need of establishment of a Fund.

### **Charter of a Closed-end Fund**

#### **Article 33**

In addition to the elements defined in Article 6 of this Law, a Charter of a closed-end fund shall also contain:

1. the words "close-end fund" in the name of the fund ,
2. provisions for assignment of the right to manage the closed-end fund and of the voting rights conferred in the shares, and other rights arising from the assets of a closed-end fund managed by a fund management company,
- 3. the operational methods of the supervisory board of the fund.**

### **Basic Capital of a Closed-end Fund**

#### **Article 34**

- (1) The minimum nominal amount of the basic capital of a closed-end fund shall be 2.000.000 DM in denar countervalue.
- (2) The closed-end fund is obliged to maintain the amount of the basic capital equity from Paragraph 1 of this Article.
- (3) The closed-end fund may increase its basic capital by new issues of shares, subject to a Commission approval.

### **Shares of Closed-end Fund**

#### **Article 35**

- (1) Shares of closed-end funds shall be registered and transferable with no restrictions.**
- (2) Shares of closed-end fund shall be paid for by money and they must be paid in full prior to the closed-end fund's entry in the court registry.
- (3) Closed-end funds shall not acquire their own shares.
- (4) Shares issued contrary to paragraph 1 of this Article shall be deemed void. Any legal action with which closed-end funds acquire their own shares shall be rendered void.
- (5) The price of shares following the establishment of closed-end funds shall depend on their supply and demand ratio which shall be determined on the Stock Exchange or other regulated markets.

### **Subscription of Shares of Closed-end funds**

#### **Article 36**

- (1) Subscription of shares on the basis of public offer shall not commence prior to the Commission's approval for establishment of a closed-end fund.
- (2) Subscription and payment of the shares shall be made at the depository bank.
- (3) When subscribing for shares, subscribers make a statement that:**

1. they are informed of and approve the Charter and Prospectus of the closed-end fund,

1. they are giving the depository bank the power of attorney to keep their shares on their behalf and exercise the rights that they confer.

**(4) If a closed-end fund suffers a loss because of a subscriber's failure to pay for the subscribed shares, the fund management company shall be liable for such a loss.**

**(5) Shares of the closed-ended fund are recorded in a unit register, pursuant to the Law on Issuance and Trading in Securities, i.e. in the Central Share Registry.**

### **Closed-end Fund Establishment Expenses**

#### **Article 37**

**(1) The Charter of a closed-end fund may provide that the fund management company have the right to be reimbursed for the fund's establishment expenses out of the assets of the closed-end fund to the amount not exceeding 2% of the value of the basic capital of the fund.**

**(2) In cases described in paragraph 1 this article, the fund's Charter may provide that the establishment expenses be reimbursed to the company by being included in the sale price of the shares of the fund.**

### **Management of Closed-end Fund**

#### **Article 38**

(1) Fund management companies shall manage closed-end funds in the name and on behalf of the fund pursuant to the provisions of this Law and the Charter of the fund.

(2) Closed-end funds shall have a Supervisory Board and a Shareholders Assembly.

(3) The Supervisory board of a closed-end fund shall have a minimum of three (3) members. Supervisory board members shall be elected by the company's shareholders assembly on the basis of their renowned expertise. A Supervisory Board member may not be a member of the management boards or of the supervisory boards in the fund management company or in the depository bank, or in employment with them, or members of more than two supervisory boards.

### **Reporting**

#### **Article 39**

(1) Fund management companies must report at least once a month to the closed-end fund supervisory board about the securities sold and bought in the name and on behalf of the fund, as well as about the fund's revenues.

(2) On the request of the supervisory board of the closed-end fund, the fund management company must give reports about the state of the securities market and about other circumstances relevant for assessment of the investment policy.

### **Division of Profits**

#### **Article 40**

**(1) Fund management company shall propose to the assembly of the fund a distribution of profits of the closed-end fund and pursuant to the assembly's**

**decision, order the depository bank to disburse the profit to the shareholders of the closed-end fund.**

**(2) Profit is distributed in accordance with the Charter of the fund and the decision of the closed-end fund's assembly.**

### **Withdrawal and liquidation**

#### **Article 41**

(1) Fund management company may withdraw from the management of the fund with a six month notice. The assembly of the closed-end fund may also withdraw from the management of the fund with the same notice. The withdrawal shall take legal effects from the day the Commission issues an approval to another fund management company to manage the fund at the request of the supervisory board of the closed-end fund.

(2) Fund management company shall also lose the management right on the day of initiation of a bankruptcy procedure against the company, as well as on the day when the ruling of the Commission on withdrawal of the approval for the activity of the company becomes effective.

(3) In cases included in paragraph 2 of this Article, the rights to manage and dispose of the assets of the closed-end fund shall be assumed by the depository bank until the date of transfer of the fund into another company within 6 months.

(4) Fund management company must, within seven days of receipt of the Commission's decision on withdrawal of the approval for management of the closed-end fund, or after the day of initiation of a bankruptcy procedure against the company, assign all management activities of the fund to the depository bank.

(5) The closed-end fund assembly may decide to assign the right to manage the fund to another fund management company with a six (6) month notice.

(6) If the fund management company mentioned in paragraph 5 of this Article fails to submit a request for approval to manage the fund, the depository bank shall submit a proposal for an opening of a liquidation procedure to the court with competent jurisdiction.

## **V. FUND MANAGEMENT COMPANY**

### *Notion*

#### **Article 42**

(1) A fund management company is a joint-stock company in the context of the Law on Trade Companies, with a sole activity of establishing and managing of funds, in its name and on behalf of open-end fund unit certificate owners and in the name and on behalf of shareholders of closed-end funds.

(2) One company may manage several funds.

### **Charter of Fund Management Company**

#### **Article 43**

1. In addition to the provision of the Law on Trade Companies pertaining to the Company's Charter, the Charter of a fund management company shall also contain:

-the method of investing own assets,

- establishment and management of funds, or investing money in its name and on behalf of an open-ended fund or in the name and on behalf of the closed-end fund, and
- other issues.

**(2) The Commission shall give its opinion on the Charter and the amendments and addenda thereto within 60 and 30 days respectively. If the Commission fails to make a decision regarding the request for approval of the Charter within the deadline, it shall be considered approved.**

### **Approval for Commencement of Company's Activities**

#### **Article 44**

(1) Fund management company may commence its activities after it has obtained an approval from the Commission. The Commission shall issue the approval if the company attaches to the request for approval proof that the following conditions are satisfied:

1. the amount of paid in basic capital at the moment of submission of the request for approval is not less than 500.000 DM in denar countervalue t the middle rate of the National Bank of the Republic of Macedonia if the company intends to manage one fund only. If the company is established for management of several funds, the basic capital shall be enlarged for the amount of 250.000 DM in denar countervalue for each following fund.
2. company can observe the personnel, technical and organisational standards narrowly defined by the Commission.
3. members of the management body in the company shall have the approval of the Commission to manage and govern the company. Persons:
  - sentenced for a criminal offence – initiation of false bankruptcy, acting against the obligation to maintain the business books, causing damage to creditors, awarding privileges to creditors, malpractice during mandatory settlement and bankruptcy procedures, unauthorised disclosure or acquisition of business secrets or fraud, for a period of five years after the verdict has become final, exclusive of the time served for the punishment, or
  - who has been banned from practising a profession which is entirely or in part in the domain of the principal activity of the company, for the duration of the ban may not be members of the company's management, persons involved in the management of the fund or persons employed by the funds;
4. to have adopted a Charter;
5. to have designated an authorised auditor; and
6. to have paid the prescribed fee for obtaining an Approval from the Commission.

(2) The Commission shall decide on the Request for Approval within 60 days from the day the complete request is submitted. SEC issues a permission for establishment of a fund, having assessed the elements in the feasibility study, the demand and supply of finances, as well as the need of establishment of a Fund If the Commission fails to make a decision on the Request for Approval of the activity within this period, the Request shall be considered to have been approved.

**(3) The Fund Management Company shall commence operation within 6 months after receipt of the Approval for Commencement.**

## **Activity of the Company**

### **Article 45**

(1) The company shall manage the fund's assets with due care, independently of the depository bank, and exclusively in the interest of the fund unit owners or shareholders pursuant to the fund's Charter and the provisions of this Law.

(2) The founders of the company, the members of managing board and supervisory board, and all persons employed in it or carrying out some permanent or temporary activities under a separate contract, shall maintain the confidentiality about the activities of the company pursuant to the Law and the company's Charter.

(3) The data about the owners of unit certificates and shares, about the payments and disbursements, are business secret and may only be announced with a court order.

(4) The provisions in paragraphs 2 and 3 of this Article do not refer to the obligation of the company to provide data and reports to the Commission and the central depository institution in order that they may supervise the activities of the company and keep records of shares respectively.

## **Maintaining and Reporting of Company's Assets**

### **Article 46**

(1) Company's assets shall be maintained and reported separately from the managed fund's assets.

(2) In case of termination of the fund management company, the assets and the rights owned by the investment fund shall be at the disposal of investors through the depository bank.

(3) Debts of the fund management company born out of financial transactions related to the company's own assets shall not be settled from the investment fund's assets.

## **The Right to Disposal and Constrains**

### **Article 47**

(1) Company shall dispose with the assets of the open-ended fund in its name and on its behalf and in the name and on behalf of the closed-end fund to use the latter's assets pursuant to the provisions of this Law and of the Charter of the fund and exercise all the rights that are derived from them, subject to the following constraints:

1. the company shall neither approve money loans on behalf of the owners of an open-ended or a closed-end fund, nor assume contractual obligations to provide any kind of guaranty;

2. assets owned by the fund must not be pledged as any kind of security and the ownership right over them must not be transferred in order to secure the creditors' claims. Legal actions contrary to this provision shall have no legal effect for open-end fund's unit certificates owners or closed-end fund's shareholders; and

3. the company shall not sell securities either on behalf of the open-end fund unit certificate owners, or in the name and on behalf of the closed-end fund shareholders, if at the moment of conclusion of the deal these securities do not constitute part of the fund's assets.

(2) The transaction which violates the restriction of Paragraph 1 Item 3 of this article shall be void.

(3) Persons described in Article 45 paragraph 2 of this Law shall not buy assets in the fund which is selling the fund management company on behalf of the fund.



## Representation of Company in Legal Affairs

### Article 47

- (1) Companies shall act in their name and on behalf of the open-ended fund's unit certificate owners and in the name and on behalf of the closed-end fund shareholders.
- (2) Companies shall have the exclusive right to exercise the right to vote conferred in shares and any other rights arising from the securities which make up the fund's portfolio.
- (3) Companies settle their compensation fee for the claims towards expenses incurred for conducting activities on behalf of open-ended fund's unit certificate owners and on behalf of the closed-end fund out of the assets of the fund in accordance with the provisions of the fund's Charter.
- (4) Such amounts of compensation as described in paragraph 3 of this article must be previously disclosed in the relevant fund's prospectus.**
- (5) A Company shall collect any claims that the open-end unit certificate owners and the closed-end fund may have against the depository bank.

## Liability of a Company

### Article 49

- (1) A company shall be liable for carrying out the fund management activities pursuant to the provisions of this Law and the Charter of the fund. The company shall be liable for the damage caused to open-ended fund's unit certificate owners or the closed-end fund shareholders and for actions performed contrary the to provisions of this Law and the fund Charter .**
- (2) The company shall be liable to the extent of its full asset base for the legal actions concluded in its own name and on the behalf of the open-ended fund's unit certificate owners and in the name and on behalf of the closed-end fund.
- (3) Third parties may not have their claims against the company settled out of the fund assets.

## Investment Restrictions

### Article 50

- (1) A company shall neither directly nor indirectly acquire unit certificates of open-ended funds under its management.
- (2) At the stage of establishment of a closed-end fund, the company may acquire and pay for shares in the closed-end fund. The value and the method of payment for the shares of the company in the closed-end fund is regulated in rules issued by the Commission. Following the completion of establishment of the fund, the company may no longer acquire new shares in the closed-end fund.**
- (3) The company shall not sell the shares mentioned in Paragraph 2 of this Article for as long as the closed-end fund remains under its management.

## Fund Management Expenses

### Article 51

- (1) The following expenses may be claimed against the fund assets:

1. management fee,
2. depository bank fees and possibly fees for other parties;
3. expenses related to the acquisition and sale of assets owned by the fund;
4. expenses for announcements;
5. expenses for printing unit certificates and share subscription forms;
6. expenses for issuing unit certificates and shares;
7. expenses for unit certificates redemption; and
8. other expenses stipulated in the Charter of the Fund.

(2) The management fee mentioned in paragraph 1 line 1 of this Article shall not exceed 2% on an annual basis of the total value of fund's assets while the issue expenses mentioned in paragraph 1 lines 6 and 7 shall not be higher than 5% of the value of the units and shares.

## **VI. DEPOSITORY BANK**

### *Definition*

#### **Article 52**

(1) Depository bank is a bank selected by the company and which conducts activities defined in Article 53 of this Law on the basis of a contract made with the company and on the latter's order.

(2) Depository banks of investment funds may only be banks with the head office on the territory of the Republic of Macedonia or the branch of a foreign bank.

(3) A bank - founder of a fund management company may not be a depository bank of that company.

(4) The selection of a depository bank and each change shall be subject to approval issued by the Commission after a previously obtained consent from the National Bank of the Republic of Macedonia. The contract concluded between the company and the depository bank and its alteration and amendments shall become effective on the day the Commission issues the approval.

**(5) The Commission shall issue the approval from Paragraph 4 of this article within 30 days.**

(6) The company and the depository bank must act independently and exclusively in the interest of the owners of units and shares when fulfilling their obligations.

### **Depository Bank's Activities**

#### **Article 53**

(1) In addition to acting as the custodian of the fund's assets, a depository bank shall conduct the following activities:

1. ensures that funds generated from the sale of fund units or fund shares are deposited immediately in a separate account of the fund held with the bank;
2. issues unit certificates, accepts redeemed unit certificates, makes payments to the unit certificate owners and pays out the share of the fund's profits;
3. determines the value of an individual unit of the fund;
4. disburses dividends to shareholders;
5. executes orders given by the company, if they are compliant with the Law and the Charter of the fund,

6. ensures that the revenues of the fund are used in accordance with a Law and the Charter of the fund,

7. carries out liquidation and other activities in accordance with the contract mentioned in Article 52 line 1 of this Law.

(2) Depository banks shall execute the satisfaction of claims in its name and on behalf of unit certificate owners and in the name and on behalf of share holders against the fund management company. This shall not deny the unit certificate owners the right to seek realisation of their claims on their own.

### **Depository Bank Liability**

#### **Article 54**

(1) The depository banks shall carry out with due care and diligence activities they are authorised to perform pursuant to the contract made with the company.

(2) A depository bank shall be liable to the company, to the open-ended fund unit certificate owners and to the shareholders of a closed-end fund for the damage caused by non-performance or by an inappropriate performance of the activities stipulated in the contract mentioned in Article 52 paragraph 1 of this Law.

## **VII. CONTROL**

### **Securities and Exchange Commission**

#### **Article 55**

(1) The Commission shall conduct control over activities of investment funds, fund management companies and depository banks associated with investment fund activities.

(2) Depository banks shall immediately inform the Commission about the confirmed irregularities in the activity of the company. Depository Banks shall also provide information upon the Commission's request.

(3) The Commission shall adopt regulations for carrying out control over activities of the fund management companies, funds and depository banks.

(4) The Commission shall be entitled to inspect without any restrictions books and other documents of fund management companies, investment funds and depository banks which pertain to the activities of investment funds.

(5) The costs of the control shall be borne by the fund management companies.

### **Competencies of the Commission**

#### **Article 56**

(1) If the Commission's findings of the control described in Article 55 of this Law show irregularities in activities or in keeping business books, it shall pass a decision to instruct the company and/or the depository bank to remove the confirmed irregularities within a certain period which may not be longer than thirty (30) days.

(2) A Company and/or the depository bank shall remove the irregularities within the period determined in paragraph 1 of this Article and inform the Commission by providing evidence that the shortcomings or the irregularities have been removed or rectified. The Commission may withdraw the approval for establishment of a fund management company issued to the company if within the specified period the company fails to remove the shortcomings and irregularities.

(3) The Commission dispossesses the approval for establishment of the fund management company, in case:

1. the company fails to commence operations within six months from the date of issuance of the approval;
2. the company ceases its operations;
3. the company obtains an approval by presenting false information;
4. the conditions defined in article 44 line 1 herein cease to exist; and
5. the company fails to remove the irregularities or shortcomings or fails to notify the Commission thereof within the period set forth in line 1 of this article.

### **Disclosure Obligation**

#### **Article 57**

**(1) Fund management companies shall inform the Commission on a regular basis about their financial standings, any alterations of the Charter, investments of their own capital in other legal entities, change of shareholders, current liquidity problems and other facts that may facilitate the supervision over a company's activities in accordance with this law.**

(2) Companies shall submit to the Commission their annual financial reports, prospectuses of investment funds under management and any alterations in them, as well as annual financial statements of these funds verified by a certified auditor.

(3) The Commission shall define the methods and the conditions for submission of the information explained in paragraphs 1 and 2 of this article.

### **Application of the Law on General Administrative Procedure**

#### **Article 58**

(1) The Law on General Administrative Procedure shall be applied in the procedure of issuing the approval for establishment of investment funds, establishment of fund management companies and selection of the depository bank, unless otherwise provided for in this law.

(2) An appeal against the decision taken by the Commission in the administrative procedure, may be filed at the Government of the Republic of Macedonia.

## **VIII. PENALTY PROVISIONS**

#### **Article 59**

(1) A fund management company shall be fined for a violation with 50.000 to 300.000 denars if:

1. it has no Commission approval (article 3);
2. the Prospectus contains false and incorrect information (article 7 line 5);
3. it has failed to submit financial reports to the Commission (article 8, paragraph 4);
4. it has failed to report to the Commission and to the members of the fund any developments that affect the investor's investment decision (article 10);
5. it has failed to give the documents prescribed with article 11 to investors intending to purchase share certificates or subscribe for and purchase shares;

6. it has failed to observe the restrictions on investments determined in Article 14;
  7. it obtains a short-term loan contrary to article 15;
  8. it fails to publish the data for each investment fund under its management in accordance with Article 17;
  9. it has established a fund contrary to the provisions of Article 19 paragraph 2 and 3 and Article 31 paragraph 2 and 3;
  10. the open-ended fund unit certificates do not contain the data required by Article 23;
  11. it carries out the disbursement of the redeemed units with deductions that are not explicitly specified in the Charter , or if it issues new unit certificates during the suspension of unit certificate redemption, or if it fails to inform the Commission about a the suspension of unit certificate redemption (Article 25)
  12. it fails to publish it in the "Official Gazette of the Republic of Macedonia" the cancellation of the fund management and to inform the owners of unit certificates thereof (Article 27);
  13. it fails to maintain the basic capital prescribed in Article 34;
  14. issues shares of a closed-end fund contrary to the provisions of Article 35;
  15. conducts subscription of shares contrary to Article 36;
  16. it fails to transfer the management of the assets of a fund to the depository bank within 7 days from the day it has received the decision of the Commission on withdrawal of the approval for managing the closed-end fund or from the day a bankruptcy procedure has been initiated (Article 41 paragraph 4),
  17. it has commenced operations before obtaining the Approval from the Commission (Article 44 paragraph 1 ),
  18. it fails to administer and present the company's assets separately from the fund's assets (Article 46 paragraph 1),
  19. it uses and disposes of the assets owned by the fund contrary to Article 47,
  20. it calculates the fund management fees against the assets of the fund contrary to Article 51; and
  21. it fails to inform the Commission as required by Article 57.
- (2) An authorised person in the company shall be fined 10.000 to 30.000 denars for a violation defined in paragraph 1 of this Article.

### **Article 60**

- (1) A depository bank shall be fined for a violation with an amount of 100.000 to 300.000 denars if:
1. it fails to dissolve the fund and distribute the fund's assets to its owners within three months or if, within the same period, it transfers the right to manage the assets of the fund to another company without the Commission approval (Article 27 paragraph 6),
  2. it fails to announce the decision to dissolve an open-ended fund in accordance with Article 28 paragraph 1; and
  3. it fails to submit to the court a proposal for initiating a liquidation procedure in accordance with Article 41 paragraph 6.
- (2) An authorised person in a depository bank shall be fined 10.000 to 30.000 denars for a violation defined in paragraph 1 of this Article.

## **IX. TRANSITORY AND FINAL PROVISIONS**

### **Article 61**

- (1) Legal entities conducting investment fund management activities until the day this law comes into force and legal entities with trade name containing the words and terms explained in Article 2 of this Law shall bring their operations and documents in compliance with the provisions of this Law and submit to the Commission a request for approval to continue their activities not later than six (6) months from the day this Law has come into force.
- (2) If legal entities described in paragraph 1 of this Article fail to bring their operations and documents in compliance, they shall cease to exist by legal force of this Law after the determined period has expired.
- (3) The Commission sets the rules and directions for implementation of this law.

### **Article 62**

This Law shall come into effect on the eighth day from the day it was published in the "Official Gazette of the Republic of Macedonia".