

# THE CROATIAN PARLIAMENT

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Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

## DECISION

### PROMULGATING THE ACT ON VOLUNTARY PENSION FUNDS

I hereby promulgate the Act on Voluntary Pension Funds passed by the Croatian Parliament at its session on 31 January 2014.

Class: 011-01/14-01/36

Reg. No: 71-05-03/1-14-2

Zagreb, 5 February 2014

The President of  
the Republic of  
Croatia

Ivo Josipović, m.  
p.

## ACT

### ON VOLUNTARY PENSION FUNDS

#### PART ONE

#### *General provisions*

##### Article 1

This Act regulates the requirements for the establishment and operation of voluntary pension funds under voluntary pension insurance based on individual capitalised savings, the establishment and operation of pension companies managing voluntary pension funds, the delegation of functions to third parties, supervision of the business and operations of voluntary pension funds, pension companies managing voluntary pension funds and depositaries of voluntary pension funds.

#### *Transposition of European Union legislation*

##### Article 2

This Act transposes the following directives into the legal system of the Republic of Croatia:

- Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ L 178, 8.7.1988);
- Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ L 209, 25.7.1998);
- Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003), as last amended by Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings (OJ L 145, 31.5.2013);
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006);
- Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (OJ L 335, 17. 12. 2009);
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010).

### *Definitions*

#### Article 3

For the purposes of this Act, the following definitions shall apply:

1. *Pension company* means a legal person with a registered office in the Republic of Croatia that pursues, on the basis of authorisation granted by the Agency, the business of management of a voluntary pension fund.
2. *Fund* means a voluntary pension fund which may be established, on the basis of authorisation granted by the Agency, by a pension company, a company managing mandatory pension funds or a company managing UCITS funds, and which is managed by one of these companies in its own name and for the joint account of fund members in accordance with the provisions of this Act (hereinafter: fund). A fund may be a closed-end or open-end fund.
3. *Open-end fund* means a voluntary pension fund that can be joined by any natural person under the conditions provided for in this Act.

4. *Closed-end fund* means a voluntary pension fund that can be joined, under the conditions provided for in this Act, by natural persons who are employed by an employer or who are members of a trade union, members of an association of the self-employed, or self-employed persons.

5. *Closed-end pension fund with defined benefits* means a closed-end fund that covers against biometric risks or guarantees either an investment performance or a given level of benefits, provided that the establishment of such funds is permitted by the legislation of the home Member State.

6. *Mandatory pension fund* means a fund established in accordance with the law governing the establishment and operation of mandatory pension funds under mandatory pension insurance on the basis of individual capitalised savings.

7. *Member of a pension company* means a stockholder or shareholder in a pension company.

8. *Fund member* means a person who joined a fund under a membership contract concluded with a pension company and who is entered in the register of fund members, and who is thus entitled or will be entitled to a pension, in accordance with the provisions of the pension scheme, this Act and other acts.

9. *Self-employed person* means a person pursuing a self-employed activity such as crafts or an activity considered to be equivalent to crafts, including members of the liberal professions, farmers and others, or a person who is self-employed within the meaning of the relevant legislation of another Member State.

10. *Pension company from another Member State* means an institution, irrespective of its legal form, which is authorised by the competent supervisory authority of that Member State, operates on the basis of payments collected from its members and is independent of any sponsor.

11. *Home Member State* means the Member State in which a pension company has its registered office or, if it does not have a registered office, the Member State in which the pension company performs its main business activity.

12. *Host Member State* means the Member State which is different from the home Member State and whose social and labour law relevant to the field of pension schemes is applicable to the relationship between the sponsor and members of a closed-end fund.

13. *Member State* means a member state of the European Union or a signatory state to the Agreement on the European Economic Area.

14. *Third country* means a country that is not a member state of the European Union or a signatory state to the Agreement on the European Economic Area.

15. *Closed-end fund in another Member State* means a closed-end fund established for the purposes of a sponsor from that Member State.

16. *Posted worker* means a person who is posted to work in another Member State and who, during the period of work in the State concerned, continues to be subject to the Croatian legislation on pension insurance.

17. *Pension* means a periodic payment of money by a pension insurance company or by a fund to a person who is entitled to it after having satisfied the requirements of this Act, made either for life or for a temporary period.

18. *Pension beneficiary* means a person who receives a pension in accordance with this Act.

19. *Personal account* means the account maintained by the pension company and opened in the name of a fund member in a selected fund, on which payments and all changes in the personal assets of the fund member during the period of individual capitalised savings are recorded.

20. *Transfer of an account* means the transfer of assets held in the personal account of a fund member from one fund to another.

21. *Exit fee* means a fee charged to a member for switching from one fund to another.

22. *Sponsor* means a legal or natural person, including trade unions and employers and associations of the self-employed, who participates in any way in establishing a closed-end fund and pays contributions to a closed-end fund on behalf of fund members.

23. *Pension scheme* means all the rules, regulations, agreements, contracts or declarations governing reciprocal rights and obligations for the acquisition of the right to a pension under voluntary pension insurance based on individual capitalised savings.

24. *Biometric risks* means risks linked to death, disability and longevity.

25. *Qualifying holding* means any direct or indirect holding in a pension company that represents 10 % or more of the share capital or of the voting rights or a smaller percentage which makes it possible to exercise a significant influence over the management of the pension company. When calculating the proportion of the voting rights, the provisions of the law governing the capital market shall apply accordingly.

26. *Close links* means a situation in which two or more natural or legal persons or entities are linked in one of the following ways:

a) by participation relationship;

b) by control relationship.

27. *Participation* means participation of a person in another legal person if:

a) the person has direct or indirect investments on the basis of which he or she owns 20 % or more of the capital or voting rights of that legal person, or

b) the person owns less than 20 % of the capital or voting rights of that legal person, which has been acquired with the intention to make it possible, through permanent links with that legal person, to exercise influence over its operation.

28. *Control* means the relationship between a parent company and a subsidiary or a similar relationship between any natural or legal person and a company.

For the purposes of this item:

a) a subsidiary company of a subsidiary company is also considered a subsidiary of the parent company which is at the head of those companies;

b) a situation in which two or more legal or natural persons are permanently linked to one and the same person by a control relationship shall be regarded as constituting a close link between such persons.

29. *Related person* means, with respect to a legal or natural person pursuant to this Act:

– a person holding more than 10 % of issued stocks or shares and decision-making rights, or equity interests in another person – entity or who, although holding a smaller percentage than this, can influence, directly or indirectly, the decisions made by another person – entity, up to the third degree of relationship based on the vertical chain of ownership of stocks, shares or decision-making rights;

– a person in which another person – entity referred to in the preceding indent holds, directly or indirectly, more than 10 % of issued stocks or shares and decision-making rights, or equity interests or who, although holding a smaller percentage than this, can influence, directly or indirectly, the decisions made by such a person, up to the third degree of relationship based on the vertical chain of ownership of stocks, shares or decision-making rights;

– any other person – entity in which a stockholder or a shareholder holds, directly or indirectly, more than 10 % of stocks or shares and decision-making rights, or equity interests, if at the same time that stockholder or shareholder also holds, directly or indirectly, more than 10 % of stocks or shares and decision-making rights, or equity interests in the first entity, up to the third degree of relationship based on the vertical chain of ownership of stocks, shares or decision-making rights;

– any natural person or persons who can influence, directly or indirectly, the decisions made by another person – entity;

– any member of the management, the supervisory board or of another body of another person – entity which makes decisions and exercises supervision;

– in relation to any person listed above, the spouse or a relative to the second degree inclusive.

The concept of “relatedness” means the relatedness between the first and the second entity, then the relatedness between the second and the third entity and the relatedness between the third and the fourth entity. The relatedness between the fourth and any further entity shall not be regarded as relatedness to the first entity.

For the purposes of this Act, persons linked by close links, relevant persons and persons with whom a relevant person has a family relationship shall also be considered to be related persons.

30. *Relevant person* in relation to a pension company means:

- a) a person in a managing position in the pension company or a person who is a member of the pension company, a member of the supervisory board or a procurator of the pension company;
- b) a person in a managing position or a person who is a member of the company in each legal person authorised to offer pension schemes;
- c) an employee of the pension company, an employee of the legal person to which the management company has delegated its functions or an employee of the legal person authorised to offer pension schemes, who is involved in the activities carried out by the pension company;
- d) any other natural person whose services are placed at the disposal and are under the control of the pension company and who is involved in the activities carried out by the pension insurance company.

31. *Person with whom a relevant person has a family relationship* means:

- a) the spouse of the relevant person or any other person considered by national law as equivalent to a spouse;
- b) a dependent child or stepchild of the relevant person;
- c) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned.

32. *Transferable securities* means those classes of securities which are negotiable on the capital market, such as:

- a) shares and other securities equivalent to shares, which represent a share in the capital or membership rights in a company, and depositary receipts in respect of shares;
- b) bonds and other forms of securitised debt, including depositary receipts in respect of such securities;
- c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities, indices or other measures.

For the purposes of this item, instruments of payment are not deemed to be transferrable securities.

33. *Money market instruments* means financial instruments, excluding instruments of payment, which are normally dealt in on the money market, such as treasury bills, commercial

papers, certificates of deposit and bankers' acceptances, which are liquid and have a value which can be accurately determined at any time.

34. *Depository* means a credit institution or a branch of a credit institution entrusted with the duties provided for by the provisions of Article 247 of this Act.

35. *Auditor* means an independent external certified auditor as defined by the legislation governing auditing.

36. *UCITS fund* (Undertakings for Collective Investment in Transferable Securities) means an investment fund defined by the law governing the establishment and operation of open-end investment funds with a public offering.

37. *Alternative investment fund* means an investment fund defined by the law governing the establishment and management of alternative investment funds.

38. *Without delay and/or immediately* means taking certain action or closing a deal no later than the next business day.

39. *Authorisation* means a positive decision of the Agency on the application that has been submitted, which is always sought and issued prior to taking certain actions or concluding a deal, as prescribed by this Act.

40. *Competent authority* means the authority of a Member State which is responsible, under the laws of that Member State, for supervising activities relating to the provision of supplementary pension scheme services.

41. *Agency* means the Croatian Financial Services Supervisory Agency, whose responsibilities and scope of activities are prescribed by the Act on the Croatian Financial Services Supervisory Agency and by this Act.

42. *European Insurance and Occupational Pensions Authority – hereinafter: EIOPA* is the European Supervisory Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010).

*Prohibition to carry out the activities of offering and management without authorisation of the competent authority*

#### Article 4

(1) No person may establish or manage a fund unless the person has obtained authorisation to do so from the Agency or the competent authority of another Member State.

(2) Only the persons referred to in Article 149 of this Act may carry on the activities of offering pension schemes.

#### *Tax status of a fund*

## Article 5

The tax status of a fund shall be determined in accordance with special regulations and international agreements applicable in the Republic of Croatia.

### *Application of other legislation*

## Article 6

The provisions of the act governing the establishment and operation of companies shall apply *mutatis mutandis* to the operation of pension companies, unless otherwise provided for in this Act or other legislation.

### *Register of pension companies and register of funds*

## Article 7

(1) Pension companies to which authorisation for the establishment and operation has been granted by the Agency shall be registered in the register of pension companies, and funds in respect of which pension companies have been granted authorisation by the Agency shall be registered in the register of funds. Both registers shall be kept by the Agency.

(2) Pension companies and funds and all the information required by this Act and by the ordinance referred to in paragraph 6 of this Article as well as any changes in that information shall be entered in the register of pension companies and in the register of funds respectively.

(3) The Agency shall publish on its website the information contained in the register of pension companies and in the register of funds.

(4) The register of pension companies shall also indicate the Member States in which the pension company is operating.

(5) The Agency shall submit to EIOPA the information referred to in paragraph 4 of this Article.

(6) The Agency shall issue an ordinance prescribing the content and manner of keeping the two registers referred to in paragraph 1 of this Article, as well as the information that is to be published on the Agency's website in accordance with paragraph 3 of this Article.

(7) If an authorisation to establish and operate a pension company ceases to be valid, the Agency shall remove the pension company from the register of pension companies on a declaratory basis.

(8) If a fund ceases to exist (due to a status change or liquidation), the Agency shall remove the fund from the register of funds on a declaratory basis.

## Article 8

The Agency shall also publish on its website a list of all pension companies from other Member States that provide their services or carry out their activities in the territory of the

Republic of Croatia, and of their branches, as well as a list of closed-end funds from other Member States that offer pension schemes in the Republic of Croatia.

## PART TWO

### PENSION COMPANY

#### *Form of the pension company*

##### Article 9

(1) A pension company shall be established and operate as a limited liability company or a joint-stock company with a registered office in the Republic of Croatia, in accordance with the provisions of the law governing the establishment and operation of companies.

(2) A pension company may not issue preferred stocks.

(3) A pension company shall ensure that all stockholders or shareholders are treated in an equal manner and shall not award any additional rights or privileges to them, nor limit their rights or impose on them additional responsibilities.

#### *Name of the pension company*

##### Article 10

(1) The name of a pension company shall contain the words “voluntary pension funds management company”, or the words “voluntary pension fund management company”. These words may only be used by companies that have obtained the Agency's authorisation to establish and operate a pension company, or an authorisation from the competent authority of a Member State.

(2) If the pension company's authorisation to conduct business ceases to be valid, the pension company must immediately change its name by removing from it the words referred to in paragraph 1 of this Article.

#### *Activities of the pension company*

##### Article 11

(1) The activities of a pension company shall be as follows:

1. core activities:

a) establishment and management of funds (hereinafter: management of funds);

b) establishment and management of UCITS funds, if it is allowed by the law governing the establishment and management of open-end investment funds with a public offering (hereinafter: management of UCITS funds);

2. ancillary activities.

(2) Management of funds shall comprise:

1. establishment of funds;
2. managing the assets of funds, and
3. administrative tasks.

(3) The administrative tasks referred to in paragraph 2, item 3 of this Article shall include:

1. legal and accounting services relating to management of funds;
2. sale and promotional activities relating to voluntary pension insurance;
3. receiving and processing inquiries from fund members;
4. valuation of assets and determining the price of units in funds;
5. regulatory compliance monitoring;
6. settlement of contractual obligations;
7. keeping business records;
8. maintaining a register of members, when applicable;
9. transferring members' personal assets under the conditions set out in this Act;
10. paying out pensions;
11. disclosures and notifying fund members.

(4) The ancillary activities referred to in paragraph 1, item 2 of this Article shall include safekeeping and administration in relation to units in UCITS funds.

(5) A pension company shall not carry out other activities than those specified in paragraph 1 of this Article.

(6) A pension company may only delegate to third parties the administrative tasks referred to in paragraph 3, items 2, 3, 7, 8 and 11 of this Article, in accordance with the provisions of this Act.

### *Cross-border activities*

## Article 12

(1) A pension company that has its registered office in the Republic of Croatia may, either through a branch or directly, manage a closed-end fund sponsored by one or more sponsors

from another Member State, and in doing so it shall comply with the labour and social security legislation of the host Member State of the fund.

(2) A pension company that has its registered office in the Republic of Croatia shall notify the Agency of its intention to accept sponsorship of closed-end funds from any new sponsor from another Member State.

(3) In order to be complete, the notification referred to in paragraph 2 shall contain the following information:

1. the host Member State of the fund;

2. the full name of the sponsor;

3. the main characteristics of the pension scheme to be managed for the sponsor.

(4) Within three months of receiving the complete notification referred to in paragraph 2 of this Article, the Agency shall communicate it to the competent authority of the fund's host Member State and inform the pension company accordingly.

(5) By way of derogation from paragraph 4 of this Article, if, on the basis of the information contained in the notification referred to in paragraph 3 of this Article and/or data and information available to the Agency, there are reasonable grounds to suspect that the administrative structure or the financial situation of the pension company or the good repute and professional qualifications or experience of the members of the pension company's board of directors are incompatible with the operations proposed in the fund's host Member State, the Agency may refuse to forward the notification in accordance with paragraph 4 of this Article, or may prohibit the acceptance of sponsorship of the closed-end fund from the sponsor from another Member State to which the notification relates, and shall inform the pension company and EIOPA thereof stating the reasons for such prohibition.

(6) Before the pension company starts to manage a closed-end fund of a sponsor from another Member State, the competent authorities of the fund's host Member State shall, within two months of receiving the Agency's communication referred to in paragraph 4 of this Article, inform the Agency of the provisions of the labour and social security legislation relevant to the field of pension schemes, and other legislation that applies to the managing of a closed-end fund in the host Member State, in particular the provisions concerning investment restrictions and obligations to inform members.

(7) The Agency shall inform the pension company of the date of receiving the information from the competent authority of the host Member State referred to in paragraph 6 of this Article and shall communicate the information referred to in paragraph 6 of this Article to the pension company.

(8) On receiving the information referred to in paragraph 6 of this Article, or if no information is received from the Agency on expiry of the period provided for in paragraph 6 of this Article, the pension company may start to manage the closed-end fund of a sponsor from another Member State in accordance with the provisions of the labour and social security legislation relevant to the field of pension schemes, and other legislation that applies to the managing of a closed-end fund in the host Member State.

(9) The competent authority of the fund's host Member State shall inform the Agency of any significant change in the provisions and legislation referred to in paragraph 6 of this Article that may affect the characteristics and operations of the closed-end fund.

### Article 13

(1) A pension company from another Member State may manage a closed-end fund sponsored by one or more sponsors from the Republic of Croatia, without authorisation by the Agency, but it must comply with the provisions of the labour and social security legislation of the Republic of Croatia.

(2) The competent authority of the home Member State of a member of the pension company shall, unless there are reasons to suspect that the administrative structure or the financial situation of the pension company or the good repute and professional qualifications or experience of the members of the pension company's board of directors or management board are incompatible with the operations proposed in the Republic of Croatia, inform the Agency of the intention of the pension company to accept sponsorship of a closed-end fund from a sponsor from the Republic of Croatia.

(3) The Agency shall, within two months of receiving the information referred to in paragraph 2 of this Article, inform the competent authority of the home Member State of the provisions of the labour and social security legislation relevant to pension schemes, and other legislation that applies to the managing of a closed-end fund in the Republic of Croatia and obligations to inform members as referred to in Article 73 of this Act.

(4) A pension company from another Member State that manages a closed-end fund sponsored by a sponsor from the Republic of Croatia must provide fund members with all the information as required by this Act.

(5) The Agency shall inform the competent authority of the pension company's home Member State of any significant change in the provisions and legislation referred to in paragraph 3 of this Article that may affect the characteristics and operations of a closed-end fund sponsored by a sponsor from the Republic of Croatia.

### Article 14

(1) In addition to a pension company from another Member State, a closed-end fund sponsored by one or more sponsors from the Republic of Croatia may also be managed by a manager established in another Member State that is authorised to perform such activity, in accordance with the Member State's legislation governing the establishment and operation of companies managing open-end investment funds with a public offering, investment companies, credit institutions and life insurance companies.

(2) The provisions of this Act relating to pension companies from another Member States shall also apply to managers referred to in paragraph 1 of this Article.

### *Pursuit of the business of a pension company*

### Article 15

(1) In the Republic of Croatia, the following entities may pursue the business of a pension company:

1. a pension company that has obtained the Agency's authorisation to conduct business;
2. a pension company from another Member State that, pursuant to the provisions of this Act, establishes a branch in the Republic of Croatia or is authorised to directly carry out the core and ancillary activities in the Republic of Croatia, but only with respect to closed-end funds;
3. a company managing mandatory pension funds that has obtained the Agency's authorisation to conduct business;
4. a company managing UCITS funds that has obtained the Agency's authorisation to conduct business;
5. a manager established in another Member State, as defined in Article 14, paragraph 1 of this Article, but only with respect to closed-end funds.

(2) The provisions of this Act shall apply *mutatis mutandis* to companies managing mandatory pension funds and companies managing UCITS funds when they perform the activities of a pension company pursuant to the provisions of this Act.

(3) A pension company from another Member State that manages a closed-end fund sponsored by a sponsor from the Republic of Croatia shall comply with the provisions of section IV of Part Three of this Act (management of the assets of a fund).

#### Article 16

(1) A pension company may carry on the activities referred to in Article 11 of this Act in respect of which it has obtained the Agency's authorisation to conduct business and which have been entered in the court register as its business activities.

(2) A pension company may not carry out activities other than those specified in paragraph 1 of this Article.

(3) A pension company may carry out management activities in respect of UCITS funds that are subject to supervision by the Agency or competent authorities of Member States.

(4) A pension company may carry on its activities within the territory of:

1. the Republic of Croatia;
2. another Member State (pension company's host Member State), through a branch or directly, provided that the requirements of Article 12 of this Act have been met.

#### Article 17

A pension company that pursues the business of managing an UCITS fund shall, in addition to the provisions of this Act, comply with the provisions of the laws and regulations

governing the establishment and management of open-end investment funds with a public offering.

### *Share capital of a pension company*

#### Article 18

(1) The minimum share capital of a pension company shall be HRK 15 000 000.00, or HRK 22 800 000.00 if it manages a closed-end fund with defined benefits.

(2) A pension company pursuing the business of managing an UCITS fund and safekeeping and administration in relation to units in an UCITS fund shall, in addition to the provisions of this Act, satisfy all the capital requirements laid down in the law governing the conditions for the establishment and operation of companies managing open-end investment funds with a public offering and in the regulations made under that law.

(3) The share capital of a pension company shall be paid in full amount in cash.

(4) The share capital of a pension company shall not originate from loans or credits nor be encumbered in any way.

(5) The share capital of a pension company shall be paid in full amount before the pension company is registered with the commercial court.

(6) If a pension company is established and operates as a joint-stock company, all the shares of the pension company shall be in the name of the holder and shall be issued in book-entry form, and no preferred stocks may be issued.

(7) The shares of a pension company may not be admitted to trading on a regulated market, MTF or other organised market.

(8) The share capital of a pension company may not be increased through a public invitation.

### *The capital of the pension company*

#### Article 19

(1) A pension company shall at all times maintain its capital in an amount equal to at least one-half of the minimum share capital determined by this Act.

(2) A pension company shall notify the Agency without delay of any reduction in the pension company's capital causing it to fall below the level specified in paragraph 1 of this Article.

(3) A pension company must increase its capital to the required level by increasing the share capital within a period to be determined by the Agency.

(4) The Agency shall issue an ordinance specifying the items of the pension company's capital.

#### Article 20

Article 19 of this Act shall not apply to a pension company that manages a closed-end fund with defined benefits, but such company must maintain its capital in accordance with the provisions of the law governing the operation of pension insurance companies.

*Authorisation to establish and conduct the business of a pension company  
(authorisation to conduct business)*

Article 21

(1) Before a pension company is registered in the court register, an authorisation to establish and conduct the business of a pension company (hereinafter: authorisation to conduct business) must be obtained from the Agency, which shall be attached to the application for the registration of the company in the court register. The authorisation to conduct business shall be granted for an indefinite period, may not be transferred to another entity and shall not apply to the successor in law.

(2) A Company may not be issued an authorisation to conduct business that contains authorisation only for ancillary activities.

(3) A joint-stock company or limited liability company which has already been established may also apply to the Agency for authorisation to conduct business, and in that case the application shall be submitted by the board of directors of the company.

(4) The company referred to in paragraph 5 of this Article must obtain from the Agency an authorisation to conduct business before any change in the company's business is registered in the court register.

*Extension of authorisation to conduct business*

Article 22

(1) After obtaining authorisation to conduct business, the pension company may request an extension of the authorisation in order to perform the activities referred to in Article 11 of this Act that are not covered by the previously issued authorisation.

(2) An application for an extension of the authorisation to conduct business referred to in paragraph 1 of this Article shall be submitted by the board of directors of the pension company.

(3) The provisions of this Act concerning the issuance of an authorisation to conduct business shall apply accordingly to the extension of the authorisation to conduct business.

Article 23

(1) An application for authorisation to conduct business shall be accompanied by the following documents:

1. the articles of association of the pension company, together with a document providing the basis for the adoption of these articles of association (founders' statement) if the pension

company is established as a joint-stock company, or a company agreement or a deed of establishment if the pension company is established as a limited liability company;

2. a list of the founders, along with information as to whether they are related persons and as to the nature of their relatedness and documents confirming the legal status and the origin of the funds intended for paying up the pension company's share capital, as well as the level of the founders'/members' participation in the share capital of the pension company;

3. a list of the members of the board of directors and the members of the supervisory board of the pension company, along with their declarations stating that they agree to perform these functions and that there are no circumstances which would be contrary to the provisions of Articles 42 and 43 of this Act with respect to the members of the board of directors, or to the provisions of Article 50 of this Act with respect to the supervisory board members, as well as a description of their qualifications and previous professional activities;

4. the organisational structure and the business plan of the pension company for the next five years;

5. a description of the risk management system.

(2) The Agency shall assess the appropriateness, suitability and financial stability of the persons referred to in paragraph 1, item 2 of this Article, taking into account the following criteria:

1. the business reputation of the founders of the pension company;

2. the financial stability of the founders of the pension company;

3. whether the pension company will be able to comply and continue to comply with the requirements laid down in this Act and, where applicable, other legislation on individual and consolidated basis, and in particular whether it has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

4. whether there are reasonable grounds to suspect that the founders of the pension company committed or attempted a criminal offence of money laundering or terrorism financing.

(3) The Agency shall issue an ordinance specifying other documents and information that must accompany an application for authorisation to conduct the business of a pension company.

## Article 24

(1) Within 15 days of receiving an application for authorisation to conduct business, the Agency may request additional documents and information, which must be submitted to the Agency within a further period of 15 days.

(2) The Agency may, if it deems necessary, re-examine the documents and information relating to the application for authorisation to conduct business. In doing so, the Agency may:

1. cooperate with competent authorities;
2. gather documents and information from other sources.

#### Article 25

The Agency shall examine an application for authorisation to conduct business and shall, within 15 days of receiving the complete application or receiving the last document or information or holding a hearing, approve or refuse the application.

#### Article 26

The Agency shall approve an application for authorisation to conduct business if it finds, based upon the submitted documents and the information collected, that the following requirements are met:

1. the proposed pension company satisfies the requirements concerning the payment of the share capital;
2. the founders of the pension company, the members of the board of directors and of the supervisory board, and all the related persons that are known of are financially stable, appropriate and suitable for performing these tasks;
3. the members of the board of directors and of the supervisory board of the pension company meet the requirements for the issuance of approval for the performance of the duties of a member of the board of directors or of the supervisory board of the pension company;
4. it has been demonstrated or at least made likely that the founders of the pension company meet, or will meet before beginning to manage a fund, the organisational requirements in accordance with this Act and regulations made under this Act;
5. conditions are in place for the pension company to operate in accordance with this Act and regulations made under this Act;
6. the instrument of incorporation of the proposed pension company complies with the provisions of this Act;
7. the name of the pension company is not misleading for potential and future fund members or for any other persons likely to have dealings with it.

#### Article 27

The Agency shall issue a decision refusing an application for authorisation to conduct business if:

1. the requirements of Article 26 of this Act are not satisfied;
2. it estimates, based on the information collected and the documents submitted, that the pension company's operations will not be conducted with due skill, care and diligence and in accordance with sound business practice.

## Article 28

(1) If an application for authorisation to conduct business is approved, the founders may establish a pension company by submitting an application for the registration of the pension company in the court register, which must be accompanied by the Agency's decision granting the authorisation to conduct business.

(2) An application for registration in the court register shall be submitted no later than within six months from the date of receipt of the decision granting the authorisation to conduct business.

(3) The pension company's authorisation to conduct business and the registration of that company in the court register do not guarantee obtaining an authorisation to establish and manage funds.

### *Termination of the validity of an authorisation to conduct business*

## Article 29

(1) The authorisation to conduct business of a pension company shall cease to be valid:

1. on the day on which bankruptcy proceedings are opened against the pension company or on which pre-bankruptcy settlement proceedings are initiated against the pension company;

2. when winding-up proceedings are instituted in respect of the pension company;

3. upon coming into effect of legal consequences of the transfer of the fund management activities to another pension company;

4. if the pension company ceases to exist.

(2) The Agency shall notify the depositary of the termination of the validity of the authorisation referred to in paragraph 1 of this Article. In cases when the authorisation to conduct business ceases to be valid for the reasons indicated in item 3 of paragraph 1 of this Article, the Agency shall also notify the competent commercial court.

(3) In cases when the authorisation to conduct business ceases to be valid as referred to in paragraph 1 of this Article, the Agency shall issue a decision determining that the authorisation to conduct business has ceased to be valid.

### *Consolidation of procedures when deciding on an application for authorisation to conduct business*

## Article 30

When granting authorisation to conduct business to a pension company, the Agency may at the same time decide on the following applications:

1. an application for approval to perform the function of a member of the board of directors of the pension company;

2. an application for approval to perform the function of a member of the supervisory board of the pension company;
3. an application for approval to make changes in the share capital of the pension company;
4. an application for approval of the prospectus;
5. an application for approval of the fund' statute.

### *Requirements for members of a pension company*

#### Article 31

(1) The following persons shall be eligible to be members of a pension company:

1. persons who, in the period of three years prior to acquiring membership in the pension company, did not have more than 10 % holding in the share capital of a pension company, a credit institution authorised to carry on the business of a depositary, an investment company or a credit institution authorised to carry on the business of purchasing and selling financial instruments, a company managing investment or mandatory pension funds or an insurance undertaking, at the time when the authorisation to conduct business was revoked in respect of these companies;
2. persons who have full legal capacity;
3. a company, sole trader or craftsman in respect of whose assets no bankruptcy proceedings have been opened or completed and no pre-bankruptcy settlement proceedings initiated;
4. persons who have not held a managing position in a company against which bankruptcy proceedings have been opened or pre-bankruptcy settlement proceedings initiated or whose authorisation to conduct business has been revoked, except where the Agency establishes that the persons in question have not contributed, by their actions or failure to act, to these circumstances;
5. persons who are not state officials or who do not hold a public service office or an office in a local and regional self-government body and who are not officers in state or local and regional self-government bodies or in bodies responsible to the legislative or executive authorities in the Republic of Croatia, another Member State or a third country;
6. persons from whom, because of their non-compliance with regulations, approval or authorisation for the performance of relevant duties has not been withdrawn by the Agency, the Croatian National Bank or related supervisory bodies of the Republic of Croatia, Member States or third countries;
7. persons who have not been convicted, on the basis of a judgement with final force and effect, of a misdemeanour or criminal offence which represents a gross or permanent violation of regulations falling within the competence of the Agency, the Croatian National Bank or other supervisory bodies of the Republic of Croatia, Member States or third countries, or of the following criminal offences provided for in the Criminal Code (Official Gazette 125/11 and 144/12):

- Title IX – a criminal offence against humanity and human dignity;
- Title XII – a criminal offence relating to labour relations and social insurance;
- Title XXIII – a criminal offence against property (other than a criminal offence involving unauthorised use of other people's movable property and a criminal offence involving damage to other people's property), for which criminal proceedings are instituted *ex officio*;
- Title XXIV – a criminal offence against the economy;
- Title XXVI – a criminal offence of forgery;
- Title XXVIII – a criminal offence against official duty;
- Title XXIX – a criminal offence against the judiciary;

a criminal offence provided for in Title II of the Companies Act or

a criminal offence under the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03 – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08 and 57/11), namely:

- Title XI – a criminal offence against the freedoms and rights of man and of the citizen, or more specifically, a criminal offence involving violation of the right to work and other labour-related rights and a criminal offence involving violation of the right to health care and disability protection;
- Title XIII – a criminal offence against values protected by international law;
- Title XVII – a criminal offence against property (other than a criminal offence involving unauthorised use of other people's movable property and a criminal offence involving the destruction and damage of other people's property) for which criminal proceedings are instituted *ex officio*;
- Title XXI – a criminal offence against the safety of payment and business operations;
- Title XXII – a criminal offence against the judiciary;
- Title XXIII – a criminal offence against authenticity of documents;
- Title XXV – a criminal offence against official duty,

for which legal continuity exists in relation to the previously mentioned criminal offences under the Criminal Code (Official Gazette 125/11 and 144/12).

(2) The Agency shall issue an ordinance to specify in more detail the requirements referred to in paragraph 1, item 7 of this Act.

*Persons possessing qualifying holdings*

## Article 32

(1) When submitting an application for the issuance to a pension company of an authorisation to conduct business, the applicant shall submit to the Agency information about the identities of the shareholders or members of the company, persons possessing qualifying holdings either directly or indirectly, and about the amounts of those holdings, as well as additional documents required by the ordinance referred to in Article 84, paragraph 4 of this Act.

(2) The Agency shall assess the appropriateness, suitability and financial stability of the persons referred to in paragraph 1 of this Article, taking into account the following criteria:

1. the reputation of the shareholders or members of the company and persons possessing qualifying holdings;
2. the professional reputation and experience of the person who will direct the business of the company;
3. the financial stability of the persons possessing qualifying holdings;
4. whether the company will be able to comply and continue to comply with the requirements laid down in this Act and, where applicable, other legislation on individual and consolidated basis, and in particular whether it has a structure that makes it possible to exercise effective supervision;
5. whether there are reasonable grounds to suspect that members of the pension company, its shareholders or persons possessing qualifying holdings committed or attempted a criminal offence of money laundering or terrorism financing according to the legislation governing these matters.

### *Close links*

## Article 33

(1) Where close links exist between the pension company and other natural or legal persons, the Agency shall grant to the pension company an authorisation to conduct business only if those close links do not prevent the effective exercise of supervision of the pension company.

(2) The Agency shall refuse to grant authorisation to conduct business if the laws and regulations of a third country governing one or more natural or legal persons with which the pension company has close links, or the application of these laws and regulations, prevent the exercise of supervision of the pension company.

## Article 34

(1) The pension company shall comply, on a continuous basis, with the conditions under which the authorisation to conduct business has been granted to it by the Agency.

(2) The pension company shall notify the Agency within three business days of any significant change in the information given in the application for authorisation to conduct

business and of any significant facts due to which the authorisation to conduct business would need to be revoked pursuant to Article 299 of this Act.

#### Article 35

(1) A pension company shall have neither a controlling influence nor shares or holdings in an investment company, a credit institution that provides investment services and carries out investment activities in accordance with the provisions of the law governing the capital market or the relevant services in accordance with the provisions of the law governing the establishments and operation of credit institutions, an insurance company, a reinsurance company, a company managing UCITS funds, a company managing alternative investment funds, another pension company (managing voluntary pension funds), a company managing mandatory pension funds, a pension insurance company, a factoring company or a leasing company.

(2) A pension company shall not have shares in the depositary. The respective business activities of the depositary and the pension company may not be interconnected in organisational terms and the same employees may not be involved in these activities.

(3) A pension company shall not have shares or holdings in the entity to which the depositary has delegated the activities referred to in Article 257 of this Act.

#### Article 36

Prior to issuing authorisation to conduct business to a pension company, the Agency may consult the competent authority of the other Member State involved or of a third country if the pension company is one of the following:

1. a subsidiary of another pension company (managing voluntary pension funds), a pension insurance company, a company managing UCITS funds, a company managing alternative investment funds, an investment company, a credit institution or an insurance company authorised in another Member State or in a third country;
2. a subsidiary of the parent company of another pension company, a pension insurance company, a company managing UCITS funds, a company managing alternative investment funds, an investment company, a credit institution or an insurance company authorised in another Member State or in a third country;
3. a company controlled by the same natural or legal persons that control another pension company, a pension insurance company, a company managing UCITS funds, a company managing alternative investment funds, an investment company, a credit institution or an insurance company authorised in another Member State or in a third country.

#### Article 37

(1) The pension company may invest its assets only in transferable debt securities and money market instruments issued or guaranteed by the Republic of Croatia, another Member State or a member state of the Organisation for Economic Co-operation and Development (OECD), the Croatian National Bank or a central bank of another Member State or of an OECD

member state, and in assets referred to in Article 155, paragraph 1, item 5 of this Act or, if it purchases another pension company, in accordance with Article 38 of this Act.

(2) By way of derogation from paragraph 1 of this Article, a pension company may also invest its assets in:

1. units in money-market UCITS funds referred to in Article 155, paragraph 1, item 3 of this Act, and

2. forward contracts that satisfy the requirements of Article 155, paragraph 1, item 6 of this Act and have been concluded exclusively for the purpose of protecting assets invested in foreign currency against the Croatian kuna.

(3) The pension company shall maintain the prescribed capital referred to in Article 19 of this Act in transferable debt securities and money market instruments issued or guaranteed by the Republic of Croatia, another Member State or a member state of the Organisation for Economic Co-operation and Development (OECD), the Croatian National Bank or a central bank of another Member State or of an OECD member state, and in assets referred to in Article 155, paragraph 1, item 5 of this Act.

(4) If a pension company indirectly acquires assets that do not comply with paragraphs 1 and 2 of this Article, it shall notify the Agency thereof within three business days, and shall bring the investment structure into compliance within six months of the day of acquisition.

#### Article 38

(1) By way of derogation from the provision of Article 35, paragraph 1 of this Act, a pension company may acquire a partial or full shareholding in another pension company, subject to the prior approval of the Agency and in accordance with the legislation governing the protection of competition.

(2) The Agency shall approve the acquisition unless it considers:

1. that it is not in the interests of the members of the funds managed by the pension companies referred to in paragraph 1 of this Article;

2. that the acquiring pension company will not fulfill the requirements of this Act or other legislation governing the operation of pension companies.

(3) A contract for the acquisition of a partial or full shareholding in another pension company without the prior approval referred to in paragraph 1 of this Article shall be null and void.

#### *Changes in the pension company's status*

#### Article 39

(1) If a pension company is involved in a merger by acquisition, merger by the formation of a new company, division or conversion, it must obtain approval from the Agency for such change in its status.

(2) The provisions of this Act concerning the granting of authorisation to conduct business to a pension company shall apply *mutatis mutandis* to the making of a decision on the approval of a status change as referred to in paragraph 1 of this Article.

(3) Where, due to a status change of a pension company, a new company is formed, that company must, prior to registering the status change in the court register, obtain from the Agency authorisation to conduct business, in order to be able to operate as a pension company.

(4) The provision of paragraph 3 of this Article shall not apply to a status change involving the conversion of a pension company.

### *Bodies of a pension company*

#### Article 40

(1) The bodies of a pension company shall be:

a) in the case of a joint-stock company – the annual general meeting, the board of directors and the supervisory board;

b) in the case of a limited-liability company – the general meeting, the board of directors and the supervisory board.

(2) Minutes shall be kept of the meetings and sessions of the pension company's bodies.

### *The board of directors of a pension company*

#### Article 41

(1) If a pension company is registered for establishing and managing UCITS funds, its board of directors shall have at least two members. The term of office of a member and of the president of the board of directors shall not exceed five years.

(2) If the board of directors of a pension company has several members, the members of the board of directors shall jointly direct the business activities and shall jointly represent the pension company, unless the instrument of incorporation of the pension company provides otherwise.

(3) The board of directors of the pension company shall direct the business activities of the pension company from the territory of the Republic of Croatia.

### *Requirements for the position of a member of the board of directors*

#### Article 42

(1) A member of the board of directors of a pension company may only be a person:

1. who has adequate professional qualifications, skills and experience required to direct the business of the pension company;

2. who is of good repute;

3. who is not an individual debtor (sole trader or craftsman) in respect of whose assets bankruptcy proceedings have been instituted, are ongoing or have been completed or pre-bankruptcy settlement proceedings have been initiated or are ongoing, unless the Agency finds that the person concerned has affected the opening of the bankruptcy proceedings or the initiation of pre-bankruptcy settlement proceedings through his or her unconscientious or incompetent professional work and conduct;

4. who was not a member of the supervisory board, a member of the board of directors or a person who held another managing position in a pension company or any other company at the time when bankruptcy proceedings were opened or pre-bankruptcy settlement proceedings initiated against these entities or when a decision on compulsory liquidation of these entities was taken or in a pension or other company whose authorisation was withdrawn, unless the Agency finds that the person concerned has affected the opening of the bankruptcy proceedings, the initiation of pre-bankruptcy settlement proceedings, the compulsory liquidation or the withdrawal or revocation of authorisation through his or her unconscientious or incompetent professional work and conduct;

5. to whom the Agency, the Croatian National Bank or other supervisory authority from the Republic of Croatia, another Member State or a third country has not refused approval for the performance of the function of a member of the board of directors or, if such approval has been refused, at least one year has passed from the date of a decision refusing an application for approval to perform the function of a member of the board of directors;

6. whose former conduct has been such that it may be reasonably concluded that he or she will perform the duties of the member of the board of directors of the pension company honestly and with due care and diligence;

7. who meets the requirements for the position of a member of the board of directors under the law governing the establishment and operation of companies;

8. who has not been convicted, by a judgement with final force and effect, of a criminal offence or misdemeanour which represents a gross or permanent violation of regulations falling within the competence of the Agency, the Croatian National Bank or other supervisory bodies of the Republic of Croatia, Member States or third countries, or of the following criminal offences provided for in the Criminal Code (Official Gazette 125/11 and 144/12):

– Title IX – a criminal offence against humanity and human dignity;

– Title XII – a criminal offence relating to labour relations and social insurance;

– Title XXIII – a criminal offence against property (other than a criminal offence involving unauthorised use of other people's movable property and a criminal offence involving damage to other people's property), for which criminal proceedings are instituted *ex officio*;

– Title XXIV – a criminal offence against the economy;

– Title XXVI – a criminal offence of forgery;

- Title XXVIII – a criminal offence against official duty;
- Title XXIX – a criminal offence against the judiciary;

a criminal offence provided for in Title II of the Companies Act or

a criminal offence under the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03 – Decision of the Constitutional Court of the Republic of Croatia, 105/04, 84/05, 71/06, 110/07, 152/08 and 57/11), namely:

- Title XI – a criminal offence against the freedoms and rights of man and of the citizen, or more specifically, a criminal offence involving violation of the right to work and other labour-related rights and a criminal offence involving violation of the right to health care and disability protection;
- Title XIII – a criminal offence against values protected by international law;
- Title XVII – a criminal offence against property (other than a criminal offence involving unauthorised use of other people's movable property and a criminal offence involving the destruction and damage of other people's property) for which criminal proceedings are instituted *ex officio*;
- Title XXI – a criminal offence against the safety of payment and business operations;
- Title XXII – a criminal offence against the judiciary;
- Title XXIII – a criminal offence against authenticity of documents;
- Title XXV – a criminal offence against official duty,

for which legal continuity exists in relation to the previously mentioned criminal offences under the Criminal Code (Official Gazette 125/11 and 144/12).

(2) The experience referred to in paragraph 1, item 1 of this Article shall be deemed to be experience of at least three years in managing positions in a pension company, a company managing a mandatory pension fund, a pension insurance company or an investment fund managing company, or a five-year experience in directing the business activities comparable to the activities of a pension company.

(3) It shall be deemed that a natural person who is not a national of the Republic of Croatia meets the requirements for a non-conviction record referred to in paragraph 1, item 8 of this Article if he or she has not been convicted, by a judgement with final force and effect, for acts that, according to their description, are equivalent to these acts.

(4) The members of the board of directors of a pension company shall direct the business of the pension company on a full-time basis and be employed with the pension company.

(5) At least one member of the board of directors of a pension company must have a good command of the Croatian language.

(6) A member of the board of directors of a pension company may only be a person who has passed an examination for obtaining the qualification of a certified pension fund manager or an internationally recognised qualifying examination in the field of investment managing, approved by the Agency.

(7) The Agency shall organise a training programme and the examination for obtaining the qualification of a certified pension fund manager, and shall issue an ordinance specifying the content and duration of the training programme, the entry requirements for the examination and the contents of the examination.

(8) The Agency shall issue an ordinance on the requirements to be met by members of the board of directors of a company managing voluntary pension funds, specifying in more detail the requirements referred to in paragraphs 1, 2, 3 and 6 of this Article, and the documentation that must be enclosed with an application for approval to perform the duties of a member of the board of directors.

#### Article 43

(1) A member of the board of directors of a pension company may not be a member of the board of directors or a procurator of another company.

(2) A member of the board of directors or a procurator of a pension company may not be a member of the board of directors, a member of the supervisory board or a procurator of:

1. another pension company;
2. the depositary;
3. an investment company;
4. a company managing mandatory pension funds, UCITS funds or alternative investment funds;
5. a credit institution;
6. a pension insurance company;
7. an insurance company;
8. a reinsurance company;
9. other legal persons operating on the basis of an authorisation issued by the Agency.

#### *Liability of members of the board of directors*

#### Article 44

Members of the board of directors of a pension company shall be jointly liable to the pension company for any damage occurred as a result of any action, failure to act or failure to fulfil

their obligations and duties, unless they demonstrate that in performing their obligations and duties they exercised all due skill, care and diligence.

*Approval to perform the function of a member of the board of directors*

Article 45

(1) Only a person who has obtained approval from the Agency to perform the function of a member of the board of directors of a pension company may be appointed as member of the board of directors of the pension company.

(2) An application for approval shall be submitted to the Agency by the candidate member of the board of directors of the pension company for a term of office not exceeding five years. Together with the application, the candidate member shall submit a written consent of the supervisory board or of a body responsible for appointing the members of the pension company's board of directors, as well as the programme for managing the operations of the pension company for the term of office for which the approval is requested.

(3) In addition to notifying the candidate member of the board of directors of its decision to grant or refuse to grant the approval, the Agency shall also always notify thereof the pension company whose candidate is involved. The Agency may grant approval for a period shorter than requested.

(4) Exceptionally, if a member of the board of directors or a temporary administrator of a pension company is appointed by the competent court in accordance with the provisions of the legislation governing the establishment and operation of companies, his or her term of office may not exceed six months, but in that case the appointed person must nevertheless meet the requirements set out in Article 42 of this Act, except for the requirements set out in Article 42, paragraph 6 of this Act.

(5) A pension company shall ensure that an application for approval to perform the function of a member of the board of directors of the pension company and the programme for managing the operations of the pension company for the term of office are submitted to the Agency at least three months prior to the expiry of the term of office of an individual member of the board of directors.

(6) A pension company shall ensure that a new application for approval and the programme for managing the operations of the pension company are submitted to the Agency within 45 days of the date on which the approval ceased to be valid, or of the date of receipt of the decision revoking or refusing approval to perform the function of a member of the board of directors of the pension company, and whenever the pension company does not meet the requirement concerning the minimum number of members of the board of directors in accordance with the provisions of this Act.

(7) An applicant submitting an application for approval referred to in paragraph 1 of this Article shall enclose evidence of fulfilment of the requirements for performing the function of a member of the board of directors of a pension company set out in this Act and in the ordinance referred to in paragraph 10 of this Article.

(8) When deciding whether to grant the approval referred to in paragraph 1 of this Article, the Agency may require the candidate member of the board of directors of a pension company to present his or her programme for managing the operations of the pension company for his or her term of office.

(9) A person to whom the Agency has granted approval to perform the function of a member of the board of directors of a pension company shall obtain a new approval from the Agency before being appointed to the same position in another pension company.

(10) The Agency shall issue an ordinance specifying the contents of the programme for managing the operations of a pension company and the procedure and criteria for assessing the programme and the candidate presenting it.

#### Article 46

The Agency shall refuse to grant approval to perform the function of a member of the board of directors if:

1. the proposed person does not meet the requirements laid down by the provisions of Article 42 of this Act and by the provisions of the ordinance referred to in Article 45, paragraph 10 of this Act;
2. the Agency has objective and provable reasons to validly assume that the business or duties in which the person is or was engaged would represent a threat to managing the pension company in accordance with the organisational requirements laid down in Articles 54 to 66 of this Act;
3. the information given in the application for approval is incorrect, false or misleading or the information that is important for deciding on the application for approval has been withheld;
4. the programme for managing the operations of the pension company referred to in Article 45, paragraph 2 of this Act and its presentation are assessed by the Agency as being unsatisfactory.

#### *Termination of an approval to perform the function of a member of the board of directors of a pension company*

#### Article 47

(1) An approval to perform the function of a member of the board of directors of a pension company shall terminate:

1. if the person concerned is not appointed to office or does not assume the office to which the approval relates within six months of the date of issuance of the approval, on the date of expiry of that period;
2. if the person's membership in the board of directors expires, on the date of expiry of membership;

3. if the person concerned ceases to be employed by the pension company, on the date when employment ended.

(2) If an approval to perform the function of a member of the board of directors of a pension company terminates as referred to in paragraph 1 of this Article, the Agency shall issue a decision determining that the approval to perform the function of a member of the board of directors has terminated.

*Withdrawal or revocation of an approval to perform the function of a member of the board of directors of a pension company*

Article 48

(1) The Agency shall issue a decision withdrawing or revoking an approval to perform the function of a member of the board of directors of a pension company in the following cases:

1. if the member of the board of directors no longer fulfils the conditions under which the approval was granted;

2. if the approval was obtained because material information was withheld, or on the basis of false, incorrect or misleading information, or in any other fraudulent manner;

3. if the member of the board of directors has violated the provisions on prohibition of trading or effecting transactions, or giving trading orders on the basis of insider information or in the manner that would constitute a market manipulation in accordance with the provisions of the legislation governing the capital market;

4. if the pension company and/or the member of the board of directors have seriously or systematically violated the provisions of this Act, the regulations made under this Act or other legislation relating to the business activities of the pension company, in particular if this has jeopardised the interests of fund members, the liquidity or capital maintenance of the pension company or if recurring violations of the same regulations have been committed twice in three years;

5. if, due to failure to act or negligence on the part of the member of the board of directors, the pension company has failed to implement the supervisory measures ordered by the Agency;

6. if the member of the board of directors has not ensured appropriate organisational conditions referred to in Articles 54 to 66 of this Act;

7. if it establishes that the member of the board of directors is in a conflict of interests which prevents, or may be validly assumed to prevent, him or her from fulfilling his or her responsibilities and duties with due professional care and diligence;

8. if the member of the board of directors fails to regularly fulfil the obligation to establish and review the effectiveness of the policies, measures or internal procedures put in place in order to bring the pension company and the funds managed by it into compliance with this Act and regulations made under this Act, or the obligation to take appropriate measures to correct deficiencies or irregularities in the operations of the pension company, or if he or she fails to fulfil these obligations with due care and diligence.

(2) In the cases referred to in paragraph 1, items 5 to 8 of this Article, the Agency may also take a special supervisory measure to temporarily prohibit the performance of the function of a member of the board of directors of the pension company (Article 297, paragraph 2, item 11 of this Act).

(3) If the Agency revokes or withdraws an approval to perform the function of a member of the board of directors, the competent body of the pension company shall without delay issue a decision revoking the appointment of that member of the board of directors.

#### Article 49

(1) The procurator may only represent the pension company jointly with at least one member of the board of directors.

(2) When entering the name of a procurator in the court register, the pension company's board of directors shall also enter the limitations on the powers of the procurator.

(3) The procurator shall not be required to pass an examination for obtaining the qualification of a certified pension fund manager or an internationally recognised qualifying examination in the field of investment managing approved by the Agency, unless he or she is authorised for managing assets of funds and/or for risk management.

#### *Requirements for the position of a member of the supervisory board of a pension company*

#### Article 50

(1) To be eligible to be elected or appointed as a member of the supervisory board of a pension company, a person must be of good repute and have the appropriate qualifications and experience to supervise the conduct of the business of the pension company.

(2) The requirement referred to in paragraph 1 of this Article shall be deemed to be fulfilled if the person has at least five years of experience in managing or supervising operations of a company of a size and activities comparable to those of the pension company.

(3) The Agency may require the pension company to convene an annual general meeting or a general meeting and propose to revoke the appointment of a member of the supervisory board of the pension company if:

1. the member of the supervisory board violates his or her duties defined by this and other Acts and regulations made under these Acts;

2. the pension company does not have a sufficient number of members of the supervisory board in accordance with the provisions of the legislation governing the establishment and operation of companies;

3. the member of the supervisory board does not meet the requirements for the position of a member of the supervisory board.

(4) The Agency shall issue an ordinance specifying in more detail the requirements that must be met by the members of the supervisory board of a pension company.

*Duties of members of the supervisory board of a pension company*

Article 51

(1) In addition to the powers conferred on the supervisory board by the provisions of the act governing the establishment and operation of companies, the supervisory board of a pension company shall be responsible for deciding on granting approval to the board of directors in respect of the following:

1. the establishment of the business policy of the pension company;
2. the financial plan of the pension company;
3. the organisation of the internal control system of the pension company and of the risk management system;
4. the pension company's annual plan, and
5. decisions concerning other matters provided for in this Act.

(2) The supervisory board of a pension company shall define the investment principles of pension funds, which shall be an integral part of the pension fund's statute.

(3) The supervisory board shall be responsible for monitoring the implementation of internal by-laws of the pension company.

Article 52

(1) The supervisory board of a pension company shall:

1. supervise the adequacy of procedures and effectiveness of internal audit activities;
2. supervise the actions taken by the pension company in accordance with the orders and decisions issued by the Agency and the findings made during supervision;
3. submit a report to the annual general meeting or the general meeting on orders made by the Agency and on the actions referred to in the preceding item of this paragraph;
4. decide whether to approve financial reports of the pension company and annual reports of funds, and inform in writing the annual general meeting or the general meeting of the pension company about these reports
5. explain to the annual general meeting or the general meeting of the pension company its opinions on annual internal audit reports and on annual reports of the board of directors.

(2) Members of the supervisory board of a pension company shall be jointly liable to the pension company for any damage arising from a breach of their obligations and duties, unless

they demonstrate that in performing their obligations and duties they exercised all due skill, care and diligence.

#### Article 53

(1) A pension company, i.e. members of its board of directors and supervisory board, procurators and employees shall:

1. in performing their activities or duties, act honestly and fairly and in accordance with the rules of the profession and in the best interests of members of the funds they manage, as well as protect the integrity of the capital market;
2. in discharging their obligations, exercise all due skill, care and diligence;
3. have and effectively employ the resources and procedures that are necessary for the proper performance of the activities of the pension company;
4. take all reasonable measures to avoid conflicts of interest and, where such conflicts cannot be avoided, identify, manage and, where applicable, disclose them in order to prevent them from adversely affecting the interests of funds and fund members and to ensure that fund members are fairly treated;
5. comply with the provisions of this Act and regulations made under this Act so as to promote the best interests of fund members and the integrity of the capital market.

(2) The pension company, members of the board of directors and supervisory board, procurators and employees of the pension company shall always give priority to the interests of fund members and shall never place their own interests or the interests of related persons above the interests of fund members and the integrity of the capital market.

#### *Organisational requirements for pension companies*

##### *General organisational requirements*

#### Article 54

(1) A pension company shall establish, implement and regularly update, assess and monitor, taking into account the nature, scale and complexity of its business, effective and adequate:

1. decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
2. measures and procedures to ensure that the relevant persons of the company are aware of the procedures that must be followed for the proper discharge of their duties and responsibilities;
3. internal control mechanisms designed to secure compliance with this Act and regulations made under this Act and with other relevant legislation, internal decisions, arrangements and procedures at all levels of the pension company, including rules for personal transactions of all relevant persons;

4. procedures for internal reporting and communication of information at all relevant levels of the pension company as well as effective information flows with any third party involved;

5. records of its business and internal organisation;

6. records of all internal acts and changes thereof;

7. policies and procedures for continuing professional training of employees, appropriate to the job of an employee;

8. administrative and accounting arrangements and procedures and the system of maintaining business books and drawing up financial statements, as well as arrangements and procedures for keeping and maintaining business documents which reflect a true and fair view of the financial position of the pension company and funds and which comply with all applicable accounting rules;

9. measures and procedures for the control and protection of the information system and electronic data processing system;

10. measures and procedures to safeguard, on a continuous basis, the security, integrity and confidentiality of information;

11. policies, measures and procedures to ensure the business continuity.

(2) A pension company shall set up, within the internal control mechanisms, taking into account the nature, scale and complexity of its business, the following functions:

1. risk management;

2. monitoring compliance with the relevant legislation;

3. internal audit;

4. the actuarial function, when it manages a fund with defined benefits.

### *Conflicts of interest*

#### Article 55

(1) The pension company shall, taking into account the nature, scale and complexity of its business, organise the business in such a manner as to minimise the risk of a conflict of interest.

(2) The pension company shall take all reasonable steps to ensure that, in the course of providing services and performing activities, the interests of the funds and their members are not jeopardised.

(3) The pension company shall take all reasonable steps to identify, detect and prevent or manage conflicts of interest, and to establish appropriate criteria for determining the types of

conflict of interests whose existence may damage the interests of the funds and their members.

(4) The pension company shall, taking into account the nature, scale and complexity of its business, establish, implement and regularly update and monitor effective conflicts of interest policies.

(5) In order to prevent conflicts of interest, the pension company shall establish, implement and regularly update the policies on personal transactions of the relevant persons and of persons related to them, involving financial instruments in which the funds managed by the pension company invest.

(6) The relevant persons of the pension company shall not be entitled to receive any remuneration or compensation for their membership in the supervisory board of another company by virtue of the ownership by the fund of shares or holdings in that another company, except for the entitlement to reimbursement of travel expenses and other justified costs.

#### *Monitoring of compliance with the relevant legislation*

##### Article 56

(1) The pension company shall establish, implement and regularly update, assess and monitor adequate policies and procedures designed to detect any risk of failure to comply with the relevant legislation, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk.

(2) The pension company shall establish, implement and regularly update, assess and monitor policies and procedures designed to ensure that it operates in accordance with this Act and regulations made under this Act and with other relevant legislation, and to ensure that the members of the board of directors and other relevant persons act in accordance with this Act and regulations made under this Act and with internal by-laws of the pension company.

#### *Internal audit*

##### Article 57

The pension company shall, where appropriate and proportionate in view of the nature, scale and complexity of its business, establish an internal audit function which makes an independent and objective assessment of the internal control system, provides independent and objective professional opinion and advice on the improvement of business operations with a view to improving the activity of the company, by introducing a systematic, disciplined approach to assessing and improving the effectiveness of risk management, control and corporate governance.

#### *Risk management system*

##### Article 58

(1) The pension company shall establish a comprehensive and effective risk management system for the pension company and funds, in accordance with the nature, scale and complexity of its business, which shall include at least:

1. risk management strategies, policies, procedures and measures;

2. risk measurement techniques;

3 allocation of responsibilities pertaining to risk management.

(2) The pension company shall establish, implement, document and regularly update adequate, effective and comprehensive risk management strategies and policies for the purpose of identifying the risks associated with the business of the pension company and the operation of the funds it manages and with the business processes and systems of the company and the funds it manages.

(3) In the risk management process, the pension company shall determine the risk profile of the funds it manages and the contribution of individual risks to the overall risk profile of a particular fund and shall set a tolerable level of risk.

(4) The pension company shall employ a risk-management process that enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolios of the funds it manages.

(5) The pension company shall set up, within the risk management process, and taking into account the nature, scale and complexity of its business, a comprehensive and efficient process of assessing the creditworthiness of issuers in which it intends to invest or is investing its assets and assets of the funds it manages.

(6) On the basis of the adopted risk management strategies and policies and the tolerable level of risk that has been set, and in order to properly identify, measure, manage and monitor all risks to which funds are exposed, the pension company shall adopt effective procedures, risk measurement techniques and risk management measures.

(7) The pension company shall monitor, evaluate, review and update the adequacy, comprehensiveness and effectiveness of the adopted risk management strategies, policies and procedures and risk measurement techniques, as well as the adequacy and effectiveness of the measures foreseen to rectifying possible deficiencies in the risk management strategies, policies and procedures, including failures on the part of the relevant persons.

(8) At the request of the Agency, the pension company shall without delay submit to the Agency the adopted risk management strategy and policies.

(9) The pension company's board of directors shall be responsible for the risk management process and all employees of the pension company must participate in the implementation of that process.

(10) The pension company shall use appropriate procedures for the accurate and independent assessment of the value of OTC derivatives.

(11) The pension company shall inform the Agency regularly about the types of financial derivative instruments, the underlying risks, the quantitative limits on the investments and the methods chosen in order to estimate the risks associated with transactions in derivative financial instruments for each fund it manages.

(12) The Agency shall issue an ordinance to specify in more detail the criteria for assessing the adequacy of risk management process used by a pension company in accordance with paragraph 4 of this Article and the rules for informing the Agency in accordance with paragraph 10 of this Article.

### *Investment process*

#### Article 59

(1) The pension company shall organise its business in such a manner as to ensure the continuing investment process, which shall comprise at least the following:

1. making of analyses;
2. determining an investment strategy;
3. making investment decisions;
4. risk management;
5. trading;
6. control of compliance, and
7. analysis of the results achieved compared to those expected from the investment.

(2) For each type of asset that is significant in terms of contribution to the assets, risks and/or operational requirements, the pension company must ensure that there is an adequate number of employees responsible for investments, trading, analyses and risk management for that type of asset. The scope of responsibilities of an individual employee must be appropriate.

(3) For each type of asset the pension company must know the nature of the investment, the issuer, particularities relating to trading, legal regulations and the associated risks.

(4) The Agency shall issue an ordinance specifying in more detail the required procedures, conditions, documentation, participants and other requirements relating to the investment process, as well as other requirements referred to in this Article.

### *Corporate governance*

#### Article 60

(1) A pension company shall set up an internal body responsible for making decisions concerning corporate governance and relations with issuers whose securities are owned by the

funds managed by the pension company, which shall be composed of persons who have adequate knowledge in the field of corporate governance.

(2) A pension company shall determine clear procedures to be followed in all standard dealings with issuers.

(3) If a relevant person of a pension company is a member of the board of directors or of another body of the issuer, such person must not influence, formally or informally, directly or indirectly, the persons in the pension company who are responsible for making investment decisions relating to securities of that issuer.

(4) The Agency shall issue an ordinance to specify in more detail the requirements concerning corporate governance in a pension company.

### *Business continuity measures*

#### Article 61

(1) A pension company shall take all appropriate measures necessary to ensure continuity and regularity in the performance of its activities.

(2) In order to achieve the purpose referred to in paragraph 1 of this Article, the pension company shall employ appropriate systems, resources and procedures that are proportionate to the nature, scope and complexity of its activities.

### *Remuneration policies*

#### Article 62

(1) In order to prevent taking unsuitable risks in its business, the pension company shall prescribe and implement clear remuneration policies and procedures for its staff, the members of the board of directors and the members of the supervisory board, whose professional activities can have a material impact on the risk profile of the pension company or fund.

(2) The remuneration policies and procedures of the pension company shall consistently promote effective risk management and shall not encourage risk-taking which is inconsistent with the fund's risk profile or statute.

(3) The pension company's remuneration policy shall be in line with the business strategy, objectives and size of the pension company and funds, as well as with the interests of the pension company, funds and their members, and it shall include measures to avoid conflicts of interest.

(4) The board of directors of the pension company shall adopt and, at least annually, review the general principles of the remuneration policy and shall be responsible for their implementation.

(5) For the purpose of supervising the operation of the pension company, the implementation of the remuneration policies and procedures shall be, at least annually, subjected to internal

review for compliance with the remuneration policies and procedures adopted by the board of directors of the pension company.

(6) Where remuneration is performance related, the total amount of remuneration shall be based on the performance of the individual and of the business unit concerned and on the overall results of the pension company or funds, and when assessing individual performance, financial as well as non-financial criteria shall be taken into account.

(7) The pension company may pay the remuneration to its employees, procurators, members of the board of directors and of the supervisory board only if it is sustainable according to the financial situation of the pension company as a whole, and justified according to the performance of the funds and the pension company or its employees. The total remuneration shall not limit the ability of the pension company to strengthen its capital base.

(8) In the case of subdued or negative business performance of a pension company and/or funds, such performance shall be taken into account by the pension company when considering the payment of remuneration to the members of the board of directors and of the supervisory board, the procurators and employees.

(9) Annual financial statements of the pension company shall disclose:

1. the total amount of bonuses and awards, split into fixed and variable components, paid by the pension company to its employees, including the number of beneficiaries of such bonuses and awards;

2. the total amount of bonuses and awards, broken down by members of the board of directors, members of the supervisory board, procurators and employees of the pension company whose activities may have a material impact on the risk profile of the pension company or fund.

*Document handling procedures, keeping of records and business documents of a company*

Article 63

(1) A pension company shall have clear and transparent procedures for handling documents that relate to the pension company and the funds it manages.

(2) A pension company shall keep and retain the records and business documents about all the activities and transactions it has carried out, in particular those relating to the management of funds' assets, in a manner that makes it possible to supervise operations in accordance with the provisions of this Act and regulations made under this Act, in particular the fulfilment of the obligations towards the actual and potential fund members.

(3) A pension company shall organise the business and keep up-to-date business documents and other administrative or business records in a manner that makes it possible at any time to check the course of a transaction it has made for its own account or for the account of a particular fund.

(4) A pension company shall keep all the documents relating to the dealings with the assets of a particular fund separately from the documents of the pension company and other funds it manages.

(5) A pension company shall protect all business documents from unauthorised access and possible record losses and shall retain them in a durable medium.

### *Handling of complaints received from fund members*

#### Article 64

A pension company shall:

1. establish and implement adequate procedures ensuring that complaints received from voluntary pension fund members are handled in a proper manner and that there are no restrictions for the exercise of the members' rights;
2. make it possible for investors to lodge their complaints in the official language of the country in which a closed-end pension scheme is offered;
3. establish and implement adequate procedures ensuring that the information in connection with the handling of complaints received from fund members are made available to both the fund member and the Agency;
4. keep records and retain documents on all complaints received from fund members and on actions taken in relation to those complaints, for at least five years from the date of the last action taken in response to a complaint.

### *Settlement of disputes between a pension company and fund members*

#### Article 65

(1) Without prejudice to the possibility of resolving disputes before a court or other competent authority, a pension company shall provide the conditions for out-of-court settlement of disputes between the pension company and members of the funds managed by the pension company.

(2) Pension companies may jointly, through a professional organisation referred to in Article 307 of this Act, regulate the procedure and requirements for the out-of-court settlement of disputes referred to in paragraph 1 of this Article.

### *The pension company's website*

#### Article 66

(1) A pension company shall have, regularly update and maintain its website, which shall contain at least the following data and information:

1. general information about the pension company (the name, the address of the registered office and the address of the head office if not the same as that of the registered office, the

reference number of the authorisation granted by the Agency, as well as the date of establishment and registration in the court register, the amount of share capital, the founders and members);

2. basic information about the members of the board of directors, the members of the supervisory board and procurators of the pension company (personal names, short resumes);

3. half-yearly and audited annual reports of open-end funds;

4. half-yearly and audited annual financial statements of the pension company;

5. general information about the pension funds' depositary (the name, the address of the registered office and the address of the head office if not the same as that of the registered office, the information about and reference number of the authorisation for the performance of business activities of a depositary granted by the competent institution, the amount of initial capital), a list of all third parties with whom the depositary has entered into an agreement on delegation of the activities referred to in Article 247, paragraph 1, item 1 of this Act);

6. a list of funds managed by the pension company;

7. the prospectus, statute and key information of the open-end funds managed by the pension company;

8. information for fund members about the possibilities and rights to transfer from one fund to another, and a tabular summary of risks associated with the pension company and open-end funds, including the level of impact of each risk on the pension company and the open-end fund;

9. the price of the units in the funds for each valuation date;

10. a list of delegated tasks, indicating the third parties to which these tasks have been delegated;

11. all notices related to the pension company and the funds managed by the pension company, as well as other data that are to be published in accordance with this Act and regulations made under this Act;

12. information about the possibilities of lodging a complaint and the out-of-court settlement of disputes between the pension company and members of the funds managed by the pension company;

13. information about the right of members of closed-end funds to receive from the company, on request, data and information referred to in items 3, 7 and 8 of this paragraph that relate to closed-end funds;

14. information about the delegated activities, in accordance with Article 76, paragraph 5 of this Act.

(2) The Agency shall issue an ordinance specifying additional data and information that are to be made available on the pension company's website and that the Agency considers to be important for the members, the market and the public.

### *Adoption of ordinances*

#### Article 67

The Agency shall issue ordinances to lay down in more detail:

a) the organisational requirements for a pension company as regards the following:

1. organisational conditions;
2. conflicts of interest;
3. administrative and accounting procedures;
4. monitoring compliance with relevant legislation;
5. risk management;
6. internal audit;
7. business continuity measures;
8. remuneration policies;
9. keeping and maintaining the pension company's business documents;
10. adequate management of the information system, and
11. business conduct rules;

b) additional organisational requirements where a pension company also manages an UCITS fund.

### *Conduct of the business of a pension company*

#### Article 68

A pension company shall:

1. be able to meet in a timely manner its liabilities as they fall due (liquidity principle) and permanently meet all its liabilities (solvency principle);
2. manage funds in such a manner as to ensure that each fund is able to meet its liabilities as they fall due (liquidity principle) and that each fund is able to permanently meet all its liabilities (solvency principle);

3. manage a fund in accordance with investment limits and the specified risk profile of each individual fund it manages;
4. be responsible for a timely, fair and efficient exercising of all the rights and obligations provided for in this Act and the fund's prospectus;
5. put in place supervisory systems and mechanisms which clearly demonstrate that the pension company acts, in the long run, in accordance with this Act and the fund's prospectus, and which makes it possible to monitor all the decisions, orders and transactions relating to the pension fund's assets;
6. ensure that promotional material, publications and reports to fund members, whether delivered directly or published in print or electronic media, are clear, accurate and not misleading, and that they are in compliance with the Agency's requirements;
7. acquire assets for funds exclusively in its own name and for the account of the fund, by placing these in safe-keeping with a depositary, in accordance with this Act, regulations made under this Act and other relevant legislation;
8. submit to the depositary copies of all original documents relating to transactions involving assets of the funds immediately after these documents are prepared or received, as well as any other document or file important for the performance of the activities and fulfilment of the duties of a depositary as provided for in this Act, regulations made under this Act and other relevant legislation;
9. keep records of transactions involving assets of a particular fund separately from its own records and accounts and transaction records of other funds, and reconcile them with the depositary's records at regular intervals;
10. publish information on the pension company and the funds it manages, in accordance with this Act, regulations made under this Act and other relevant legislation;
11. submit to the Agency regular reports in accordance with the procedure provided for in the rules of the Agency;
12. observe the principle of honesty and good faith in its dealings with the Agency;
13. establish, maintain and keep available all the records determined by the Agency's regulation, in a complete, timely, accurate and truthful manner, for a period to be determined by the Agency;
14. make all its records available to the Agency in a timely manner, and make it possible for the Agency to conduct interviews with the persons carrying out tasks in the pension company;
15. comply with other requirements provided for in this Act and regulations made under this Act;
16. not conclude any contract intended to diminish or change the responsibilities determined by this Act, and any provision of a contract containing such intention shall be considered null and void;

17. charge one member of the board of directors with the duty of maintaining contacts with the Agency for the purposes of reporting and other correspondence activities required by the provisions of this Act;

18. issue orders to the depositary for the purpose of exercising the rights attaching to the fund's assets;

19. ensure that the fund's assets and liabilities are assessed at fair value and that the price of the units is correctly determined;

20. comply with other requirements provided for in this Act and regulations made under this Act.

### *Prohibited activities for pension companies*

#### Article 69

A pension company may not:

1. carry out activities of intermediation in purchase and sale of financial instruments;
2. acquire or dispose of assets of the funds it manages, whether for its own account or for the account of relevant persons;
3. purchase, out of the fund's assets, the assets not provided for in this Act or enter into deals not provided for in this Act;
4. effect transactions by which it would violate the provisions of this Act, regulations made under this Act and the fund's prospectus, including the provisions concerning investment limits;
5. dispose of the fund's assets without receiving the appropriate compensation;
6. acquire or dispose of assets of the funds it manages at a price less favourable than the fair value of the asset concerned;
7. arrange, whether directly or indirectly, simultaneously or with a delay, sale, purchase or transfer of assets between two funds managed by the same pension company under conditions other than market conditions or under conditions that favour one fund over the other;
8. assume obligations with respect to assets which, at the time when these obligations are assumed, are not owned by the fund, except for:
  - a) transactions in financial instruments made on a regulated market or another market the rules of which allow for delivery versus payment for financial instruments, and
  - b) transactions for which delivery versus delivery of financial instruments is not possible or which cannot normally be made through a delivery-versus-payment settlement system, in which case the pension company must put in place appropriate procedures and measures to control the settlement risk.

## *The pension company's liability*

### Article 70

(1) A pension company shall be liable to fund members for the sound and prudent conduct of the business activities provided for in this Act, regulations made under this Act and the fund's prospectus.

(2) In the case that a pension company does not perform or fails to perform, wholly or in part, or improperly performs any activity or duty provided for in this Act or in the fund's prospectus, the pension company shall be liable to the fund members for the damage caused to the assets of the fund, which has occurred as a consequence of the failure on the part of the pension company to perform and fulfil its duties.

(3) In the fund's statute, the pension company shall provide for appropriate procedures and model for compensating loss to the fund members, which are to be applied in the event that the value of the unit is wrongly calculated and in the event that the investment limits are not complied with within the meaning of Article 164, paragraph 4 of this Act, and which must cover, in particular, the development and verification of a loss compensation plan and loss compensation measures.

(4) The loss compensation procedures and model referred to in paragraph 3 of this Article must be audited by an auditor within the framework of an audit of the fund's annual reports.

(5) The Agency shall issue an ordinance elaborating in more detail the loss compensation procedure and model and its implementation, in particular:

1. details of the loss compensation procedure, the minimum amount of the wrongly calculated price of the unit above which the loss compensation procedure is to be carried out, and the details of a simplified loss compensation procedure in the case of absence of a defined total loss value;
2. loss compensation measures that are to be taken with respect to fund members or to the fund and low-value limits within which such loss compensation measures would cause disproportionate cost;
3. notification obligations towards the Agency;
4. obligation to provide information to fund members;
5. the contents and development of a loss compensation plan and the details of loss compensation measures;
6. the contents and scope of an audit of a loss compensation plan and loss compensation measures to be carried out by an auditor.

## *Assertion of claims and exercise of rights by a pension company*

### Article 71

A pension company shall be empowered and obliged to exercise, in its own name, the rights of fund members against a depositary.

### *Financing of pension company's activities*

#### Article 72

In order to cover the costs of a pension fund, the pension company may charge the following fees in accordance with the fund's prospectus and statute:

1. an entry fee;
2. a management fee;
3. an exit fee for leaving the fund;
4. a fee towards the costs of auditing the fund.

### *Pension company's reports*

#### Article 73

- (1) The legislation governing accounting and the International Financial Reporting Standards shall apply to financial reporting by a pension company, unless the Agency provides otherwise.
- (2) The Agency shall prescribe the structure and the contents of annual financial statements of a pension company, their publication and the method and deadlines for their submission.
- (3) A pension company shall determine its business year by way of an internal by-law.
- (4) Apart from annual financial statements referred to in paragraph 2 of this Article, the Agency shall lay down the structure, the contents and the method and deadlines for submission of other reports of a pension company that pension companies are required to prepare for the Agency's purposes.
- (5) The Agency shall prescribe the chart of accounts for a pension company.

### *Auditing of pension company's reports*

#### Article 74

- (1) Annual financial statements of a pension company shall be audited by an auditor in the manner and under the conditions laid down in the legislation governing accounting and auditing activities and in the rules of the auditing profession, unless otherwise provided for in this Act and regulations made under this Act.
- (2) The pension company shall submit to the Agency audited annual financial statements referred to in Article 73, paragraph 2 within 15 days of the date of issue of the auditors' report,

but not later than four months following the end of the business year in respect of which the statements are drawn up.

(3) The same audit firm may audit no more than seven consecutive annual financial statements of a pension company.

#### Article 75

(1) The Agency may require the auditor to provide additional explanations with regard to the audited annual financial statements or other audited reports of a pension company.

(2) If the Agency establishes that an audit of the pension company's reports has not been carried out or that the auditor's report has not been drawn up in accordance with this Act, regulations made under this Act, the legislation governing accounting and auditing activities and the rules of the auditing profession, or if it establishes, on the basis of a supervision of the operations of the pension company or otherwise, that the auditor's report on the pension company's reports is not based on true and objective facts, it may reject the auditor's report and require the pension company to have the audit carried out by certified auditors from another audit firm at the expense of the pension company.

(3) The Agency shall issue an ordinance to specify in more detail the scope and content of the audit, auditing procedures and auditor's report on an audit of annual financial statements or other reports of a pension company.

#### *Delegation of tasks to third parties*

#### Article 76

(1) A pension company may delegate to third parties only the administrative tasks referred to in Article 11, paragraph 3, items 2, 3, 7, 8 and 11 of this Act, subject to the prior approval by the Agency.

(2) Only the administrative tasks referred to in Article 11, paragraph 3, items 2, 3, 7, 8 and 11 of this Act may be delegated to a depositary, persons with whom the depositary has concluded a depositary contract and any further sub-depositaries.

(3) The delegation of tasks referred to in paragraph 1 of this Article shall be evidenced by a written contract concluded between the pension company and a third party. The contract shall provide that the third party must make it possible for the Agency to supervise the delegated tasks.

(4) The contract referred to in paragraph 3 may not enter into force without the Agency's approval.

(5) Immediately after receiving the Agency's approval, the pension company shall publish on its website information about the tasks delegated to a third party, indicating the identity of the third party. If the third party further delegates the delegated tasks, the pension company shall also publish on its website this information and the identity of the person concerned, immediately upon entry into force of that contract.

## Article 77

(1) Tasks may be delegated to third parties only if the following requirements are met:

- a) the delegation is carried out for objective reasons and exclusively for the purpose of a more efficient performance of these tasks;
- b) the third party must have the resources that are necessary for the proper, high-quality and efficient performance of the delegated tasks;
- c) persons authorised by the third party must have good reputation, professional qualifications and experience needed for the performance of the delegated tasks;
- d) the pension company must be able to prove that the third party is qualified and capable of undertaking the delegated tasks, that it was selected with due care and that the management company is in a position to monitor effectively at any time the delegated tasks;
- e) the pension company shall supervise the third party in the performance of the delegated tasks on an ongoing basis;
- f) tasks may not be delegated to a person whose interests are in conflict with those of fund members;
- g) the delegation shall not prevent the effectiveness of supervision over the pension company and the funds;
- h) the delegation shall not jeopardise the interests of the fund and fund members;
- i) the pension company shall remain fully responsible for the performance of the delegated functions;
- j) the fund's prospectus shall list the tasks that have been delegated to a third party, and the party to whom these tasks have been delegated shall be indicated.

(2) The third party may sub-delegate the delegated tasks only if the following conditions are met:

- a) the pension company has approved the sub-delegation;
- b) the pension company has informed the Agency of the sub-delegation in advance;
- c) all the requirements of paragraph 1 of this Article have been met with regard to sub-delegation;
- d) the sub-delegation contract shall provide that the party to which the tasks are sub-delegated must make it possible for the Agency to supervise the delegated tasks.

(3) The requirements of paragraph 1 of this Article shall be deemed to be fulfilled if the third party is a company that, at the time of the conclusion of the contract referred to in Article 76, paragraph 3 of this Act, already manages a mandatory or voluntary pension fund.

(4) The Agency shall issue an ordinance specifying in more detail the procedure for delegation of functions to third parties by pension companies.

#### Article 78

(1) A pension company shall act in the best interests of the members of the funds it manages and shall exercise due skill, care and diligence when taking investment decisions, delegating its functions to third parties, outsourcing and performing other activities of importance to the pension company and the pension funds it manages.

(2) A pension company shall determine and implement internal policies and procedures to ensure that it acts in accordance with paragraph 1 of this Article, which shall be consistent with the provisions of this Act and regulations made under this Act, the fund's statute, the fund objectives, the investment strategy and the risk management strategy and policy, including the risk limits.

#### *Change in holders of qualifying holdings in a pension company*

#### Article 79

(1) Any natural or legal person or such persons acting in concert (proposed acquirer) intending to acquire or to further increase, directly or indirectly, a holding in a pension company as a result of which the proportion of the share capital or of the voting rights held would reach or exceed the threshold of 10 %, 20 %, 30 % or 50 % or so that the pension company would become a subsidiary of the proposed acquirer (proposed acquisition), must first submit to the Agency an application for approval.

(2) The application referred to in paragraph 1 of this Article shall contain:

1. information on the size of the intended holding;
2. the documents referred to in Article 84, paragraph 4 of this Act.

#### Article 80

(1) Any natural or legal person intending to dispose, directly or indirectly, of a qualifying holding in a pension company shall notify the Agency thereof in writing at least seven days prior to the disposal, indicating the size of the holding intended to be disposed of.

(2) The person referred to in paragraph 1 of this Article shall likewise notify the Agency, at least seven days in advance, about its intention to reduce its qualifying holding so that the proportion of the share capital or of the voting rights held would fall below the threshold of 10 %, 20 %, 30 % or 50 % or so that the pension company would cease to be a subsidiary of that person.

#### Article 81

(1) The Agency may cooperate with other competent authorities when carrying out the assessment referred to in Article 84 of this Act, in particular if the proposed acquirer is one of the following:

1. a credit institution, an insurance company, a reinsurance company, a company managing UCITS funds, a company managing alternative investment funds, an investment company, a company managing a mandatory pension fund, a pension company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

2. the parent company of an entity referred to in item 1 of this paragraph;

3. a legal or natural person controlling an entity referred to in item 1 of this paragraph.

(2) In the case referred to in paragraph 1 of this Article, the Agency may request another competent authority to provide:

1. any information that is necessary for the assessment referred to in Article 84 of this Act;

2. other information at the disposal of another competent authority, which may be relevant to the assessment referred to in Article 84 of this Act

3. where appropriate, an opinion of another competent authority on the proposed acquirer.

(3) If the authority that is responsible for the proposed acquirer expresses its opinion along with the information referred to in paragraph 2 items 1 and 2 of this Article, the Agency must take it into account when taking a decision on the proposed acquisition of the qualifying holding.

#### Article 82

The Agency shall carry out the assessment referred to in Article 84 of this Act and make a decision within 60 days of the date of submission of the complete application for approval to acquire or increase a qualifying holding, and of any additional information referred to in Article 83 of this Act (assessment period).

#### Article 83

(1) The Agency may, during the assessment period if necessary, and no later than on the 50th day of the assessment period, request any further information or clarification that is necessary to complete the assessment, and in such case the 60-day period for making a decision shall run from the day of receipt of all the requested information or clarification.

(2) In its decision approving the proposed acquisition the Agency may set the deadline by which the proposed acquisition must be completed and may subsequently extend it for justified reasons.

(3) If the proposed acquirer does not acquire a qualifying holding within the time limit referred to in paragraph 2 of this Article, the Agency shall fully revoke its decision to approve the proposed acquisition. The power of the Agency to revoke its lawful decision shall not be time limited.

#### Article 84

(1) In assessing the application referred to in Article 79, paragraph 1 of this Act and the information requested in accordance with Article 83, paragraphs 1 and 3 of this Act, the Agency shall, in order to verify whether the operations of the pension company in which an acquisition is proposed will be conducted with due professional care, and having regard to the possible influence of the proposed acquirer on that company, assess the suitability of the proposed acquirer and the financial stability of the proposed acquisition, taking into account all of the following criteria:

1. the reputation of the proposed acquirer;
2. the business reputation and experience of the person who will direct the business of the pension company as a result of the proposed acquisition;
3. the financial stability of the proposed acquirer, in particular in relation to the type of business pursued in the pension company in which the acquisition is proposed;
4. whether the pension company will be able to comply and continue to comply with the requirements of this Act, and where applicable, other legislation on individual and consolidated basis, in particular whether the group of which the pension company will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and whether the allocation of responsibilities among the competent authorities can be determined;
5. whether there are reasonable grounds to suspect that money laundering or terrorism financing has been or could be committed or attempted, within the meaning of the legislation governing these issues.

(2) The Agency may refuse an application for approval of the proposed acquisition only if the requirements of paragraph 1 of this Article are not satisfied or if the information provided by the proposed acquirer is incomplete, false or misleading.

(3) The documents that are necessary to carry out the assessment and that must be provided to the Agency together with an application for approval to acquire or increase a qualifying holding shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.

(4) The Agency shall specify, by way of an ordinance, the documents referred to in paragraph 3 of this Article.

(5) Where two or more applications to acquire or increase qualifying holdings in the same pension company have been received by the Agency, the latter shall treat the proposed acquirers in a non-discriminatory manner.

(6) If a pension company becomes aware of an acquisition or disposal of a qualifying holding in the company that causes the holding to exceed or fall below the threshold of 10 %, 20 %, 30 % or 50 %, it shall inform the Agency thereof without delay.

(7) A pension company shall submit to the Agency, once a year and no later than 31 March of the current year, a list of all shareholders or stockholders, as well as holders of qualifying holdings and the sizes of such holdings, as on 1 January of the current year.

*Legal consequences of acquisition without approval and the revocation of approval to acquire a qualifying holding*

Article 85

(1) A person who acquires a qualifying holding in a pension company contrary to the provisions of this Act shall not be entitled to voting rights attaching to shares or holdings acquired without approval.

(2) In the case referred to in paragraph 1 of this Article, the Agency shall order that the shares or holdings so acquired be disposed of and shall set a deadline for such disposal.

(3) The Agency may revoke approval to acquire a qualifying holding if:

1. the person possessing a qualifying holding has obtained the approval by providing false, incorrect or misleading information or by withholding material information, or in any other fraudulent manner;

2. the conditions imposed by the provisions of this Act based on which the approval to acquire of a qualifying holding was granted no longer exist.

(4) In the case referred to in paragraph 3 of this Article, the person whose approval for the acquisition of a qualifying holding has been revoked shall not have the right to exercise voting rights attaching to the shares or holdings in respect of which the approval has been revoked. The Agency shall order the disposal of the acquired shares or holdings in respect of which the approval for the acquisition of a qualifying holding has been revoked from the holder of the qualifying holding, and shall set a deadline for such disposal.

(5) Costs of the disposal of the shares or holdings referred to in paragraphs 2 and 4 of this Article shall be borne by the holder of the qualifying holding.

(6) The power of the Agency to revoke its lawful decision shall not be time limited.

*Measures to be taken by the Agency when the sound and prudent management of a pension company is jeopardised*

Article 86

(1) Where the inappropriate influence exercised by a holder of a qualifying holding is likely to operate against the sound and prudent management of a company, the Agency is authorised to take appropriate measures to prevent such influence.

(2) The measures referred to in paragraph 1 of this Article shall include, in addition to appropriate supervisory measures, the submission of a request to the competent court for imposition of interim measures related to the exercise of the voting rights attaching to the holdings held by the holders of qualifying holdings referred to in paragraph 1 of this Article.

*Transfer of the fund management activities*

*Voluntary transfer of the fund management activities*

## Article 87

(1) A pension company (transferor company) is entitled to transfer the fund management activities to another pension company (transferee company).

(2) Prior to the transfer of the fund management activities, the transferee company must obtain approval from the Agency.

(3) The transfer of the fund management activities shall be evidenced by a written contract between the transferor company and the transferee company, which must contain:

1. a description of all procedures and actions that the companies will take with regard to the transfer of the management activities;

2. the time limit within which the management activities will be transferred to another company, which shall not be shorter than one month and shall begin to run from the public announcement of the transfer of the management activities referred to in Article 90, paragraph 1 of this Act.

(4) During the procedure for the transfer of the fund management activities to a transferee company, the complete fund of the transferor company shall be transferred.

(5) The Agency shall issue an ordinance specifying in more detail the procedure, the conditions for and the method of transfer of the fund management activities.

### *Application for approval for the transfer of management activities*

## Article 88

In support of its application for approval for the transfer of the fund management activities the transferee company shall submit:

1. the contract on the transfer of the fund management activities referred to in Article 87, paragraph 3 of this Act;

2. the text of the announcement referred to in Article 90, paragraph 1 of this Act;

3. the text of the notification to be provided to fund members as referred to in Article 90, paragraph 2 of this Act;

4. an application for approval to conclude or amend a depositary contract referred to in Article 245, paragraph 3 of this Act;

5. when necessary, such other documents as may be requested by the Agency.

### *Deciding on an application for approval for the transfer of management activities*

## Article 89

(1) The Agency shall refuse an application for approval for the transfer of fund management activities if:

1. the transferee company does not meet the requirements for managing the fund;
  2. the contents of the announcement to be published and of the notification to be provided to fund members, as referred to in Article 90, paragraphs 1 and 2 of this Act, do not comply with the provisions of this Act and regulations made under this Act;
  3. it considers that the transfer of the management activities could harm the interests of the members of the fund that is transferred or the interests of the public.
- (2) If an application for approval for the transfer of the fund management activities is submitted by a transferor company, the Agency shall reject such application.

#### Article 90

- (1) Within eight days of receiving approval from the Agency, the transferor company and the transferee company shall jointly publish an announcement of the transfer of the management activities.
- (2) Within 15 days of receiving approval from the Agency, the transferor company and the transferee company shall notify all the members of the funds they manage of the transfer of the management activities.
- (3) Members of the funds shall not pay an exit fee in consequence of the transfer of the management activities to another pension company, during the period beginning one month before, and ending two months after, the legal consequences of the transfer of the management activities take effect.
- (4) The Agency shall issue an ordinance specifying the contents of the announcement of the transfer and of the notification to the fund members and the method of publishing and submitting the announcement and the notification referred to in paragraphs 1 and 2 of this Article.

#### *Legal consequences of the transfer of management activities*

#### Article 91

(1) On expiry of the time limit referred to in Article 87, paragraph 3, item 2 of this Act, the following legal consequences shall arise:

1. all rights and obligations of the transferor company with regard to the management of the transferred fund shall be transferred to the transferee company;
2. the transferor company's authorisation to manage the transferred fund shall terminate.

(2) The transferor company and the transferee company shall, by the date of expiry of the time limit referred to in Article 87, paragraph 3, item 2 of this Act, complete all the procedures and

actions necessary for the transfer of the fund management activities, and shall notify the Agency of all the procedures and actions taken.

(3) By way of exception, the Agency may, at the joint request of the transferor company and the transferee company, extend the time limit referred to in Article 87, paragraph 3, item 2 of this Act, if it serves the interests of the fund members. An application for extension shall be submitted to the Agency by the transferor company and the transferee company before the expiry of the time limit referred to in Article 87, paragraph 3, item 2 of this Act.

### *Compulsory transfer of the fund management activities*

#### Article 92

A compulsory transfer of the fund management activities shall be carried out if:

1. the Agency has withdrawn an authorisation to conduct business granted to a pension company, or
2. bankruptcy proceedings, pre-bankruptcy settlement proceedings or winding-up proceedings have been initiated against a pension company;
3. the case referred to in Article 94, paragraph 6 of this Act has occurred;
4. the case referred to in Article 96, paragraph 2 of this Act has occurred;
5. the competent authority of the fund's host Member State has prohibited a pension company from the Republic of Croatia from managing a closed-end fund in the territory of that Member State (Article 304, paragraph 2);
6. the Agency has prohibited a pension company from another Member State from managing a closed-end fund in the territory of the Republic of Croatia (Article 305, paragraph 4).

### *Obligations of the depositary*

#### Article 93

(1) From the time when the reasons for a compulsory transfer of the fund management activities arise until the time when the legal consequences of the transfer of the management activities to a transferee company take effect, the depositary shall perform all fund management activities which, for the protection of the interests of the fund members, cannot be delayed.

(2) From the time when the reasons for a compulsory transfer of the fund management activities arise, the depositary shall suspend payments by fund members and closures of personal accounts.

(3) From the time when the reasons for a compulsory transfer of the management activities arise until the time when the legal consequences of the transfer of the management activities to a transferee company take effect, the depositary shall be entitled to a fee that is otherwise payable to the pension company in accordance with the fund's prospectus.

## *Selection of another pension company and transfer of management activities*

### Article 94

- (1) The depositary shall, within 60 days of the day when the reasons for a compulsory transfer of the fund management activities has arisen as referred to in Article 92 of this Act, carry out the relevant tender procedure following an invitation for tenders from companies that meet the requirements for managing the fund and are interested in taking over the management of the fund, as well as the procedure for selecting a new pension company.
- (2) If more than one pension company that meets the requirements for taking over the fund management activities responds to the depositary's invitation referred to in paragraph 1 of this Article, the depositary shall, when selecting the pension company, act in the best interests of the fund members.
- (3) The depositary and the transferee company shall conclude a contract for the transfer of management activities.
- (4) The provisions of Article 87, paragraph 3 of this Act shall apply *mutatis mutandis* to the contract referred to in paragraph 3 of this Article, but the period in which the depositary and the transferee company are to complete the transfer of management activities may not exceed one month from the date of conclusion of the contract.
- (5) The provisions of Article 87, paragraph 4 and Articles 88 to 91 of this Act shall apply *mutatis mutandis* to the compulsory transfer of management activities.
- (6) If, in response to the public invitation referred to in paragraph 1 of this Article, no tenders are received from pension companies satisfying the requirements for managing the fund, the depositary shall inform the fund members that they need to select a fund managed by another pension company and shall set a deadline by which they can join this new fund.
- (7) With regard to fund members who fail to select a fund managed by another pension company by the deadline referred to in paragraph 6 of this Article, the depositary shall allocate them, *ex officio*, to other open-end funds in accordance with the principle of equality, in such a way as to allocate an equal number of members to each pension company, and shall carry out the liquidation of the fund.
- (8) The Agency shall issue an ordinance setting out in more detail the responsibilities, procedures, conditions and manner of compulsory transfer of the fund management activities, *ex officio* allocation of fund members to other open-end funds and liquidation of the fund and its removal from the register of funds.

## *Voluntary termination of the business of a pension company*

### Article 95

A pension company may terminate its registered business by:

1. taking a decision to terminate its business and

2. communicating to the depositary and the Agency the decision referred to in item 1 of this Article and the notification of termination of the business at least two months prior to the date of termination of management activities in respect of all the funds it manages.

#### Article 96

(1) The pension company shall, within two months of the communication referred to in Article 95 of this Act, carry out the procedure for the transfer of the fund management activities to another pension company in accordance with the provisions of Articles 87 to 91 of this Act.

(2) If the pension company does not find a new pension company to which the fund management activities would be transferred in accordance with the provisions of paragraph 1 of this Article, it shall immediately inform the Agency thereof. In that case, conditions for the compulsory transfer shall arise, and the provisions of Articles 93 and 94 of this Act shall apply accordingly.

(3) Upon completion of the procedure for the transfer of the fund management activities to another pension company or completion of the compulsory transfer of the management activities, the Agency shall revoke the granted authorisation to conduct business, at the pension company's own request.

### PART THREE

#### FUNDS

##### *Section I*

#### Article 97

(1) A fund is a separate pool of assets that has no legal personality and is established with a view to collecting financial assets derived from payments to personal accounts of fund members and investing these assets in order to increase the value of the fund's assets, with a goal to provide for the payment of pension benefits to fund members in accordance with the statutory provisions.

(2) Fund's assets are owned by the members of the fund whose individual ownership rights are determined in proportion to the assets in their personal accounts.

(3) A certificate showing the number of units in the personal account of the fund member, which must be issued to the fund members by the pension company in accordance with the provisions of Article 133 of this Act, shall serve as evidence of ownership of assets in the fund.

#### Article 98

(1) A fund may be established and managed by a pension company or a company managing mandatory pension funds or a company managing UCITS funds, subject to an authorisation granted by the Agency, in accordance with this Act.

(2) By way of derogation from the provision of paragraph 1 of this Article, a closed-end fund sponsored by a sponsor from the Republic of Croatia may also be managed by a pension company from another Member State in accordance with the provisions of Article 13 of this Act, or by a manager established in another Member State, in accordance with the provisions of Article 14 of this Act.

#### Article 99

The fund's registered name shall contain the words “voluntary pension fund”.

#### *Approval to establish and manage funds*

#### Article 100

(1) Following its registration in the court register, a pension company, represented by its board of directors, shall submit to the Agency an application for approval to establish and manage funds.

(2) An application for approval to establish and manage funds shall contain:

1. the name of the fund and its investment objectives;
2. the statute and prospectus of the fund;
3. the depositary contract concluded between the pension company and the depositary;
4. information about the audit firm;
5. proof that the pension company establishing the fund meets the organisational requirements of Articles 54 to 67 of this Act, unless the pension company already manages at least one fund on the basis of an authorisation granted by the Agency;
6. for a closed-end fund, the decision, collective agreement or statute of the sponsor.

(3) The Agency shall issue an ordinance specifying the required contents of an application for approval to establish and manage funds referred to in paragraph 2 of this Article and additional information that are to be provided with the application.

(4) The Agency shall decide on an application within 60 days of the date of receipt of the complete application. An application shall be deemed to be complete if, pursuant to the provisions of the ordinance referred to in paragraph 3 of this Article, it contains all required information and if all necessary documents containing the required information are annexed thereto.

#### Article 101

Any changes to the documents and information listed in Article 23 of this Act, proposed by a pension company before an approval to establish and manage a fund is granted, shall be examined by the Agency in accordance with the provisions of Article 24 of this Act.

## Article 102

(1) The Agency shall refuse an application for approval to establish and manage a fund if:

1. the application does not satisfy the requirements of this Act;
2. the pension company has not concluded a valid contract with the depositary concerning the performance of depositary activities;
3. the prospectus and statute of the fund do not comply with the provisions of this Act and regulations made under this Act;
4. the pension company does not satisfy other requirements for managing the fund which are laid down in this Act and regulations made under this Act;
5. the pension company does not have an adequate organisational structure and conditions for managing the fund;

(2) The Agency shall refuse an application for approval to establish and manage a fund, submitted by a pension company that already carries out fund management activities in the territory of the Republic of Croatia if, due to serious or frequent violations of the provisions of this Act and regulations made under this Act, the Agency has already imposed supervisory measures which the pension company failed to observe.

## Article 103

(1) The Agency may simultaneously decide on the following applications:

1. an application for approval to establish and manage a fund;
2. an application for approval of the fund's prospectus;
3. an application for approval of the fund's statute;
4. an application for approval of changes in the fund's status.

(2) The provisions of paragraph 1 of this Article and the provisions of Articles 100 to 102 of this Act shall apply *mutatis mutandis* when an application for approval to establish and manage a fund is submitted to the Agency by a company managing mandatory pension funds or a company managing UCITS funds.

## *Fund's assets*

## Article 104

The fund's assets shall not belong to the pension company, shall not be part of the pension company's assets or its liquidation or bankruptcy estate and may not be subject to execution to satisfy claims against the pension company. The fund's assets shall be held and kept separately from the pension company's assets.

## *Management of personal accounts and valuation of assets*

### Article 105

- (1) Payments into personal accounts and the accounts transferred shall be credited to the personal account opened in the name of a fund member. The assets in the personal account of a pension fund member shall constitute his or her personal assets. The right to receive assets standing to the personal account of a fund member shall be subject to the provisions of this Act, regulations made under this Act and other applicable legislation.
- (2) The assets in the personal account of a fund member may not be subject to execution or security to satisfy claims against the fund member, depositary, pension company or sponsor. Also, these assets may not form part of the bankruptcy and/or liquidation estate of the fund member, depositary, pension company and/or sponsor.
- (3) The assets in the personal account of a fund member may not be encumbered, pledged or assigned to the benefit of any other person. Any such action shall be null and void.
- (4) The assets in the personal account of a fund member shall be inheritable under the law governing inheritance rights. If a fund member has agreed with the fund that his or her pension will be paid for a temporary period from the fund's assets, the heirs shall nevertheless be entitled to a lump sum payment under the conditions stipulated in a contract concluded between the fund member and the pension company.
- (5) The assets of the deceased that were transferred to a pension insurance company shall be disposed of in accordance with the provisions of the law governing pension insurance companies.

### Article 106

- (1) The pension company shall be responsible for determining the value of assets of a fund and the value of all its liabilities at the time of calculating its net asset value or the price of units.
- (2) The calculation of the net asset value of a fund shall ensure impartiality towards all the members of the fund and shall be in the interest of all the members of the fund.

### Article 107

- (1) Payments made into personal accounts as well as the accounts transferred to the fund shall be converted into units.
- (2) For the purposes of valuation, each unit shall represent a proportionate share in the net asset value of the fund.
- (3) The total value of all the units of a fund shall always be equal to the net asset value of the fund, calculated in accordance with the provisions of this Act and regulations made under this Act.

(4) The Agency shall issue an ordinance specifying in more detail the calculation of the net asset value of a fund and the price of the units of a fund.

#### Article 108

(1) Payments made into personal accounts as well as the accounts transferred shall be converted into units on a daily basis according to the price of the units on that date.

(2) The initial price of the units of a fund shall be determined in the fund's prospectus.

#### Article 109

(1) The net asset value of a fund shall be calculated for each day in accordance with this Act and regulations made under this Act.

(2) The price of the unit of a fund shall be calculated for each day and shall be rounded to four decimal places.

#### *Responsibility for calculating the net asset value of a fund or the price of units*

#### Article 110

(1) The net asset value and the price of the units of a fund shall be calculated by the pension company in accordance with the adopted accounting policies and valuation methodologies that comply with this Act, regulations made under this Act, other legislation and the fund's prospectus.

(2) The pension company shall adopt the accounting policies and valuation methodologies for each fund it manages, at the time when the fund is established, and shall without delay communicate these to the depositary of the fund.

(3) The depositary shall ensure that the pension company calculates the net asset value and the price of the units of a fund in accordance with the adopted accounting policies and valuation methodologies that must comply with this Act, regulations made under this Act, other applicable legislation and the fund's prospectus.

(4) The calculation of the values referred to in paragraph 1 of this Article shall be verified by the depositary in charge of verifying the calculations.

(5) The depositary shall sign and keep for its records one copy of the documents evidencing that the calculations have been verified.

(6) If the depositary, at the time of verifying the calculation of the net asset value of a fund, finds any inaccuracy and/or irregularity, it shall inform thereof the pension company without delay in writing.

(7) When auditing annual reports, the fund's auditor shall also audit the implementation of the principles of valuation of the fund's net asset value provided for in this Act, regulations made under this Act and other applicable legislation in order to ascertain that the prices of the units determined by applying these principles are accurate and that the management fee and other

fees and expenses provided for in the law and in the fund's prospectus do not exceed the allowed amounts.

(8) The pension company shall, for each day, publish on its website the price of the units of the funds as confirmed by the depositary.

(9) The pension company shall be responsible for the proper valuation of the fund's assets and for the accurate calculation of the fund's net asset value and the price of the units.

(10) If the calculation and verification of the net asset value of a fund are not completed within the prescribed time, the pension company shall notify the Agency thereof, indicating the reasons for which it was not possible to determine the accurate net asset value of the fund. The Agency shall issue an ordinance setting out the actions that need to be taken in such cases.

(11) The Agency shall issue an ordinance laying down the method and deadline by which the depositary must notify the Agency of the calculation of the net asset value of a fund and the price of the units of a fund, as well as the method of reporting.

#### *Fund's costs*

##### Article 111

Only the following may be paid directly out of the fund's assets:

1. the fees referred to in Article 72 of this Act;
2. a fee payable to a depositary;
3. costs, fees or charges related to the acquisition or sale of the fund's assets, including the necessary costs for protecting or safeguarding the assets of the fund.

#### *The fund's liability*

##### Article 112

(1) The fund shall not be liable for the obligations of the pension company.

(2) Fund members shall not be liable for the obligations of the pension company arising from legal transactions concluded by the pension company in its own name and for the account of fund members. The pension company may not conclude a legal transaction which would impose a direct obligation on a fund member. Any legal transactions contrary to this paragraph shall be null and void.

(3) Any power of attorney under which the pension company would represent the fund members shall be null and void.

(4) The pension company may settle claims for reimbursement of costs and fees arising from the conclusion of legal transactions for the joint account of the fund members solely out of the fund's assets and may not directly charge the fund members for these costs and fees.

## *Exercise of voting rights*

### **Article 113**

- (1) The pension company shall represent the fund in exercising the voting rights attaching to financial instruments that belong to the fund's assets.
- (2) The pension company shall exercise, by itself or through a depositary, the voting rights attaching to shares and the rights attaching to other financial instruments that form part of the fund's assets.
- (3) The voting rights attaching to shares and the rights attaching to other financial instruments that form part of the fund's assets may also be exercised by a proxy to whom the pension company or the depositary shall issue a special power of attorney in writing. The pension company shall give clear voting instructions.

## ***Section II***

### ***Membership in a fund***

#### **Article 114**

- (1) Membership in a fund is established by concluding a membership agreement with the pension company that manages the selected fund and by registering in the register of fund members referred to in Article 130 of this Act.
- (2) The same person may simultaneously be a member of one or more funds.

### ***Membership agreement***

#### **Article 115**

- (1) The relationship between a pension company and a fund member shall be governed by a membership agreement.
- (2) A membership agreement shall be deemed to be concluded when a potential fund member accepts the prospectus and statute of the fund, provided that the first payment into the fund has been made.
- (3) A membership agreement must contain the member's name, personal identification number, date of birth and sex, the name of the pension company and of the fund, the date of conclusion of the agreement and the signature or consent of the fund member attesting to the acceptance of the terms of the agreement.
- (4) By a membership agreement, the pension company shall undertake to convert payments made into personal accounts of a fund member into units, register this in the register of fund members, manage the fund for the joint account of the members and carry out all other legal transactions and actions necessary for managing the fund in accordance with the provisions of this Act, regulations made under this Act and the fund's prospectus and statute.

(5) By a membership agreement, the company shall provide information to a fund member about any fees that will be charged to the fund member and paid out of the fund's assets during the term of his or her membership in the fund, and about the ways in which payments can be made after he or she becomes entitled to a pension, the requirements for the exercise of entitlement to a pension after the death of a fund member (Article 123, paragraph 2), the conditions for withdrawal from membership in the fund (Article 118, paragraph 3), as well as the fees that may be charged for payment of pension, and the method and time limits for informing fund members.

### *Rejection of membership*

#### Article 116

(1) A pension company may refuse to conclude a membership agreement if:

1. the relations between the pension company and a potential fund member are seriously impaired (for example, there is a litigation or other similar dispute);
2. there are reasonable grounds to suspect that money laundering or terrorism financing has been committed or attempted or is likely to be committed, in accordance with the legislation governing these matters.

(2) When a pension company refuses to conclude a membership agreement, it must inform the potential fund member thereof.

#### Article 117

(1) A fund member may, within 15 days of the date of the first payment into the personal account in the fund, submit to the pension company a written statement declaring that he or she terminates the membership agreement, without stating specific reasons.

(2) In the case referred to in paragraph 1 of this Article, the pension company shall repay to the payer the amount paid, reduced by the entry fee and any fees charged to the assets of the fund, all corrected for the fund's realised return.

(3) If a pension company or a person that has concluded a business co-operation contract with the pension company for offering pension funds schemes has misled a fund member as to the conditions and procedures for voluntary pension insurance based on individual capitalised savings, the pension company shall repay the funds from the personal account of the member concerned, provided that the fund member has informed the pension company of such misleading practice within 30 days of the date of the first payment into the personal account in the fund and further provided that within that period he or she has submitted a statement terminating the agreement or a request for repayment.

(4) In the case referred to in paragraph 3 of this Article, the pension company shall repay to the fund member the amounts in the personal account of the fund member, and the difference between the amounts paid by the member and the price of units in the member's personal account at the date of repayment shall constitute either the revenue or the liability of the pension company.

(5) The pension company shall make repayments referred to in paragraphs 2 and 4 of this Article within seven days of the day of receipt of the statement referred to in paragraph 1 of this Article or the statement or duly documented request for repayment referred to in paragraph 3 of this Article.

### *Termination of membership*

#### Article 118

(1) If a fund member has opted for his or her pension to be paid through a pension insurance company, his or her membership in the fund shall terminate when funds are transferred to the pension insurance company selected by the member, in accordance with the provisions of Article 125 of this Act.

(2) If a fund member has opted for his or her pension to be paid through the fund, his or her membership in the fund shall not terminate when the agreement referred to in Article 126, paragraph 2 of this Act (agreement on the payment of a pension through the fund) is concluded between the fund member and the pension company, but only when the final instalment of the pension is paid in accordance with the provisions of that agreement.

(3) A member of an open-end fund may withdraw from membership in such fund under the conditions and according to the procedures determined in the membership agreement referred to in Article 115, paragraph 1 of this Act, while a member of a closed-end fund may withdraw from membership in such fund if the circumstances referred to in Article 120, paragraph 1 of this Act have ceased to exist, in accordance with the fund's prospectus and statute.

(4) Notwithstanding the provision of paragraph 3 of this Article, if the conditions for exercising the entitlement to a pension are not met in accordance with Article 123 of this Act, the withdrawal from membership shall be possible only under the condition of the simultaneous entering into membership in another fund.

(5) If a member of a fund ceases to make payments into his or her personal account in the fund, he or she shall continue to be a member of that fund.

#### Article 119

(1) A worker posted to a Member State or a worker posted to work in a third country shall not cease to be a member of a closed-end fund because of being posted.

(2) The employer shall ensure that, in respect of a posted worker, payments continue to be made to his or her personal account in a closed-end fund or to an appropriate voluntary pension (occupational) insurance scheme in the Member State to which the worker is posted.

(3) With regard to a worker posted to a third country, the employer shall ensure that payments continue to be made to his or her personal account in a closed-end fund or to an appropriate voluntary pension fund in the country to which the worker is posted if such fund exists.

(4) The pension company shall take all the measures necessary to ensure the preservation of vested proprietary rights and pension rights of a member of a fund who no longer makes payments to that fund, irrespective of whether payments to the fund are no longer made

because the member has been posted to work in another Member State or in a third country or for some other reasons.

### *Membership in a closed-end fund*

#### Article 120

(1) A closed-end fund may accept applications for membership from the following persons:

1. workers employed by an employer sponsoring the closed-end fund, including former workers of that employer;
2. members of a trade union sponsoring the closed-end fund, including former members of that trade union;
3. members of an association of self-employed persons or a professional association sponsoring the closed-end fund, including former members of these associations, and
4. self-employed persons.

(2) Membership in a closed-end fund shall be further regulated by the prospectus and statute of the closed-end fund.

#### Article 121

The pension company shall ensure that, in respect of members of closed-end funds who are nationals of other Member States, pension payments are made in other Member States net of any taxes and transaction charges which may be applicable. This provision shall also apply to property and legal rights under the provisions of this Act.

#### Article 122

(1) Access to a closed-end fund sponsored by an employer, trade union or association of self-employed persons must not be limited to certain persons, but must be offered to all the workers of that employer, trade union or association of self-employed persons or professional association or a special professional category of workers.

(2) Joining a closed-end fund must not be a condition for employment or for membership in a trade union.

(3) The employer may withhold a portion of an employee's wages to make payments to the personal account of a member of a closed-end fund only upon the written consent of the employee.

### *Fund member's entitlement to a pension*

#### Article 123

(1) A fund member may exercise rights under voluntary pension insurance (the exercise of the right to a pension) not earlier than on reaching 50 years of age.

(2) By way of derogation from paragraph 1 of this Article, the right to a pension may be exercised earlier in the case of death, under the conditions stipulated in the agreement referred to in Article 115 of this Act.

(3) The Agency shall issue an ordinance prescribing in more detail the conditions for exercising the right to a pension and the pension payment conditions and options.

#### *Pension payment options*

##### Article 124

(1) When exercising the right to a pension referred to in Article 123, paragraph 1 of this Act, a fund member shall select the method of payment of the pension.

(2) A pension may be payable:

a) for a temporary period of time or

b) for life.

(3) The pension shall be paid by a pension insurance company.

(4) By way of derogation from the provision of paragraph 3 of this Article, temporary payments of pensions referred to in paragraph 2, item a) of this Article may be made out of the fund, in accordance with the procedure and under the conditions laid down in Article 126 of this Act.

#### *Payment of a pension through a pension insurance company*

##### Article 125

(1) If, upon exercising the right to a pension, a fund member opts for his or her pension to be paid by a pension insurance company, the amount in the fund member's account shall be transferred to the pension insurance company selected by the fund member, which shall pay him or her the pension for life or for a temporary period of time.

(2) The payment of a pension through a pension insurance company shall be made in accordance with the law governing the establishment and operation of pension insurance companies.

#### *Payment of a pension through a fund*

##### Article 126

(1) If, after a fund member has exercised the right to a pension, the value of the assets in the personal account of the fund member is lower than HRK 50 000.00, the fund member may opt for his or her pension to be paid through the fund, in which case the pension may only be paid from the fund's assets for a temporary period of time under the following conditions:

1. the fund's prospectus provides for the possibility of paying a pension out of the fund;

2. payments have been agreed to be made for at least five years;
  3. payments will be periodic;
  4. payments shall be made in the equivalent value of the number of the units determined in advance, according to the price of the units on the day of payment.
- (2) The fund member and the pension company shall conclude a separate agreement concerning the conditions of payment of a pension through the fund.
- (3) The temporary payment of pension through a fund as referred to in paragraph 1 of this Article shall not be subject to the payment of an exit fee.
- (4) The provisions of Article 115 of this Act shall apply *mutatis mutandis* to the agreement referred to in paragraph 2 of this Article.

### *Lump sum payments*

#### Article 127

After the condition referred to in Article 123, paragraph 1 of this Act is satisfied, the pension company may pay out a portion of the pension in the form of a lump sum payment amounting to up to 30 % of the amount in the fund member's account, or a greater percentage but only up to a maximum amount of HRK 10 000.00.

#### Article 128

- (1) A pension company may pay the total realised amount to a fund member who satisfies the requirement referred to in Article 123, paragraph 1 of this Act if, upon the expiry of the agreement referred to in Article 115 of this Act, the value of the assets in his or her personal account is less than HRK 10 000.00.
- (2) The pension company shall make the payment referred to in paragraph 1 of this Article upon the written request of the member, in the form of a one-time payment for the full amount.
- (3) In the case of a payment referred to in paragraph 1 of this Article, the pension company shall not be entitled to charge an exit fee.

### *Sponsor of a closed-end fund*

#### Article 129

- (1) The sponsor of a closed-end fund shall pay contributions to the personal accounts of the fund members, in whole or in part, as laid down in a decision, collective agreement or other relevant by-law of the sponsor.
- (2) The sponsor shall also pay contributions to a closed-end fund in a Member State.

### *Register of fund members*

## Article 130

(1) Records of units in a fund shall be kept in electronic form in the register of fund members, which may be maintained by:

1. a pension company;
2. the operator of the central register of book-entry financial instruments in accordance with the provisions of the law governing the capital market, or
3. a third person to which the pension company has delegated this administrative task.

(2) When records of units in a fund are kept in the register of fund members maintained by a third person, the pension company shall be responsible for maintaining that register.

(3) The Agency shall issue an ordinance regulating the organisation and maintenance of the register of fund members and the publication of information contained in the register.

### *Confidentiality of information contained in the register of fund members*

## Article 131

(1) The person who keeps the register of fund members shall treat as a business secret the information about the fund members, the number of units in the personal accounts of the fund members, amounts paid in, amounts paid out and transfers of accounts. The person who keeps the register may communicate this information:

1. on request by a fund member, but only the information relating to that fund member, regardless of the provisions of the law governing the capital market as regards the accessibility of data from the central depository;
2. to the depositary
3. to the person who proves a legal interest;
4. to judicial and administrative authorities and other persons on request and within the framework of mandates in accordance with the provisions of a special law.

(2) The Agency and the pension company shall at any time have access to the register of fund members.

### *The procedure and conditions for registration in the register of fund members*

## Article 132

(1) Units and rights attaching to units in a fund shall be acquired by registration in the register of fund members referred to in Article 130, paragraph 1 of this Act.

(2) The registration in the register of fund members referred to in paragraph 1 of this Article shall be carried out immediately upon the conclusion of the membership agreement referred to in Article 115 of this Act.

*Certificate of acquisition of units and conditions for payment*

Article 133

(1) A pension company shall, at least once a year, make available to fund members a regular certificate that must contain the following information:

1. the name of the member;
2. the name of the fund and the name and registered office of the pension company;
3. the number of units in the member's personal account;
4. the price of units on the day of issue of the certificate;
5. the value of the assets in the member's personal account as on the day of issue of the certificate;
6. the dates, the amounts paid in, the amounts paid out, the amounts of the entry and exit fees charged, and the number of units that have been allocated to the fund member's personal account and recorded in the corresponding period;
7. a short information about the standing of the pension company and the fund;
8. the date of issue of the certificate;
9. the signature of the authorised person of the pension company.

(2) At the request of a fund member, the pension company shall provide that member with additional information about the amounts paid in or out, transfers of the account, the number of the units and the value of the assets in his or her personal account. The pension company may charge a fee for providing such information, which shall not be higher than the cost of preparing this information and sending it to the fund member.

(3) The signature referred to in paragraph 1, item 9 of this Article may be made by electronic means or by mechanical reproduction of the signature.

*Suspension of payments in and out of a fund*

Article 134

(1) The closure of members' personal accounts, payments into personal accounts and the transfer of the account of a fund member to another fund may be suspended by a decision of a pension company:

a) if the pension company and the depositary consider that there are justifiable and sufficient grounds for suspension, or

b) if it is in the public interest, or

c) if it is in the interest of the members or potential members of the fund.

(2) If the depositary disagrees with the pension company's decision to suspend the closure of personal accounts, payments into personal accounts of fund members and the transfer of the account of a fund member to another fund, it shall inform the pension company and the Agency thereof without delay and the suspension may not be effected.

(3) In the case referred to in paragraph 2 of this Article, the Agency shall decide on further action within a reasonable period.

(4) Any suspension of the closure of personal accounts, of payments into personal accounts of fund members and of the transfer of the account of a fund member to another fund shall be immediately notified by the pension company to the Agency and the competent authorities of the home Member State and the competent authorities of all states in which the pension schemes are offered. The pension company must notify the Agency of all the competent authorities to which it reported the suspension of the closure of members' personal accounts, payments into personal accounts and transfer of the account of a fund member.

(5) The pension company shall publish the information about each suspension of the closure of personal accounts, of payments into personal accounts of fund members and of the transfer of the account of a fund member to another fund on its website throughout the duration of the suspension and shall inform the members of the fund.

(6) In the cases referred to in paragraph 1, items b) and c) of this Article, the Agency may order the pension company and the depositary to temporarily suspend the closure of personal accounts and payments into personal accounts of fund members and the transfer of the account of a fund member to another fund.

(7) The suspension of the closure of personal accounts, of payments into personal accounts of fund members and of the transfer of the account of a fund member to another fund, as referred to in paragraph 1 of this Article, must end as soon as possible or as soon as the reasons for the suspension cease to exist, but no later than 28 days from the beginning of the suspension, unless the Agency approves the extension of this period on a reasoned request from the pension company.

(8) The resumption of the business activities of a fund shall be notified, without delay, to the Agency and published on the pension company's website, and the fund members shall be informed thereof.

(9) The Agency shall issue an ordinance stipulating the conditions and method for the receipt of requests for the closure of personal accounts, payments into personal accounts and transfer of fund members' accounts during the suspension period, the conditions for determining the price of units, the time limits for payments, and the conditions for the continuation of business after the expiry of the suspension of the closure of personal accounts, payments into personal accounts of fund members and the transfer of the account of a fund member to another fund.

## *State incentive payments*

### Article 135

- (1) State incentive payments from the state budget shall be granted to fund members on the basis of the pension company's documented data on the contributions collected in the personal accounts of the fund members in the preceding calendar year.
- (2) Each fund member who resides in the Republic of Croatia or is a citizen of the Republic of Croatia shall be entitled to state incentive payments referred to in paragraph 1 of this Article.
- (3) Each fund member who is not a citizen of the Republic of Croatia shall also be entitled to state incentive payments referred to in paragraph 1 of this Article, provided that he or she resides in one of the Member States, but shall have such entitlement only during the period in which contributions to mandatory pension insurance based on individual capitalised savings are paid for him or her in the Republic of Croatia.
- (4) A state incentive payment shall amount to 15 % of the total contributions paid in respect of a fund member in the preceding calendar year, but such percentage shall be applied to up to a maximum paid contribution of HRK 5 000.00 per fund member during one calendar year.
- (5) The Ministry of Finance shall supervise whether state incentive payments are lawfully determined and used.
- (6) The pension company must make available to the Ministry of Finance for inspection business books and operating records, and must submit to it all data and information necessary to examine requests for the grant of state incentive payments and for the registration of state incentive payments in the personal accounts of fund members, as well as all other information necessary to supervise whether state incentive payments are lawfully determined and used.

### Article 136

- (1) The pension company shall, no later than 1 October of the current year, prepare and submit to the Ministry of Finance a substantiated plan of requests for the grant of state incentive payments in the next calendar year.
- (2) A plan of requests for the grant of state incentive payments shall be prepared on the basis of contributions collected from fund members in the first eight months of the current year and of the estimate of the inflow of contributions by the end of the current year.

### Article 137

- (1) The pension company shall have an obligation to submit to the Ministry of Finance by 1 March of the current year a single written request for the payment of state incentive payments for all the fund members for the preceding year.
- (2) The Ministry of Finance shall, after the submitted requests are reconciled and no later than 60 days after the day on which a corrected request is submitted, pay to the pension company the state incentive payments.

(3) The pension company shall record the received amount of state incentive payments in its business books and credit it to the personal accounts of fund members within eight business days of the receipt of that amount.

#### Article 138

(1) The pension company shall include the following information in the request referred to in Article 137 of this Act:

1. the number of fund members for whom the request for the payment of state incentive payments is being made;
2. the total amount of contributions collected in the personal account of a fund member in the preceding year;
3. the total amount of state incentive payments requested for the year for which the request is being made;
4. the number of fund members who entered into a membership agreement with a fund in the preceding year;
5. the number of fund members whose membership in the fund concerned terminated in the preceding year.

(2) In addition to the request referred to in paragraph 1 of this Article, the pension company shall enclose a list of fund members (names and personal identification numbers), as well as the amount on their personal accounts and the amount of the corresponding state incentive payments as on 31 December of the preceding year.

(3) When it considers that a request for the payment of state incentive payments is incomplete, inaccurate or gives rise to suspicion as to the authenticity and reliability of the information provided, the Ministry of Finance may request the pension company to provide additional information and evidence within a specified time limit.

#### Article 139

State incentive payments shall be kept on the personal account of a fund member in such a manner that their amounts may be determined at any time, and they shall constitute the fund member's personal assets and form an integral part of the personal account of the fund member.

#### Article 140

(1) State incentive payments shall be granted for membership or contributions paid in only one fund.

(2) If a fund member hold simultaneous membership and entitlement to state incentive payments referred to in paragraph 1 of this Article in several funds managed by one or more pension companies, the fund member shall, no later than 1 February each year, notify the

pension company of the personal account to which he or she wants state incentive payments to be credited.

(3) If a fund member fails to select a fund within the time limit specified in paragraph 2 of this Article, state incentive payments referred to in paragraph 1 of this Article shall be credited to the personal account in the fund into which the highest annual amount of pension contributions have been paid and in respect of which state incentive payments are requested. If the same amount has been paid into several funds, state incentive payments referred to in paragraph 1 of this Article shall be credited to the personal account in the fund in which the fund member had the highest amount as on 31 December of the preceding year.

(4) The pension company shall notify the Ministry of Finance of the selection of the fund in respect of which state incentive payments are to be paid.

### ***Section III***

#### ***Promotion of funds in the Republic of Croatia***

##### **Article 141**

The following entities may undertake and carry out the promotion of the funds they manage:

1. a pension company with a head office in the Republic of Croatia;
2. a pension company with a head office in another Member State;
3. a branch of a pension company from another Member State.

##### **Article 142**

(1) Promotional materials concerning the funds and pension companies must be submitted to the Agency before being published.

(2) The pension company shall be responsible for the completeness and accuracy of information published for the purpose of promoting funds.

##### **Article 143**

(1) Promotional materials concerning pension funds and pension companies distributed through print and electronic media shall include:

1. brochures;
2. advertisements in newspapers, magazines, on the radio or on television and on websites;
3. communications sent by regular or electronic mail, facsimile or by other means;
4. telemarketing, which includes use of a specialised provider of telemarketing services on the basis of an agreement concluded with a pension company;

5. means of promoting the offer that have the characteristics of financial promotion;
6. investment or other publications offering recommendations concerning pension savings;
7. other methods or means of promotion that entities in the Republic of Croatia may read, see or receive.

(2) Promotional materials referred to in paragraph 1 of this Article which are used to advertise funds in the Republic of Croatia must be written in the Croatian language.

#### Article 144

The pension company shall keep a copy of each published promotional material, when applicable, as well as the sources of information supporting the statements contained in such publications.

#### Article 145

When promotional materials about funds and pension companies that manage them are published:

1. their promotional purpose shall not be disguised or misrepresented;
2. they shall contain an accurate and truthful description of the fund that is being promoted;
3. it must be ensured that the facts and statements given therein are comprehensive, clear, accurate, true and unambiguous on the date when they are presented and that they are not misleading;
4. it must be ensured that the promotional material is accurate, complete and unambiguous and that approval of the pension company is obtained for any further use thereof;
5. it must be ensured that any use of comparison is based on facts that are accurate and up-to-date or that key assumptions are clearly stated, and that any such comparison is presented in a fair and balanced way, which is not misleading and includes all factors which are important for such comparison;
6. they shall not contain any false indications, in particular as to the skills and competences of the responsible persons, resources and scale of activities of the funds and the pension company and the rights arising from membership in the fund;
7. it must be ensured that the design, content or format of the promotional material does not distort, disguise or diminish the significance of any statement, warning or other information which must be disclosed in accordance with this Act or a regulation made under this Act;
8. it must be ensured that no reference is made to any approval granted by a competent authority without approval of the Agency or other competent authority and no third parties should be led to a conclusion that approval granted by the Agency has any meaning other than the meaning of an attestation that the company concerned has satisfied the requirements for the acquisition of the legal status indicated in the approval;

9. no information shall be omitted if omission of such information would result in the promotional material not being accurate, true and clear or being misleading.

#### Article 146

(1) The presentation of operating results of a fund:

1. must not be subject to any warranty, guarantee or promise;
2. must not be prepared in the form of estimate of any kind;
3. must reflect the fund's operating results at least from the date of its establishment to the date of release of the presentation, or its performance in the last five years, whichever of the two periods is shorter;
4. must contain up-to-date information available at the time of presentation of the fund's operating results;
5. must be drawn up on a consistent basis in terms of the periods covered, including or excluding specific factors which have impact on such results;
6. must not be provided in a manner that might be construed as a forecast of possible future operating results of the fund concerned.

(2) The Agency shall issue an ordinance determining the contents and the methods of presentation of operating results of a fund.

#### Article 147

The Agency shall issue an ordinance determining the contents, time limits, release, modification and keeping of promotional materials about funds.

#### Article 148

The following communications shall be exempt from the application of the provisions of this Act concerning the conditions for fund advertising:

1. communications between a pension company and a person that has permission to provide financial services and perform financial activities in the Republic of Croatia;
2. short, exclusively factual announcements on the radio, television, websites, in printed or electronic media, which relate to a fund and/or pension company, and indications as to basic contact information;
3. letters and written communications individually addressed to third persons concerning their specific requests, which are not part of a mass mail advertising campaign;
4. half-yearly and audited annual reports of a fund and half-yearly and audited annual financial statements of a pension company.

## Offering of pension schemes

### Article 149

(1) Pension schemes may be offered not only by a pension company, but also by other persons in the Republic of Croatia on the basis of a business cooperation agreement, when they are allowed to do so by the provisions of this Act or another law.

(2) The provisions of this section of this Act shall apply *mutatis mutandis* to pension companies from another Member State or branches of these pension companies when they offer pension schemes in the Republic of Croatia.

### Article 150

(1) When offering pension schemes, persons referred to in Article 149 of this Act shall act as sales representatives of a pension company on the basis of a written agreement concluded with the pension company.

(2) The pension company shall notify the Agency of any contract concluded in accordance with paragraph 1 of this Article.

(3) The Agency shall issue an ordinance laying down the method and deadlines for submitting the notification referred to in paragraph 2 of this Article.

### Article 151

(1) The persons referred to in Article 149 of this Act may not offer pensions schemes during the time when their authorisation to conduct business is withdrawn or revoked by the Agency, the Croatian National Bank or other competent authority in accordance with special regulations.

(2) Any withdrawal or revocation of an authorisation to conduct business shall be notified without delay to the pension company with which an agreement concerning the offering of pension schemes has been concluded.

(3) The Agency shall issue an ordinance laying down the requirements that must be met by the persons referred to in Article 149 of this Act, the requirements pertaining to the way they conduct business and the requirements related to reporting on the offering of pension schemes.

### Article 152

The persons referred to in Article 149 of this Act who are authorised to offer pension schemes shall:

1. make available to potential members all relevant documents and information;
2. promptly forward to the pension company the membership agreements concluded;

3. when advertising the funds, make use only of the prospectus, statute, monthly reports and promotional materials approved by the pension company;
4. not provide false information or information that may mislead the members as to the state of affairs of the fund, shall provide the relevant facts and shall not make false statements about the fund, its investment objectives, associated risks, price of units, rates of returns or any other issues or matters related to the fund or pension company and shall not give any other statement that deviates from the contents of the fund's prospectus or monthly reports;
5. be liable to the pension company for errors or failures made by their employees and for any non-compliance with this Act and other regulations;
6. make known to a potential member which Company they represent and whether they offer the schemes of that specific pension company only or products of several companies;
7. at any time act in accordance with this Act and applicable regulations.

#### Article 153

The persons referred to in Article 149 of this Act shall receive compensation for their work exclusively from the pension company, which shall be paid out of funds generated from the entry fee, management fee or exit fee charged to members or the fund by the pension company.

### ***Section IV***

#### ***Management of the funds' assets***

#### Article 154

- (1) The pension company shall invest the assets of a fund with due professional care and diligence in accordance with the provisions of this Act, in such a manner as to ensure the security, quality, liquidity and profitability of the fund's portfolio as a whole.
- (2) The assets must be invested in the best interests of fund members.
- (3) In the case of a potential conflict of interest, the pension company shall ensure that assets are invested exclusively in the interest of fund members.
- (4) The assets covering technical provisions must also be invested in accordance with the provisions of paragraphs 1 to 3 of this Article.

#### ***Permitted investments of the fund's assets***

#### Article 155

- (1) The assets of a fund may consist solely of:
  1. transferable securities and money market instruments:

a) which are admitted to or dealt in on a regulated market within the meaning of the law governing the capital market in the Republic of Croatia, another Member State and/or a member state of the Organisation for Economic Co-operation and Development (hereinafter: "the OECD"), and

b) which are dealt in on another regulated market in the Republic of Croatia, another Member State and/or an OECD member state, which operates regularly and is recognised and open to the public;

2. recently issued transferable securities, provided that:

a) the prospectus of the issue includes an undertaking that the issuer will make an application for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public;

b) such investment is provided for in the fund's prospectus, and

c) the admission is carried out within one year of issue, or otherwise the transferable securities will be deemed unlisted;

3. units of UCITS funds authorised to operate in the Republic of Croatia or another Member State or units of UCITS or open-end investment funds with a public offering in an OECD member state, provided that:

a) such investment funds have been authorised by the Agency or by the competent authority of a Member State or the competent authority of an OECD member state whose cooperation with the Agency is ensured, provided that the supervision of these funds and the level of investor protection are equivalent to those prescribed by the law governing the establishment and operation of open-end investment funds with a public offering;

b) the level of protection for unit-holders in such investment funds is equivalent to that provided for unit-holders in UCITS funds, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements laid down in the law governing the establishment and management of open-end investment funds with a public offering;

c) the business of such investment funds is reported in half-yearly and audited annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period, and

d) the prospectus of the investment fund whose units or shares are intended to be acquired provides that no more than 10 % of the assets of the investment fund can be invested in aggregate in units or shares in other investment funds;

4. holdings or shares in open-end alternative investment funds, or shares or holdings in closed-end alternative investment funds;

5. deposits with credit institutions which are repayable on demand and maturing in no more than 12 months, provided that the credit institution has its registered head office in the Republic of Croatia or another Member State or an OECD member state, and further provided

that the supervision of the credit institution and the level of protection for depositors are equivalent to those prescribed by the law governing the operation of credit institutions;

6. financial derivative instruments traded in on a regulated market referred to in item 1 of this paragraph or financial derivative instruments traded in outside a regulated market referred to in item 1 of this paragraph (OTC derivatives), provided that:

a) the underlying assets of the derivative consist of financial instruments covered by items 1 and 2 of this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the fund may invest according to its investment objectives as stated in the fund's prospectus and in accordance with the provisions of this Act and regulations made under this Act;

b) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories that will be additionally prescribed by the Agency by way of an ordinance referred to in paragraph 2 of this Article, and

c) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the fund's request;

d) the fund's prospectus envisages investment in such instruments and shows the impact of these instruments on the fund's risk profile;

7. money market instruments not traded in on a regulated market referred to in item 1 of this paragraph, provided that they are issued in accordance with the following conditions:

a) they are issued or guaranteed by the Republic of Croatia or units of local or regional self-government or by the central bank of the Republic of Croatia, units of local or regional self-government or a central bank of another Member State or an OECD member state, the European Central Bank, the European Union or the European Investment Bank, or by a public international body to which one or more Member States or OECD member states belong;

b) they are issued by a company the securities of which are traded on regulated markets referred to in item 1 of this paragraph;

c) they are issued or guaranteed by an entity subject to prudential supervision by the competent authority of a Member State in accordance with the laws governing the capital market and the operation of credit institutions, or by an entity which is subject to and complies with supervision rules of the supervisory authority of an OECD member state which are equivalent to those prescribed by the laws governing the capital market and the operation of credit institutions; or

d) they are issued by another person authorised by the Agency, provided that investments in such instruments are subject to investor protection equivalent to that to which the instruments referred to in indents b) or c) of this item are subject and provided that the issuer is a company whose capital and reserves amount to at least HRK 80 million and which presents and publishes its annual financial statements in accordance with the legislation governing the accounting activities of an undertaking and the application of financial reporting standards, that the issuer is an entity which, within a group of companies which includes one or several

companies whose shares are admitted to trading on a regulated market, is dedicated to the financing of the group or that the issuer is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line;

8. cash in the fund's business account opened with the depositary and in other accounts when this is necessary for the realisation of an investment;

9. other types of assets arising from the assets referred to in items 1 to 8 of this paragraph.

(2) The Agency shall issue an ordinance specifying in more detail the permitted investments for funds, markets considered to be regulated, institutions considered to be counterparties and money market instruments in which investment is permitted.

### *Investment limits and breach of investment limits*

#### Article 156

Investments of assets of a fund shall be subject to the following limits:

1. not more than 10 % of the net asset value of the fund may be invested in transferable securities or money market instruments issued by the same body, subject to a restriction that if the value of the transferable securities and the money market instruments held by the fund in the issuing bodies in each of which it invests more than 5 % of the net asset value of the fund, the sum of the value of these investments for all such issuers may not exceed 40 % of the fund's net asset value, with an exception that:

a) no limitation applies to investment in transferable securities or money market instruments issued or guaranteed by the Republic of Croatia or a local or regional self-government unit of the Republic of Croatia, another Member State or a local or regional self-government unit of another Member State, an OECD member state or a public international body to which one or more Member States or OECD member states belong, provided that:

– the fund's prospectus and promotional material clearly indicate the Member States, the local and regional self-government units of Member States or the public international body to which one or more Member States belong in whose transferable securities and money market instruments more than 35 % of the fund's net asset value may be invested;

– the fund's assets consists of at least six different securities or money market instruments, and

– the value of any single security or money market instrument referred to in the first indent of sub-item a) of item 2 of this paragraph does not exceed 30 % of the fund's net asset value;

b) not more than 25 % of the net asset value of the fund may be invested in bonds approved by the Agency, issued by a credit institution which has its registered office in the Republic of Croatia or another Member State and is subject by special law to special public supervision designed to protect bond-holders. Sums deriving from the issue of those bonds shall be invested in accordance with a special law in assets which, until the maturity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment

of the principal and the accrued interest on these bonds. If more than 5% of the fund's net asset value is invested in such bonds issued by a single issuer, the total value of these investments, accounting for more than 5 % of the fund's net asset value, shall not exceed 80 % of the fund's net asset value;

c) not more than 10 % of the net asset value of the fund may be invested in securities or money market instruments the issuers of which are persons constituting related companies, in accordance with the provisions of the law governing the establishment and operation of companies and this Act. The persons constituting related companies, within the meaning of the law governing the establishment and operation of companies, shall be regarded as a single person for the purpose of calculating the limits referred to in item 5 of this paragraph;

2. the transferable securities and money market instruments referred to in item 1 sub-items a) and b) of this paragraph shall not be taken into account for the purpose of calculating the limit of 40 % referred to in item 1 of this paragraph;

3. not more than 5 % of the net asset value of the fund may be invested in deposits made with the same credit institution referred to in Article 155, paragraph 1, item 5 of this Act;

4. the risk exposure to a counterparty of the fund in an OTC derivative transaction shall not exceed 5 % of the fund's net asset value;

5. the total value of investment in transferable securities or money market instruments issued by the same body and the value of deposits made with that body and exposures arising from OTC derivative transactions undertaken with that body may not exceed 15 % of the fund's net asset value;

6. not more than 10 % of the net asset value of the fund may be invested in units or shares of investment funds referred to in Article 155, paragraph 1, item 3 of this Act, and not more than 5 % of the net asset value of the fund may be invested in alternative investment funds referred to in Article 155, paragraph 1, item 4 of this Act;

7. investments in units of UCITS funds and in units or shares of alternative investment funds shall not be taken into account when calculating the limits referred to in items 1 to 5 of this paragraph;

8. if the fund's assets are invested in units of UCITS funds and in units or shares of investment funds managed by the same pension or management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, this pension company, management company or other company shall not charge an entry or exit fee for investments of the fund in units or shares of these investment funds;

9. if the fund invests in units of UCITS funds and in units or shares of investment funds, the fund's prospectus shall also clearly indicate the maximum level of the management fee that may be charged out of the assets of the investment funds in which it intends to invest, and the fund's audited annual report shall clearly indicate the maximum proportion of management fees charged both out of the assets of the fund itself and out of the assets of the investment funds in which the fund concerned invested;

10. a closed-end fund may invest no more than 5 % of its net asset value in transferable securities or money market instruments of the issuer sponsoring the closed-end fund. If the sponsor of the closed-end fund belongs to a group, no more than 10 % of the net asset value of the closed-end fund may be invested in companies that are part of this group. If the closed-end fund has several sponsors, investments in the sponsoring undertakings must be prudent and adequately diversified. Exceptionally, investments referred to in this item shall not concern investments in bonds issued by the Republic of Croatia and/or another Member State;

11. the fund may acquire no more than:

a) 10 % of the voting shares of a single issuer;

b) 10 % of the non-voting shares of a single issuer;

c) 10 % of the debt securities of a single issuer;

d) 25 % of the units or shares of a single investment fund;

e) 10 % of the money market instruments of a single issuer;

f) the limits laid down in this item shall not apply to transferable securities and money market instruments issued or guaranteed by the Republic of Croatia, another Member State, an OECD member state or a public international body to which one or more Member States belong;

g) the limits laid down in sub-items c), d) and e) of this item may be disregarded at the time of acquisition if at that time the total number or value of the instruments in circulation cannot be calculated;

12. the fund's total exposure to financial derivatives may in no case exceed the fund's net asset value. The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. The fund may invest, in accordance with its investment policy and within the limits laid down in item 1 of this paragraph, in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the limits laid down in this Article. When transferable securities or money market instruments embed a financial derivative, that financial derivative shall be taken into account when calculating the investment limits laid down in this Article;

13. Funds may not invest in precious metals or certificates representing them, or gain exposure to precious metals or other commodities exchanges.

#### Article 157

The pension company may employ techniques and instruments relating to transferable securities and money market instruments under the condition that such techniques and instruments are used for the purpose of efficient management of the fund's portfolio.

#### Article 158

(1) Funds, together with other funds managed by the same pension company, shall not hold in total:

- a) more than 25 % of the voting shares of a single issuer;
- b) more than 10 % of the non-voting shares of a single issuer;
- c) more than 10 % of the debt securities of a single issuer;
- d) more than 25 % of the units of a single investment fund;
- e) more than 10 % of the money market instruments of a single issuer.

(2) The limits referred to in paragraph 1 of this Article shall not apply to debt securities and money market instruments issued by the Republic of Croatia, another Member State, an OECD member state or a public international organisation to which one or more Member States or OECD member states belong.

### *Borrowing/lending*

#### Article 159

(1) An open-end fund may borrow money from third persons up to an amount totalling 5 % of the fund's net asset value, but only through repos and sell-buy back transactions and only for a period not exceeding three months.

(2) Not more than 5 % of the net asset value of an open-end fund, and not more than 50 % of each individual investment may be lent to third persons. Assets of an open-end fund may be lent only on the basis of a written contract or through organised securities lending systems that operate within a clearance and settlement system. Lending shall only be permitted if it is made exclusively for the benefit of the open-end fund for the purpose of increasing the fund's rate of return, without inappropriately increasing risks. In this regard, lent securities must be adequately secured by collateral. Lending contracts shall contain a provision allowing for the withdrawal of lent securities on demand within 15 business days.

(3) A closed-end fund may borrow money from third persons up to an amount totalling 5 % of the fund's net asset value, but only for liquidity purposes and only for a period not exceeding three months.

### *Derivatives*

#### Article 160

(1) A company may use financial derivatives in its own name and for the account of a fund only for the purpose of:

- 1. protecting the fund's assets;
- 2. efficiently managing the fund's assets and liabilities.

(2) When contracting financial derivatives, the following limits must be observed:

1. the total exposure to financial derivatives must not exceed the fund's net asset value;
2. the underlying of a financial derivative must consist of assets eligible for investment as referred to in Article 155 of this Act;
3. the exposure to a single body resulting from the derivative financial instruments contracted with that body must not exceed 10 % of the net asset value of the pension fund;
4. investment in derivatives or other instruments referred to in Article 155, paragraph 1 that embed a derivative shall create neither exposure exceeding the investment limits set in the investment strategy, the fund's prospectus, this Act or ordinances issued by the Agency under this Act nor exposure to the assets referred to in Article 163 of this Act.

#### Article 161

(1) The fund's assets shall be invested in such a way as to be currency matched to the fund's liabilities.

(2) At least 70 % of the net asset value of a closed-end fund must be invested in assets that are traded or settled in the currency in which pensions under the voluntary pension insurance scheme based on individual capitalised savings are paid out.

#### Article 162

(1) The Agency shall issue an ordinance to prescribe additional investment limits for funds, the requirements and restrictions concerning the techniques and instruments referred to in Article 156, paragraph 4 of this Act, how the assets of funds are to be dealt with and how the exposures referred to in this part of the Act are to be calculated.

(2) By way of derogation from the provisions of this part of the Act, in the event of a serious disturbance of the financial market that could jeopardise the value of the assets of a fund, the Agency may prohibit or further limit investments in certain types of assets.

#### Article 163

The assets of a fund may not be invested in:

1. assets that are inalienable according to the law or encumbered, i.e. pledged or fiduciarily transferred as a security for a claim, and
2. securities issued by the fund's depository, any shareholder or stockholder of the pension company or any related person of these persons. This limitation shall not apply to securities issued by the Republic of Croatia, another Member State or an OECD member state, or securities issued by the sponsor of the closed-end fund, in which case the limits referred to in Article 156, paragraph 10 of this Act shall apply.

#### Article 164

(1) A fund may exceed the investment limits referred to in Articles 156 to 163 of this Act when exercising pre-emptive subscription rights or subscription rights attaching to transferable securities or money market instruments forming part of its assets.

(2) If the limits referred to in Articles 156 to 163 of this Act are exceeded as a result of:

1. circumstances beyond the control of the pension company;
2. the exercise of the subscription rights referred to in paragraph 1 of this Article, or
3. the acquisition of assets referred to in Article 155, paragraph 1, item 9 of this Act,

the pension company must, except where bankruptcy proceedings have been opened or winding-up proceedings instituted in respect of the credit institution or the issuer of the financial instruments, bring investments made by the fund into compliance within a reasonable period not exceeding three months and shall enter into transactions primarily to bring investments of assets of the fund into compliance, taking due account of the interests of the fund members and trying to minimise any loss that might occur.

(3) Exceptionally, at the request of the pension company, the Agency may extend the period referred to in paragraph 2 of this Article by additional three months, when this is in the interest of the fund members and, if the investment limits are exceeded with respect to an issuer against which pre-bankruptcy settlement proceedings have been initiated, by a period of more than three months.

(4) If the limits referred to in Articles 156 to 163 of this Act are exceeded as a result of a transaction into which the pension company has entered and by which, at the time of its inception, the limits in question were exceeded or the excess additionally increased, and such excesses are not covered by paragraph 2 of this Article, the pension company must bring the fund's investments into compliance immediately upon becoming aware that the limits have been exceeded. The pension company shall compensate the fund for the damage suffered.

(5) The investment limits referred to in Articles 156 to 163 of this Act may be exceeded in the first six months following the establishment a fund, with due observance of the principles of risk spreading and protection of interests of the fund members.

#### Article 165

(1) The pension company is prohibited from entering into transactions, in its own name and for the account of a fund, with members of the pension company's board of directors or supervisory board.

(2) If the counterparties to transactions entered into for the account of a fund are:

1. shareholders or stockholders of the pension company;
2. the depositary of the fund or
3. the sponsor of the closed-end fund or

4. any other person who is related to the above mentioned legal or natural persons,

the pension company shall keep records thereof and shall, upon request and without delay, submit these records to the Agency.

(3) The Agency may, when it deems necessary, and in particular to protect the financial interests of the fund members, prohibit the pension company from entering into transactions, in its own name and for the account of the fund, with or through the intermediary of a related person, either for a specific period of time or permanently.

(4) The pension company is prohibited from granting loans or guarantees out of the fund's assets to any legal or natural person.

### *Statement of investment principles*

#### Article 166

(1) The pension company shall, in respect of closed-end funds, prepare a statement of investment principles that shall contain at least the following:

1. the strategic asset allocation with respect to the nature and duration of pension liabilities;
2. investment risk measurement methods/techniques;
3. risk tolerance;
4. the implemented risk management strategies, processes, procedures and measures.

(2) The pension company shall revise the statement referred to in paragraph 1 of this Article before any significant change in the investment policy, and at least every three years.

(3) The pension company shall make the statement referred to in paragraph 1 of this Article available to all members and potential members of the fund and to the Agency.

(4) The Agency shall issue an ordinance specifying in more detail the contents and the method and place of publication of the investment statement.

### *Section V*

### *Information to be provided to fund members*

#### Article 167

(1) For each fund it manages, the pension company shall:

1. adopt the fund's prospectus, in accordance with the provisions of this part of the Act;
2. adopt the fund's statute, in accordance with the provisions of this part of the Act;

3. adopt and publish half-yearly and audited annual reports, in accordance with the provisions of this part of the Act;

4. prepare key information for fund members, in accordance with the provisions of this part of the Act;

5. regularly inform the fund members about other disclosures concerning the performance of the fund, which are prescribed by the provisions of this part of the Act.

(2) The documents and information referred to in paragraph 1 of this Article shall be drawn up and published in the Croatian language, unless otherwise specified in this Act.

(3) With regard to closed-end funds, the latest versions of the documents and information referred to in paragraph 1 of this Article shall be published on the pension company's website.

(4) With regard to closed-end funds, the latest versions of the documents and information referred to in paragraph 1 of this Article must be submitted to the members of a closed-end fund in the manner provided for in the membership agreement referred to in Article 115 of this Act.

*The pension company's liability for damage resulting from the provision of false and incomplete information*

#### Article 168

(1) The pension company shall be liable for damage incurred to a fund member who acted, or failed to act, on the basis of a membership agreement or the documents or information referred to in Article 167, paragraph 1 of this Act that contained false, incomplete or misleading information or data.

(2) The pension company shall also be liable for damage incurred to a fund member as a result of the fund member's actions, or failure to act, based on false, incomplete or misleading data and information contained in:

1. other publications or notices issued by the pension company or

2. on the basis of the information and statements communicated to the fund member by the persons who carry out the activities of offering pension schemes on behalf and for the account of the pension company.

### **Section VI**

#### *Fund's prospectus*

#### Article 169

(1) A fund's prospectus is an invitation to membership in the fund.

(2) Information given in the prospectus shall be true, accurate, complete and consistent.

(3) All the provisions contained in the prospectus shall be written in clear and simple language easily understandable to fund members.

(4) The fund's prospectus shall be accompanied by the fund's statute, which shall form an integral part of the prospectus.

#### *Approval and publication of the prospectus*

##### Article 170

(1) The Agency shall, within two months of the date of submission of a complete application, decide on approval of a fund's prospectus before the offering of the pension scheme is launched, and prior to that it shall decide on approval of amendments to the existing prospectuses which have been made as a result of material changes referred to in Article 178 of this Act.

(2) An application for approval of a prospectus shall be deemed to be complete if, pursuant to the provisions of the ordinance referred to in paragraph 4 of this Article, it contains all required information and if all necessary documents containing the required information are annexed thereto.

(3) If the Agency fails to take a decision on an application for approval of a prospectus within two months of the date of receipt of a complete application, the prospectus or its amendments shall be deemed to have been approved.

(4) The Agency shall issue an ordinance specifying in more detail the mandatory contents of an application for approval of a prospectus, and may specify additional information which must be enclosed with the application.

#### *Obligation to publish the prospectus*

##### Article 171

(1) A pension scheme may be offered in the territory of the Republic of Croatia only if a proper prospectus related thereto has been published in advance.

(2) The prospectus may only be published after it has been approved in accordance with the provisions of this Act.

(3) The Agency shall not be responsible for the truthfulness and completeness of the information contained in the approved prospectus.

#### *Publication of the prospectus*

##### Article 172

The pension company shall, within eight days of receiving approval from the Agency, submit the prospectus to the Agency in electronic form, publish the prospectus in accordance with the provisions of Article 173 of this Act and notify the Agency of how the prospectus has been published.

## Article 173

(1) The pension company shall be deemed to have fulfilled its obligation to publish the prospectus and its amendments as referred to in Article 172 of this Act when it makes the prospectus available to the public in one of the following ways:

1. in electronic form on the pension company's website;
2. by publication in one or more daily newspapers circulated throughout, or widely circulated in, the territory of the Republic of Croatia;
3. in a printed form to be made available, free of charge, to the public at the offices of the pension company and at all offices of the pension company's sales representatives.

(2) The pension company shall be deemed to have fulfilled its obligation to publish the prospectus of a closed-end fund, and its amendments, if the prospectus has been submitted to the members of the closed-end fund in the manner and within the time limit set out in the membership agreement referred to in Article 115 of this Act.

(3) The Agency shall issue an ordinance to prescribe additional requirements concerning the publication of the prospectus.

## Article 174

The published prospectus and the amendments to the prospectus referred to in Article 176 of this Act shall, in terms of contents and form, be equivalent to the original approved by the Agency.

### *Contents of the prospectus*

## Article 175

(1) The prospectus of a fund shall contain at least the following information:

a) information concerning the fund:

1. the name of the fund and an indication of the type of fund (open-end/closed-end);
2. the date of establishment of the fund;
3. an indication of the place where a copy of the fund's statute, key information for fund members or other prescribed information and half-yearly and audited annual reports can be obtained;
4. the manner of publication of the prospectus, the fund's statute, key information for fund members, half-yearly and audited annual reports and other prescribed information;
5. brief information relevant to fund members about the tax regulations applicable to the fund;
6. information about the audit firm and other providers of services to the fund;

7. the manner in which payments made into personal accounts and the transferred accounts are converted into units, the method and conditions for transferring funds from the fund member's account to the pension insurance company, options for payment of pensions and for transferring an account to another fund, and circumstances in which these activities may be suspended;

8. details of the rights arising from membership in the fund, in particular the right to be informed (half-yearly and audited annual reports), the right to share in the profit and the right to be paid a pension;

9. procedures and conditions for issue of units, the method of registering in the register of fund members or in the register of units issued, procedures and conditions for offering a pension scheme and circumstances in which the closure of personal accounts, payments into personal accounts or transfer of a fund member's account to another fund may be suspended;

10. types of assets in which the fund is authorised to invest;

11. the fund's investment principles, strategy and objectives;

12. a description of the following elements related to investments of the fund:

a. the fund's investment objectives, including its financial objectives (e.g. capital growth or income) and the manner in which the fund's objectives will be achieved;

b. the target structure of the fund's portfolio and permitted deviations from the target structure;

c. investments (e.g. specialisation in geographical or industrial sectors);

d. any limitations on the investment strategy;

e. an indication of any techniques and instruments or powers for taking or granting loans or effecting other legal transactions that are, according to their economic effects, equivalent to loans, which may be used in the management of the fund;

f. risks associated with the fund's investments and assets and liabilities structure, including a tabular presentation of these risks and the level of their impact on the fund and the pension company, as well as the risk management method and the risk profile, the level of risk propensity and risk tolerance;

g. the conditions for borrowing by the fund;

13. in the case of a closed-end fund with defined benefits, a description of other risks associated with the pension scheme;

14. the method and time of the calculation of the net asset value of the fund;

15. the time, method and frequency of the calculation of the price of units, the manner of the publication of this value, a description of the amount and frequency of payment of the

authorised charges and costs relating to the issue of units and the change or termination of membership in the fund;

16. management fees and costs that may be charged to the fund and fund members;

17. the method of the calculation of the depositary's fee;

18. a description, amount and frequency of payment of authorised fees and charges that may be charged to the fund and fund members;

19. the cases in which the pension company may refuse payments from fund members;

20. the method of the calculation of the fund's operating results;

21. the fund's average rate of return achieved from the time the fund started operating and the historical rate of return in the last five years, or from the time the fund started operating if it operates less than five years;

22. the duration of the business year;

23. the date of issue of the prospectus;

b) information concerning the pension company:

1. the pension company's name and registered office address, the reference number of the authorisation to conduct business granted by the Agency, the date of establishment and the date of registration in the court register, including an indication of whether the pension company is established in a Member State other than the home member State of the fund;

2. in the case that the pension company also manages other funds, a list of these other funds;

3. the pension company's business objectives and strategy;

4. the pension company's organisational structure with clear lines of responsibility;

5. a description of the risks associated with operations of the pension company, including a tabular presentation of these risks and the level of their impact on the fund and the pension company, as well as the risk management method and the risk profile, the level of risk propensity and risk tolerance;

6. the investment principles and strategy for the investment of the assets of the pension company;

7. a description of responsibilities and of the manner in which investment decisions are made;

8. a description of corporate governance undertaken in the past period;

9. a description of the remuneration policy;

10. information about the pension company's audit firm;

11. names and positions of the members of the board of directors and the members of the supervisory board, their short resumes, including the particulars of their main activities outside the pension company, if these are significant for the pension company and the fund;

12. the amount of the share capital of the pension company, personal identification numbers and personal names or company names of the members of the pension company, their legal form and an indication of the holdings of the members in the share capital;

13. important provisions of the agreement entered into with the depositary that may be relevant to the fund members, excluding those relating to payment of fees;

14. a list of delegated tasks, indicating the persons to whom these tasks have been delegated;

c) information concerning the depositary:

1. the depositary's name and registered office address, the details about and the reference number of the authorisation for the performance of business activities of a depositary granted by the competent institution;

2. where the depositary has delegated the safekeeping of the fund's assets as referred to in Article 249 of this Act to third parties, the information referred to in Article 260 of this Act and a list of all third parties with whom the depositary has entered into a contract for the delegation of the activities referred to in Article 249, paragraph 1, item 1 of this Act;

3. the level of the depositary's share capital;

d) basic information about the Agency, with an explanation of its role in the pension system;

e) such other information as the Agency may prescribe by its regulations.

(2) The Agency shall issue an ordinance specifying the additional content and structure of the fund's prospectus.

(3) The pension company shall make the prospectus available to each person applying for membership in the fund managed by it.

(4) The pension company shall deliver the prospectus to each fund member once a year, on his or her request and free of charge, either as a paper copy or in a durable medium, depending on what is specified in the membership agreement referred to in Article 115 of this Act.

### *Material changes to the prospectus*

#### Article 176

Material changes to the prospectus of a fund for which approval must be obtained from the Agency shall be deemed to be amendments to the fund's prospectus proposed for the purpose of:

1. changing entry fees, management fees or exit fees, which may result in increased costs for fund members;
2. changing the fund's investment objectives; or
3. changing the fund's risk profile, risk propensity and risk tolerance.

#### Article 177

- (1) The Agency shall issue approval to the pension company for material changes to the prospectus, provided that all the conditions for doing so are satisfied.
- (2) On the next business day following the receipt of the Agency's approval referred to in paragraph 1 of this Article, the pension company shall publish the information about material changes to the prospectus in the manner specified in Article 173 of this Act.
- (3) Within eight days of the date of receipt of the Agency's approval referred to in paragraph 1 of this Article, the pension company shall communicate to all fund members the information on material changes to the prospects in the manner specified in the membership agreement referred to in Article 115 of this Act.
- (4) Within 30 days of the date of publication of the information referred to in paragraph 2 of this Article, any fund member may request the transfer to another fund without being charged any exit fee which would otherwise be payable.
- (5) The pension company shall notify the Agency without delay of the fulfilment of its obligations towards fund members as referred to in paragraphs 2 and 3 of this Article.
- (6) Material changes to the prospectus shall enter into force on the expiry of a period of 15 days from the date of publication of the information referred to in paragraph 2 of this Article.
- (7) The Agency shall issue an ordinance to determine in more detail the requirements concerning the Agency's approval of material changes to the prospectus.

#### Article 178

- (1) The pension company shall, once a year, update the fund's prospectus in the part that relates to immaterial changes to the prospectus made in the preceding year.
- (2) The pension company shall send the updated fund's prospectus to the Agency and publish it in the manner specified in Article 173 of this Act by 31 March each year at the latest.
- (3) If the pension company manages a closed-end fund from another Member State, it shall submit to the Agency, on request, the prospectus of that closed-end fund and all its amendments.

### ***Section VII***

#### ***Fund's statute***

## Article 179

- (1) The fund's statute shall regulate a trust relationship between the pension company and the fund members, and between the fund and the fund members.
- (2) The fund's statute shall only enter into force after having been approved by the Agency and no earlier than the next day following that of its publication as referred to in Article 185 of this Act.
- (3) Subsequent amendments to the statute shall be subject to obtaining approval from the Agency if they involve changes to the information referred to in Article 182, paragraph 1, items 1, 7 and 9 of this Act.

### *Issuance of approval for the fund's statute*

## Article 180

- (1) The Agency shall decide on an application for approval of the fund's statute within two months of the date of receipt of the complete application. An application shall be deemed to be complete if, pursuant to the provisions of the ordinance referred to in paragraph 3 of this Article, it contains all required information and if all necessary documents containing the required information are annexed thereto.
- (2) If the Agency fails to take a decision on an application for approval of the fund's statute within two months of the date of receipt of the complete application, the approval shall be deemed to have been granted.
- (3) The Agency shall issue an ordinance determining in more detail the mandatory contents of an application for approval of the fund's statute and specifying additional information that must be enclosed with the application.

## Article 181

The Agency may simultaneously decide on the following applications:

1. an application for approval to establish and manage a fund;
2. an application for approval of the fund's prospectus;
3. an application for approval of the fund's statute;
4. an application for approval of changes in the fund's status.

### *Contents of the fund's statute*

## Article 182

- (1) The fund's statute shall contain at least the following information, described in clear and simple language easily understandable to fund members:

1. basic rights, obligations and responsibilities of the pension company towards the fund members and the fund, and of the fund members towards the pension company and the fund, as well as the manner and conditions of their exercise and protection;
2. basic rights, obligations and responsibilities of the pension company towards the depositary, of the depositary towards the pension company and the fund members, and of the fund members towards the depositary;
3. basic information on the operating conditions of the pension company and on supervision of its operations;
4. procedures for compensating fund members for loss suffered because of a wrong calculation of the value of units and violation of investment limits, in accordance with the provisions of Article 70, paragraph 5 of this Act;
5. information on any conflict of interest and the manner in which it is addressed, in particular as regards possible conflicts of interest between the pension company and members or related persons of the pension company or the fund or persons having a qualifying holding in the pension company, and conflicts of interest between the funds themselves, and between these funds and other funds managed by the pension company, including other activities referred to in Article 11 of this Act if carried out by the pension company;
6. a description of the procedure for the settlement of disputes between the pension company and the fund;
7. requirements concerning changes in the fund's status and the rights of members in the status change procedure;
8. the date of issue of the statute and of the last approval of the statute granted by the Agency;
9. the rights of the fund members and the requirements for transferring to a fund managed by the same or another pension company.

(2) The statute of an open-end pension fund may prescribe the conditions and procedure under which the pension company may decide that a member of the fund shall cease to be a member of that fund and become a member of another open-end fund managed by that pension company. In that case, the fund member shall cease to be a member of the fund upon the expiry of 90 days from the date on which the fund member is properly notified of the decision, and shall become a member of another open-end pension fund as from the next day. The notification shall be submitted to the fund member in the manner provided for in the membership agreement referred to in Article 115 of this Act.

(3) The statute of an open-end pension fund may prescribe the conditions upon fulfilment of which, or the time limits upon expiry of which, a fund member shall automatically, without any special notification, become a member of another open-end fund managed by the same pension company. In such cases, the fund member shall cease to be a member on the day when the conditions are fulfilled or the time limit expires, and shall become a member of another open-end fund managed by the same pension company as from the next day following the fulfilment of the conditions or expiry of the time limit.

(4) In the cases referred to in paragraphs 2 and 3 of this Article, another open-end fund which is managed by the same pension company and in which the fund member may become a member must be clearly determined by the fund's statute, and no fee, payment or cost shall be collected from or charged to the fund member for ceasing to be a member of one fund and becoming a member of another fund managed by the same pension company.

(5) The Agency shall issue an ordinance prescribing the additional contents of the fund's statute.

#### Article 183

(1) The application of the statute shall not, directly or indirectly, cause the pension company and the sponsor of the closed-end fund to act contrary to the principle of equal treatment for men and women, or make it possible to practice discrimination on grounds of sex in relation to the rights under the supplementary pension insurance.

(2) The discrimination referred to in paragraph 1 of this Article relates in particular to:

1. acquiring membership in a fund;
2. the mandatory or voluntary nature of membership in a fund;
3. different conditions for acquiring membership in a fund;
4. different periods of membership in a fund required to exercise the rights;
5. different conditions as regards the retention or exercise of the rights under this Act when membership is suspended during periods of maternity leave or leave for raising children;
6. setting different conditions or provisions applicable only to fund members of the same sex, regarding the expected benefits when a person leaves the fund;
7. setting different levels of pension, except in the case of closed-end funds with defined benefits where this is necessary to take account of actuarial calculations which differ according to sex. In the case of closed-end funds with defined benefits, certain elements of treatment of men and women may be unequal where the inequality of the amounts results from the effects of the use of actuarial calculations differing according to sex;
8. setting different levels for workers' contributions;
9. setting different levels for employers' contributions, except in the case of closed-end funds if the aim is to equalise the amount of the final pension or to make it more nearly equal for both sexes;
10. setting different levels for employers' contributions, except in the case of closed-end funds with defined benefits where the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined;

11. laying down different criteria applicable only to workers of a specified sex, except as provided for in items 7, 9 and 10 of this paragraph, as regards the guarantee or retention of entitlement to deferred pensions when a worker leaves a pension scheme.

#### Article 184

In addition to the information specified in Article 182 of this Act, the statute of a closed-end fund must contain detailed information on:

1. the procedures relating to the transfer of accounts;
2. the place and manner of obtaining a written statement of investment principles referred to in Article 166 of this Act;
3. the place and manner of obtaining information on the fund's portfolio, the risk exposure of the fund and the pension company and investment costs;
4. the rights that a member of a closed-end fund has on the basis of membership in the fund in the case when the fund member moves to work in another country;
5. the place and manner of obtaining information about the balance on the personal account and about the possibilities for payment of pensions to pension beneficiaries after the exercise of pension rights;
6. in the case of a closed-end fund with defined benefits, the place and manner of obtaining information on:
  - a) the target level of pensions and
  - b) the level of pensions in the case of exercising pension rights.

#### *Publication of the fund's statute*

#### Article 185

- (1) The pension company shall, within eight days of receiving approval from the Agency, publish the fund's statute in accordance with the provisions of Article 173 of this Act and notify the Agency of how the statute has been published.
- (2) The Agency shall issue an ordinance to prescribe additional requirements concerning the publication of the fund's statute.

### ***Section VIII***

#### ***Key information for fund members***

#### Article 186

- (1) Key information for fund members must include a clear and unambiguous description of the essential characteristics of the fund, which is easily understandable to fund members.

- (2) The contents of key information for fund members shall not be misleading.
- (3) Key information for fund members shall enable the fund members to understand the nature and relevance of the risks, and to assess the consequences of membership in the fund.
- (4) The contents of key information for fund members shall be consistent with the contents of the fund's prospectus and statute.
- (5) Key information for fund members shall constitute a comprehensive whole and shall not include any reference to other documents.
- (6) The pension company shall be liable for damage caused by the provision of key information for fund members that is misleading, inaccurate or inconsistent when read together with the prospectus.

#### *Contents of key information for fund members*

##### Article 187

Key information for fund members shall contain:

1. the name and type of the fund (open-end/closed-end) and the pension company;
2. a short description of the fund's investment objectives and strategy;
3. an overview of historical rates of return;
4. a description of the risks associated with investments in the relevant fund, including appropriate guidance and warnings in relation to the risks associated with investments;
5. costs and other fees charged to the fund or to a fund member.

#### *Changes to key information for fund members*

##### Article 188

- (1) Key information for fund members shall be regularly updated.
- (2) The pension company shall update the key information for fund members at least once a year.

#### *Communication of changes to key information for fund members to the Agency*

##### Article 189

- (1) The pension company shall communicate to the Agency any changes to key information for fund members, in respect of each fund it manages in the Republic of Croatia, no later than five days prior to its publication.
- (2) The pension company shall publish the key information on its website.

## *Provision of information to members*

### **Article 190**

(1) The pension company and, in the case of a closed-end fund, the sponsor of the closed-end fund shall inform the fund members and potential fund members about the opportunities offered by membership in the fund and about their rights and obligations resulting from membership in the fund.

(2) The pension company shall submit to fund members and pension beneficiaries, on request and in the manner defined in the agreement referred to in Article 115, the following:

1. audited annual financial statements of the pension company and audited annual reports of the fund;
2. a written statement of investment principles referred to in Article 166 of the Act;
3. detailed information on the fund's portfolio, the risk exposure and investment costs;
4. detailed information on the procedures for transferring an account and on the rights in case of cessation of employment.

(3) The pension company managing a closed-end fund with defined benefits shall, in addition to information referred to in paragraph 2 of this Article, provide to members and pension beneficiaries, on their request and in the manner defined in the membership agreement referred to in Article 115, information on:

1. the target level of pensions;
2. the level of pensions in the case of exercising pension rights.

(4) The pension company shall provide to pension beneficiaries, after they exercise the right to a pension, appropriate information about the balance on the personal account and about the pension payment options.

(5) The pension company managing a closed-end fund or the sponsor of a closed-end fund shall inform a fund member who moves to work in another country about the rights arising from his or her past membership.

## ***Section IX***

### ***Reporting by funds***

#### *Fund's business year and application of financial reporting standards*

### **Article 191**

(1) The business year of a fund shall be defined by the pension company in the fund's prospectus.

(2) The legislation governing accounting and the International Financial Reporting Standards shall apply to financial reporting by funds, unless the Agency provides otherwise.

(3) The Agency shall prescribe the chart of accounts for funds.

### *Fund reports*

#### Article 192

(1) The Agency shall issue an ordinance laying down the structure and contents of half-yearly and annual reports of funds and the method of their submission and publication.

(2) Apart from half-yearly and annual reports of funds referred to in paragraph 1 of this Article, the Agency shall prescribe the structure, the contents and the method and deadlines for submission of other fund reports that the pension companies are required to prepare for the Agency's purposes.

### *Auditing of fund reports*

#### Article 193

(1) Fund annual reports shall be audited by an auditor in the manner and under the conditions laid down in the legislation governing accounting and auditing activities and in the rules of the auditing profession, unless otherwise provided for in this Act and regulations made under this Act.

(2) The Agency shall issue an ordinance to specify in more detail the scope and content of the audit, auditing procedures and auditor's report on an audit of fund annual reports.

(3) The Agency may require the auditor to provide additional explanations with regard to the audited annual reports.

(4) The same audit firm may audit no more than seven consecutive annual reports of the same fund.

(5) If the Agency establishes that an audit of the fund annual reports has not been carried out or that the auditor's report has not been drawn up in accordance with this Act, the regulations made under this Act, the legislation governing accounting and auditing activities and the rules of the auditing profession, or if it establishes, on the basis of a supervision of the operations of the fund or otherwise that the audit and the auditor's report on the fund annual reports are not based on true and objective facts, it may reject the auditor's report and require the pension company to have the audit carried out by certified auditors from another audit firm at the expense of the pension company.

### *Time limits for the preparation of half-yearly reports and audited annual reports*

#### Article 194

(1) Half-yearly reports of a fund shall be submitted to the Agency within two months after the end of the first six months of the business year.

(2) Audited annual reports of a fund shall be submitted to the Agency within four months after the end of the business year.

(3) A pension company from another Member State that manages a closed-end fund whose pension schemes are offered in the territory of the Republic of Croatia shall submit to the Agency the closed-end fund's half-yearly and audited annual reports within the time limits specified in paragraphs 1 and 2 of this Article.

#### *Availability of fund's reports and documents*

##### Article 195

(1) A pension company shall publish half-yearly reports and audited annual reports of open-end funds on its website.

(2) The most recent audited annual reports and half-yearly reports of an open-end fund shall be provided to members of the fund on request and free of charge, in the manner defined in the agreement referred to in Article 115 of this Act.

##### Article 196

A pension company and sales representatives of the pension company managing a fund or a closed-end fund from another Member State in the Republic of Croatia shall provide potential fund members, free of charge, with key information for fund members before the conclusion of the membership agreement.

##### Article 197

(1) Key information for fund members, the prospectus and the statute of the fund shall be available to potential members of the fund at all places where pension schemes of the fund are offered.

(2) The documents referred to in paragraph 1 of this Article shall be available to potential fund members for inspection even when pension schemes of the fund are offered outside the points of sale by the employees of the pension company or by other persons authorised by the pension company for that purpose.

#### *The method of submission of documents and reports*

##### Article 198

(1) The fund's prospectus and key information for fund members shall be provided to fund members in paper copies, as well as in other durable medium or by means of the pension company's website, in accordance with the provisions of Article 173, paragraphs 1 and 2 of this Act. The pension company shall provide on request to fund members a paper copy of key information for fund members, once a year free of charge.

(2) The most recent audited annual reports and half-yearly reports of a closed-end fund shall be provided to members of the fund in the manner specified in the prospectus of the fund, and

if no manner is specified in the prospectus, then in the manner envisaged for delivering the prospectus as described in paragraph 1 of this Article.

(3) Notwithstanding the provision of paragraph 2 of this Article, the pension company shall provide to a member of a closed-end fund on his or her explicit request and free of charge paper copies of the latest audited annual reports and half-yearly reports of the fund, once a year for the preceding business year or the preceding reporting period.

## ***Section X***

### ***Other notices and information for fund members***

#### ***Quarterly reports***

##### **Article 199**

(1) A pension company shall prepare a quarterly report on the operations of an open-end fund intended for fund members and shall publish it on its website no later than 15 days after the end of each of the three-month periods ending 31 March, 30 June, 30 September and 31 December.

(2) A pension company shall prepare a quarterly report on the operations of a closed-end fund intended for fund members and shall publish it in the manner and within the time limit specified in the membership agreement referred to in Article 115 of this Act.

#### ***Disclosure of legal and business transactions***

##### **Article 200**

(1) A pension company shall, whenever possible, disclose on its website any legal and business transactions related to the pension company or fund when such transactions might have a significant impact on the operations of the open-end fund.

(2) A pension company shall, whenever possible, disclose or inform the members of a closed-end fund, in the manner specified in the fund's prospectus, about any legal and business transactions related to the pension company or the fund when such transactions might have a significant impact on the operations of the closed-end fund.

(3) The pension company shall without delay notify the Agency of the legal and business transactions referred to in paragraph 1 of this Article.

#### ***Provision of supplementary information***

##### **Article 201**

Upon request of a fund member, the pension company shall also provide supplementary information relating to the limits that apply in the risk management of the fund managed by the company, to the procedures chosen to this end and to the evolution of the risks and yields of the basic categories of financial instruments in which the fund's assets have been invested.

## Article 202

Pension companies and sponsors of closed-end funds shall provide posted workers who are members of a closed-end fund with adequate information on the closed-end fund, on their pension rights and on the options open to them under the supplementary pension scheme of the Member State to which they are posted to work. Such information shall at least correspond to information that pension companies and sponsors of closed-end funds give to members of the closed-end fund to which contributions in respect of posted workers have ceased to be made.

### *Ordinance on the contents of disclosures and deadlines for their publication*

## Article 203

The Agency shall issue an ordinance specifying the contents of a quarterly report concerning the operations of a fund referred to in Article 199 of this Act, and the manner, contents and deadlines for disclosures referred to in Article 200 of this Act.

## Section XI

### ***Provision of information to members of a closed-end fund in the Republic of Croatia by a pension company from another Member State***

#### *Provision of information to members of a closed-end fund in the Republic of Croatia*

## Article 204

- (1) A pension company from another Member State shall provide to members of a closed-end fund in the Republic of Croatia, in relation to the operation of a fund the pension scheme of which is offered in the Republic of Croatia, all documents and information which it provides to members of the closed-end fund in the home Member State of the fund.
- (2) Notwithstanding the provisions of paragraph 1 of this Article, the documents and information on a closed-end fund shall be submitted or made available to any member of the closed-end who joined that fund in the Republic of Croatia, even after the pension scheme of that fund is no longer offered in the Republic of Croatia, for as long as there are members of that fund who have joined the fund in the Republic of Croatia.
- (3) A pension company from another Member State shall provide to members of a closed-end fund all documents and information referred to in paragraph 1 of this Article in the manner provided for in this Act for delivering specific documents and items of information relating to closed-end funds.
- (4) Notwithstanding the provisions of paragraph 3 of this Article, the frequency of the publication of the price of units of a closed-end fund from another Member State shall be subject to the laws of the home Member State of the closed-end fund.

### *Language of the documents*

## Article 205

- (1) Key information for members of a closed-end fund from another Member State must be available to the members of the closed-end fund in the Republic of Croatia in the Croatian language.
- (2) Other documents and information concerning a closed-end fund from another Member State must be available or submitted to the members of the closed-end fund in the Republic of Croatia in Croatian or English.
- (3) The pension company from the fund's home Member State shall be responsible for the authenticity and accuracy of the translation of the documents and information referred to in paragraphs 1 and 2 of this Article.

### *Submission of documents of a fund from another Member State to the Agency*

## Article 206

The Agency shall require the pension company from another Member State that manages in the Republic of Croatia a closed-end fund sponsored by a sponsor from the Republic of Croatia to submit the documents referred to in Article 167, paragraph 1 of this Act in respect of the closed-end fund concerned and up-to-date versions of these documents.

## **Section XII**

### ***Changes in the fund's status***

## Article 207

- (1) A fund may be divided and two or more funds may be merged by acquisition or by the formation of a new fund, subject to prior approval by the Agency.
- (2) A closed-end fund may be transformed into an open-end fund subject to prior approval by the Agency. An open-end fund may not be transformed into a closed-end fund.
- (3) Merger by acquisition, merger by the formation of a new fund, division or conversion shall not be allowed if such status change weakens the financial situation of members of the funds involved in the status change.
- (4) If a closed-end fund has one sponsor, the status change of the fund is necessary if bankruptcy proceedings, liquidation proceedings or pre-bankruptcy settlement proceedings have been initiated in respect of the sponsor, in the case the sponsor ceases to exist or if any other reason arises which permanently prevents payments to the members of the closed-end fund. This status change also requires prior approval by the Agency.
- (5) The Agency shall issue an ordinance specifying in more detail the procedure, conditions and manner of carrying out changes in the fund's status.

### *Merger of funds by acquisition or by the formation of a new fund*

## Article 208

- (1) A merger of funds by acquisition may only be effected by transferring all the assets of one or more funds (the merging fund) to another existing fund (the receiving fund).
- (2) A merger of funds by the formation of a new fund may only be effected by transferring all the assets of two or more funds (the merging funds) to a new fund formed by merger (the receiving fund).
- (3) Several merging funds and only one receiving fund may participate in a merger by acquisition or a merger by the formation of a new fund.
- (4) When a merger by acquisition or by the formation of a new fund is carried out, the merging fund shall cease to exist without going into liquidation, and all the assets, rights and obligations of the merging fund shall be transferred to the receiving fund.
- (5) The pension company managing the receiving fund shall enter, in its own name and for the account of the receiving fund, into all legal transactions in which the pension company of the merging fund participated in its own name and for the account of the merging fund.
- (6) After the status change involving a merger by acquisition or by the formation of a new fund is carried out, the net asset value of the receiving fund or of a new fund must be at least equal to the net asset value of the merging fund, or to the sum of the net asset values of the merging funds, before the status change.
- (7) The total value of all the units of the receiving fund or of the new fund, held by a fund member after the status change involving a merger by acquisition or by the formation of a new fund is carried out, shall be at least equal to the total value of units of the merging fund held by that fund member before the status change.

*Exchange of units in the case of a merger by acquisition or by the formation of a new fund*

## Article 209

- (1) After a merger of funds by acquisition or by the formation of a new fund is effected, the members of the merging fund shall acquire units in the receiving fund in accordance with the exchange ratio set out in the merger agreement.
- (2) The exchange ratio of units of the merging fund into units of the receiving fund shall be calculated on the effective date of the status change, on the basis of the net asset value of the funds involved in the status change determined in accordance with the rules to be adopted by the Agency with regard to the method of valuation of the assets and liabilities of funds (date for calculating the exchange ratio).
- (3) The effective date of the status change shall be the date set in the draft terms of merger by acquisition or by the formation of a new fund as the planned effective date of the status change on which the assets of the merging fund are transferred to the receiving fund and the units of the merging fund exchanged for units in the receiving fund.

(4) The deadline for the allocation of units shall be the next business day following the effective date of merger by acquisition or by the formation of a new fund.

### *Division of a fund*

#### Article 210

(1) The division of a fund may be effected by transferring all its assets to two or more funds, in which case the fund being divided ceases to exist (complete division), or by transferring part of its assets to two or more funds, in which case the fund being divided does not cease to exist (partial division).

(2) Division may be into two or more existing funds (division by acquisition – receiving funds) or into two or more new funds formed for the purpose of effecting the division (division by the formation of a new fund – new funds).

(3) An open-end fund may only be divided into two or more open-end funds, and a closed-end fund may be divided into open-end and closed-end funds.

(4) After the status change involving a complete division is carried out, the net asset value of the receiving funds or of new funds must be at least equal to the net asset value of the divided fund before the status change.

(5) The total value of all the units of the funds to which the assets of the divided fund have been transferred, held by a fund member after the status change involving a division is carried out, shall be at least equal to the total value of units of the fund being divided held by that fund member before the status change involving division.

### *Exchange of units in the case of a division*

#### Article 211

(1) The members of the fund being divided shall acquire units in the receiving funds and/or new funds in proportion to the units they had in the fund being divided and in accordance with the exchange ratio set out in the terms of division.

(2) The exchange ratio of units of the fund being divided into corresponding units of the receiving funds shall be calculated on the effective date of the status change, on the basis of the net asset value of the funds involved in the status change determined in accordance with the rules to be adopted by the Agency with regard to the method of valuation of the assets and liabilities of the fund (date for calculating the exchange ratio).

(3) The effective date of the status change shall be the date set in the terms of division as the planned effective date on which the assets of the fund being divided are transferred and the units of the fund being divided are exchanged for units in the receiving funds.

(4) The deadline for the allocation of units shall be the next business day following the effective date of the status change involving division.

### *Conversion of a fund*

#### Article 212

Members of a closed-end fund shall, as a result of the fund's conversion, acquire units in an open-end fund in proportion to the units they had in the closed-end fund being converted.

#### Article 213

(1) An application for approval of conversion shall be submitted to the Agency by the pension company managing the fund being converted.

(2) The application referred to in paragraph 1 of this Article shall be accompanied by:

1. the fund's statute and prospectus;
2. a short description of the reasons for the conversion and the planned effective date of the conversion;
3. a description of the expected consequences of the conversion for the members of the fund;
4. the depositary's opinion about the conversion;
5. the decision on the conversion, which is subject to approval by the Agency.

(3) The Agency shall not approve a conversion if it estimates that the intended conversion is likely to adversely affect the fund members.

#### Article 214

(1) Within eight days of receiving the conversion approval from the Agency, the pension company shall inform the fund members about all the actions and circumstances concerning the conversion, so as to enable the members to assess the consequences of the conversion for their assets in the fund.

(2) The information referred to in paragraph 1 of this Article shall include:

1. a short description of the reasons for the conversion;
2. a description of the expected consequences of the conversion for the members of the fund;
3. a description of, and the procedure for exercising, all the rights that the fund members have pursuant to the provisions of this Act, and the planned effective date of the conversion;
4. the fund's prospectus.

(3) The Agency shall issue an ordinance specifying in more detail the manner in which the information concerning the conversion referred to in paragraph 1 of this Article is to be provided to fund members.

#### Article 215

(1) The fund members shall be allowed to switch, without being charged an exit fee, to another fund within two months from the date on which the information about the conversion referred to in Article 214, paragraph 2 of this Act was provided.

(2) On the next business day following the effective date of the conversion, the pension company shall notify thereof the Agency and the depositary and shall publish on its website the information on the implementation of the conversion.

(3) Any costs incurred as a result of the conversion shall be borne by the pension company.

#### Article 216

(1) The pension company and the members of its board of directors shall be liable for damage incurred to the fund members as a result of the implementation of the conversion, unless they prove that they acted with due professional care in the conversion procedure.

(2) The provisions of the law governing the establishment and operation of companies concerning the damage liability of members of the bodies of a merged company shall apply *mutatis mutandis* to the damage liability of the pension company and members of its board of directors and to the damage compensation procedure and periods of limitation.

#### *Procedure for effecting a change in the fund's status*

#### *Procedure for a merger by acquisition*

#### Article 217

(1) Prior to carrying out the procedure for a merger by acquisition, the pension company managing the merging fund shall obtain an approval from the Agency (approval of a merger by acquisition).

(2) If a merger involves several merging funds which are managed by the same pension company, the pension company must obtain the Agency's approval of a merger by acquisition for each merging fund separately.

(3) If a merger involves several merging funds which are managed by different pension companies, each pension company managing a merging fund must obtain the Agency's approval of a merger by acquisition for each merging fund separately.

#### *Application for approval of a merger by acquisition*

#### Article 218

(1) An application for approval of a merger by acquisition shall be submitted to the Agency by the pension company managing the merging fund.

(2) The application referred to in paragraph 1 of this Article shall be accompanied by:

1. draft terms of merger, in accordance with the provisions of Article 219 of this Act;

2. the receiving fund's statute and prospectus;
3. statement of the depositaries about the merger, as referred to in Article 220 of this Act;
4. information about the merger that will be provided to the members of the merging fund and the receiving fund.

### *Draft terms of merger*

#### Article 219

(1) The pension companies managing the merging fund and the receiving fund shall draw up common draft terms of merger.

(2) The draft terms of merger shall specify:

1. the names and categories of funds involved in the merger, the name and registered office address of the pension company managing the merging fund and of the pension company managing the receiving fund;
2. a short description of the background to and rationale for the merger;
3. a description of the expected consequences of the merger for the members of both the merging and the receiving fund;
4. a description of the method adopted for valuation of the assets and liabilities of both the merging and the receiving fund on the date for calculating the exchange ratio;
5. a description of methodology to be applied for the calculation of the exchange ratio on the date for calculating the exchange ratio;
6. an indication of the planned effective date of the merger;
7. a detailed description of the procedures concerning the transfer of assets of the merging fund to the receiving fund and the exchange of the units of the merging fund for units of the receiving fund.

(3) In addition to the information and documentation referred to in paragraph 2 of this Article, additional information concerning the merger procedure may be included in the draft terms of merger.

(4) The draft terms of merger shall be signed by all the members of the board of directors of the merging and the receiving funds' pension companies.

(5) Regardless of whether the merger involves several merging funds managed by different pension companies, one draft terms of merger shall be drawn up.

### *Statement of depositaries about the merger*

#### Article 220

(1) The depositaries of the funds involved in a merger by acquisition shall, autonomously and independently of each other, prepare their statements on the merger, each for the fund for which it provides depositary services, on the basis of the draft terms of merger referred to in Article 219 of this Act.

(2) In its statement, the depositary shall explicitly indicate whether items 3, 6 and 7 of paragraph 2 of Article 233 of this Act have been drafted in conformity with the provisions of this Act and the fund's statute.

(3) Costs associated with the preparation of the depositary's statement on the merger may not be paid out of the assets of the funds involved in the merger.

### *Informing members about the merger by acquisition*

#### Article 221

(1) The pension company managing the merging fund shall inform all the members of the merging fund about all the actions and circumstances concerning the merger by acquisition, so as to enable the members to assess the consequences of the merger for their assets in the merging fund.

(2) The information about the merger, as referred to in paragraph 1 of this Article, shall include:

1. a short description of the background to and rationale for the merger;
2. a description of the expected consequences of the merger for the members of the merging fund;
3. a description of, and the procedure for exercising, all the rights that the members of the merging fund have pursuant to the provisions of this Act, and the planned effective date of the merger.

(3) The pension company managing the merging fund shall provide the information on the merger to members only after the Agency has approved the merger, but at least 30 days before new members are prohibited from joining the merging and the receiving funds in accordance with Article 225, paragraph 1 of this Act.

(4) Members of the merging fund and of the receiving fund shall be allowed to switch, without being charged an exit fee, to another fund within the time limit referred to in paragraph 3 of this Article and within two months after the merger is completed.

(5) The Agency shall issue an ordinance specifying in more detail the contents of the information about the merger by acquisition and the method of its delivery to the members of the merging fund.

### *Refusal of an application for approval of a merger by acquisition*

#### Article 222

The Agency shall refuse an application for approval of a merger by acquisition if it establishes that the requirements of Article 207, paragraph 3 and Articles 217 to 230 of this Act have not been satisfied.

### *Audit of a merger by acquisition*

#### Article 223

(1) Before the date for calculating the exchange ratio and the effective date of a merger by acquisition, the merger must be audited by an auditor from the audit firm that the pension company managing the merging fund has appointed after having obtained a non-binding opinion from the depositary of the merging fund.

(2) On the basis of the audit referred to in paragraph 1 of this Article, the auditor shall draw up a merger report, which shall include the auditor's findings regarding the following:

1. whether the principle of unchangeability of the financial situation of the fund members, as set out in Article 207 of this Act, is respected in the proposed merger by acquisition;

2. the criteria adopted for valuation, as referred to in Article 219, paragraph 2, item 4 of this Act;

3. the appropriateness of the exchange ratio calculation method referred to in Article 219, paragraph 2, item 5 of this Act.

(3) The auditor shall submit his merger report to the board of directors of the pension companies managing the merging fund and the receiving fund, and the pension company of the receiving fund shall submit it to the Agency within three business days.

(4) If the merger by acquisition involves more than one merging fund, the auditor shall audit the merger for each merging fund. The pension companies managing the merging funds may, in agreement with the depositaries of these funds, determine that the audit of the merger should be performed by the same auditor who will issue a single merger report, in which the merging fund of each pension company shall be covered separately, which means that the provisions of paragraph 2 of this Article will be indicated in the report for each merging fund of each pension company.

(5) The provisions of the legislation governing auditing shall apply *mutatis mutandis* to the damage liability of the auditor preparing the report referred to in paragraph 2 of this Article.

(6) The costs of audits may not be paid out of the assets of the funds involved in the merger by acquisition.

### *Access to data on a merger by acquisition*

#### Article 224

(1) A member of the merging or the receiving fund may request from the pension company managing the receiving fund a copy of the auditor's merger report.

(2) The pension company shall make available to the fund member free of charge a copy of the auditor's merger report, no later than the next business day after the receipt of a written request.

(3) A copy of the auditor's merger report may also be provided to the fund member in electronic format or by publication on the pension company's website.

### *Implementation of a merger by acquisition*

#### Article 225

(1) Any further entry into membership, payments in and out, and closures of personal accounts in the merging fund and the receiving fund shall be prohibited five working days before the date for calculating the exchange ratio.

(2) The prohibition referred to in paragraph 1 of this Article shall last until the effective date of the status change, but no longer than 15 days.

(3) The pension companies managing the merging fund and the receiving fund shall, taking into account the situation as at the date for calculating the exchange ratio and using the methodology described in the draft terms of merger based on which the Agency issued the merger approval, determine the exchange ratio according to which the units in the merging fund shall be exchanged for the units in the receiving fund. This shall take into account the net asset value of the funds involved in the merger by acquisition.

(4) On the effective date of the status change, the pension companies managing the merging fund and the receiving fund shall make the transfer, as provided for in the draft terms of merger, of all the assets and liabilities with respect to each pension fund involved in the merger.

(5) On the effective date of the merger, the pension companies managing the merging fund and the receiving fund shall, for the members of the merging fund, exchange their units in the merging fund for units in the receiving fund, in accordance with the exchange ratio referred to in paragraph 1 of this Article.

(6) The pension companies managing the merging fund and the receiving fund may not perform the transfer of assets and liabilities and the exchange of units in accordance with the provisions of this Article, unless the auditor has previously given his positive opinion about the merger.

(7) With regard to investment limits, the assets of the receiving fund need not be fully aligned with the provisions of this Act and the prospectus of the receiving fund for a maximum period of 60 days after the effective date of the status change.

### *Notification of the Agency*

#### Article 226

The pension company managing the receiving fund shall notify the Agency and the receiving fund's depository of the status change on the next business day following the effective date of the status change.

*Publication of the information on the implementation of a merger by acquisition*

Article 227

On the next business day following the effective date of the status change, the pension company managing the receiving fund shall publish on its website the information on the implementation of the status change.

*Convalidation of errors in the merger procedure*

Article 228

Once the units in the merging fund have been exchanged for the units in the receiving fund, it is not possible to require that the implemented merger of the funds be declared null and void nor can the legal actions taken for the purpose of the merger be disputed.

*Costs of merger by acquisition*

Article 229

All the costs incurred as a result of the merger by acquisition shall be borne by the pension companies managing the merging fund and the receiving fund.

*Damage liability of the pension company and members of its board of directors*

Article 230

(1) The pension companies managing the merging fund and the receiving fund and the members of their boards of directors shall be liable for damage incurred to the members of these funds as a result of the implementation of the merger, unless they prove that they acted with due professional care in the merger procedure.

(2) The provisions of the law governing the establishment and operation of companies concerning the damage liability of the members of the bodies of a merged company shall apply *mutatis mutandis* to the damage liability of the pension companies and members of their boards of directors and to the damage compensation procedure and periods of limitation.

*Procedure for a merger by the formation of a new fund*

*The mutatis mutandis application of the provisions concerning a merger by acquisition*

Article 231

(1) The provisions of this Act governing a merger of funds by acquisition shall apply *mutatis mutandis* to a merger of the merging funds with a receiving fund by the formation of a new fund.

(2) When Article 219 of this Act is applied *mutatis mutandis*, the draft terms of merger shall be accompanied by the receiving fund's statute and prospectus.

(3) When Article 221 of this Act is applied *mutatis mutandis*, the Agency may refuse an application for approval of a merger by the formation of a new fund if it is not possible to grant the approval for the establishment of the receiving fund.

(4) Notwithstanding the provisions of Article 225, paragraph 7 of this Act, the assets of the receiving fund need not be fully aligned with the provisions of this Act and the statute of the receiving fund for a maximum period of six months after the effective date of the status change.

### *Procedure for a division*

#### *Application for approval of a division*

#### Article 232

(1) An application for approval of a division shall be submitted to the Agency by the pension company managing the fund being divided.

(2) The application referred to in paragraph 1 of this Article shall be accompanied by:

1. the decision on the division, which is subject to approval by the Agency;
2. draft terms of division;
3. the statute and prospectus of the fund being divided and the statutes and prospectuses of the receiving funds in the case of a division by acquisition or the proposal for the statute and prospectus of the new fund in the case of a division by the formation of a new fund;
4. the depositary's opinion about the division;
5. information about the division that will be provided to the members of the fund being divided and the members of the new fund or the receiving fund.

### *Draft terms of division*

#### Article 233

(1) The board of directors of the pension company managing the fund being divided shall draw up draft terms of division.

(2) The draft terms of division shall specify:

1. the names and types of the funds involved in the division, and the name and registered office address of the pension company managing the funds involved in the division;
  2. a short description of the reasons for the division;
  3. a description of the expected consequences of the division for the members of the funds involved in the division;
  4. the exchange ratio of units of the receiving funds and a description of methodology to be applied for the calculation of the exchange ratio;
  5. the effective date of the status change as the planned effective date on which the assets of the fund being divided are transferred to the receiving funds and the units of the fund being divided are exchanged for units in the receiving funds;
  6. a description of the method adopted for valuation of the assets and liabilities of the funds involved in the division on the date for calculating the exchange ratio;
  7. an indication of the planned effective date of the division;
  8. a detailed description of the procedures concerning the transfer of assets of the fund being divided and the exchange of the units of the fund being divided for units of the receiving funds.
- (3) In addition to the information and documentation referred to in paragraph 2 of this Article, additional information concerning the division procedure may be included in the draft terms of division.
- (4) The draft terms of division shall be signed by all the members of the board of directors of the pension company managing the fund being divided.

#### *Statement of depositaries about the division*

##### Article 234

- (1) The depositaries of the funds involved in the division shall, autonomously and independently of each other, prepare their statements on the division, each for the fund for which it provides depositary services, on the basis of the draft terms of division referred to in Article 233 of this Act.
- (2) In its statement, the depositary shall explicitly indicate whether items 3, 4, 5, 6, 7 and 8 of paragraph 2 of Article 233 of this Act have been drafted in conformity with the provisions of this Act and the fund's statute.
- (3) Costs associated with the preparation of the depositary's statement on the division may not be paid out of the assets of the funds involved in the division.

#### *Informing members about the division*

##### Article 235

(1) The pension company managing a fund involved in a division shall inform all the members of the fund about all the actions and circumstances concerning the division (information about the division), so as to enable the members to assess the consequences of the division for their assets in the fund.

(2) The information about the division shall include:

1. a short description of the reasons for the division;
2. a description of the expected consequences of the division for the members of the fund involved in the division;
3. a description of, and the procedure for exercising, all the rights that the members of the fund being divided have pursuant to the provisions of this Act, and the planned effective date of the division;
4. the prospectus of the receiving fund or the new fund.

(3) The companies managing a fund involved in a division shall provide the information about the division to members only after the Agency has granted a merger approval to the company managing the fund being divided, but at least 30 days before new members are prohibited from joining the fund in accordance with Article 225, paragraph 1 of this Act.

(4) Members of a fund involved in a division shall be allowed to switch, without being charged an exit fee, to a fund managed by another pension company, within two months after the submission of the information about the division.

(5) The Agency shall issue an ordinance specifying in more detail the contents of the information about the division and the method of its delivery to members.

#### *Refusal of an application for approval of a division*

##### Article 236

The Agency shall refuse an application for approval of a division if it establishes that the requirements of Articles 232 to 244 of this Act have not been satisfied.

#### *Audit of a division*

##### Article 237

(1) Before the status change involving a division is effected, it must be audited by an auditor from the audit firm that the pension company of the fund being divided has appointed after having obtained an opinion from the depositary of the fund being divided.

(2) On the basis of the audit referred to in paragraph 1 of this Article, the auditor shall draw up a division report, which shall include the auditor's findings regarding the following:

1. whether the principle of unchangeability of the financial situation of the fund members, as set out in Article 207, paragraph 3 of this Act, is respected in the proposed division;

2. the criteria for valuation adopted in the draft terms of division, as referred to in Article 233, paragraph 2, item 6 of this Act;

3. the appropriateness of the exchange ratio calculation method set out in the draft terms of division referred to in Article 233, paragraph 2, item 4 of this Act.

(3) The auditor shall submit his division report to the board of directors of the pension companies managing the funds involved in the division, and the pension company of the fund being divided shall submit it to the Agency within three business days.

(4) The provisions of the legislation governing auditing shall apply *mutatis mutandis* to the damage liability of the auditor preparing the report referred to in paragraph 2 of this Article.

(5) The costs of audits may not be paid out of the assets of the funds involved in the division.

### *Access to data on a division*

#### Article 238

(1) A member of a fund involved in a division may request from the pension company managing that fund a copy of the auditor's division report.

(2) The pension company shall make available to the fund member free of charge a copy of the auditor's division report, no later than the next business day after the receipt of a written request.

(3) A copy of the auditor's division report may also be provided to the fund member in electronic format or by publication on the pension company's website.

### *Implementation of a division*

#### Article 239

(1) The pension company managing a fund involved in the status change involving a division may not carry out the division or transfer the assets and exchange the units, unless the auditor has previously given his positive opinion about the division.

(2) With regard to investment limits, the assets of the receiving funds to which the assets of the fund being divided have been transferred need not be fully aligned with the provisions of this Act and the fund's statute for a maximum period of 60 days after the effective date of the status change.

(3) Exceptionally, the Agency may, on request of the pension company, extend the period referred to in paragraph 2 of this Article if it is in the interest of the fund members.

### *Notification of the Agency*

#### Article 240

On the next business day following the effective date of a division, the pension company of the fund that has been divided shall notify thereof the Agency and the depositary.

*Publication of the information on the implementation of a division*

Article 241

On the next business day following the effective date of the status change, the pension company that manages (partial division) or has managed (complete division) the fund being divided shall publish on its website the information on the implementation of the status change.

*Convalidation of errors in the division procedure*

Article 242

Once the units have been exchanged, it is not possible to require that the implemented division of the fund be declared null and void nor can the legal actions taken for the purpose of merger be disputed.

*Costs of division*

Article 243

All the costs incurred as a result of a division shall be borne by the pension companies managing the funds involved in the division.

*Damage liability of the pension company and members of its board of directors*

Article 244

(1) The pension company managing the fund being divided and the members of its board of directors shall be liable for damage incurred to the members of that fund as a result of the implementation of the division, unless they prove that they acted with due professional care in the division procedure.

(2) The provisions of the law governing the establishment and operation of companies concerning the damage liability of the members of the bodies of a merged company shall apply *mutatis mutandis* to the damage liability of the pension company and members of its board of directors and to the damage compensation procedure and periods of limitation.

PART FOUR

DEPOSITARY

*General provisions*

Article 245

(1) The pension company shall entrust the assets of a fund to a depositary for safekeeping and administration.

(2) The depositary may be:

1. a credit institution with a registered office in the Republic of Croatia, which is authorised by the Croatian National Bank for providing the services of safekeeping and administration of financial instruments for the account of clients, including custody activities and related services, such as cash and collateral management;

2. a branch of a credit institution from another Member State, established in the Republic of Croatia in accordance with the legislation governing the establishment and operation of credit institutions, authorised by the competent authority of that Member State for providing the services of safekeeping and administration of financial instruments for the account of clients, including custody activities and related services, such as cash and collateral management.

(3) The depositary shall carry out the activities determined by this Act on the basis of a written depositary contract concluded with the pension company.

(4) The depositary shall be ready and able to meet all the necessary organisational requirements and conditions in order to fulfil its duties of depositary pursuant to the provisions of this Act.

(5) The depositary's managers in charge of a fund shall have adequate experience. Managers of the depositary shall be deemed to be persons responsible for the operations of an organisational unit which pursues the depositary activities within a credit institution or a branch of a credit institution or persons who can influence the business policy in the area of depositary activities of a credit institution or a branch of a credit institution.

(6) No entity shall act as both pension company and depositary.

(7) A fund may have only one depositary, but a depositary may simultaneously carry out these activities for more than one fund.

(8) In carrying out the activities referred to in Article 247 of this Act, the depositary shall act solely in the interest of the members of the funds for which it carries out the depositary activities.

(9) When depositary activities are performed for several funds, the assets, activities and records of each fund shall be completely separated, both from those of other funds and from those of the depositary.

(10) The depositary shall keep as confidential all the data that are made available to him in accordance with the provisions of this Act.

### *Selection and replacement of a depositary*

#### Article 246

(1) Any selection of a depositary by the pension company and any replacement of the depositary shall require an approval by the Agency.

(2) The Agency may at any time order the pension company to replace the depositary, in particular when:

1. in the opinion of the Agency, the depositary does not discharge its duties in accordance with the assumed obligations and/or the provisions of this Act and regulations made under this Act;

2. there are circumstances which raise doubts as to the ability of the depositary to fulfil its duties properly, on time and in a high-quality manner in accordance with the assumed obligations and/or the provisions of this Act and regulations made under this Act;

3. the Agency has reasonable grounds to suspect that the pension company acts in collusion with the depositary to the detriment of the fund members;

4. there are circumstances which strongly suggest that there has been a breach of the control duties of the depositary and of the fundamental duties of the pension company;

5. the financial or organisational structure of the depositary has become substantially impaired, thus representing a potential threat to the safety of the funds' assets.

(3) The Agency shall issue an ordinance laying down the conditions and procedure for the selection of a depositary, and the documents that must be enclosed with an application for approval referred to in paragraph 1 of this Article.

#### *Duties and obligations of the depositary*

##### Article 247

(1) The depositary shall perform the following activities for a fund:

1. safe-keeping and/or record-keeping of the assets of the pension fund;

2. monitoring of the fund's cash flows on a continuous basis;

3. maintaining the accounts for the assets of the fund and segregating the assets of each individual fund from the assets of other funds, the assets of the depositary and other clients of the depositary and of the pension company;

4. carrying out checks to ensure that the assets of the fund are invested in accordance with the declared objectives, the provisions of this Act and other applicable legislation and the fund's prospectus and statute;

5. informing the Agency and the pension company of the calculation of the value of the fund's assets and of the price of units, and confirming and ensuring that the net asset value of the fund and the price of units are calculated in accordance with the adopted accounting policies or valuation methodologies, this Act, applicable regulations and the fund's prospectus and statute;

6. carrying out the pension company's instructions concerning the transactions involving financial instruments and other assets that form part of the fund's assets, provided that they are not in contravention of this Act, the Agency's regulations and the fund's prospectus and statute;

7. reporting to the pension company on the corporate actions related to the fund's assets entrusted to it for safe-keeping, and carrying out the pension company's instructions in that regard;

8. providing voting services at annual general meetings of shareholders and services relating to the exercise of other rights attaching to the financial instruments in which the fund's assets have been invested;

9. collection of payments of any income and other rights due to the benefit of the fund, attaching to its assets;

10. ensuring that the fund's income is applied in accordance with this Act, regulations made under this Act and the fund's statute and prospectus, and that the costs paid by the fund are in compliance with the provisions of this Act, regulations made under this Act and other regulations and with the fund's statute and prospectus;

11. carrying out other activities provided for in the depositary contract;

12. notifying to the Agency any serious or grave violation of this Act and the depositary contract by the pension company;

13. enabling access to data and accounts related to the fund and its assets to auditors and other persons authorised to perform inspection, including the Agency, and exchanging with them information on these data and accounts.

(2) The Agency shall also lay down special rules for performing the depositary functions in respect of funds' assets and details regarding a standard contract to be concluded between the depositary and the pension company.

*Records of violations and the depositary's notifications concerning matters relevant to supervision*

#### Article 248

(1) At the request of the Agency, the depositary shall submit to the Agency information on all matters relevant to the exercise of supervision of the activities carried out by the fund depositary.

(2) When a depositary, in discharging its duties and obligations referred to in Article 247 of this Act establishes irregularities and/or illegalities constituting a violation of the pension company's obligations determined by this Act, regulations made under this Act or the fund's prospectus or statute, but not constituting a serious or grave violation referred to in Article 246, paragraph 1, item 12 of this Act, it shall without delay warn the pension company thereof and request clarification of these circumstances.

(3) If, after the depositary's warning referred to in paragraph 2 of this Article, the pension company continues to violate its obligations, the depositary shall notify the Agency thereof without delay.

(4) The Agency shall issue an ordinance specifying in more detail the procedure and time limits for notifying the irregularities and/or illegalities referred to in paragraphs 2 and 3 of this Article.

### *Method of safekeeping of pension fund's assets*

#### Article 249

(1) The assets of a fund shall be entrusted to the depositary for safekeeping as follows:

1. financial instruments placed in custody:

a) the depositary shall hold in custody all financial instruments that may be registered in a book-entry securities account;

b) financial instruments that cannot be registered in a book-entry securities account and materialised financial instruments which have been entrusted to the depositary shall be registered in other appropriate accounts;

2. non-invested pecuniary assets shall be kept in transaction accounts for business purposes, which may not be subject to execution to satisfy claims against the depositary or the pension company;

3. other assets:

a) the depositary shall check other assets of the fund and verify the ownership by the fund of such assets, and shall maintain a record of these assets;

b) the assessment and confirmation of the fact that the fund holds the ownership of the assets shall be based on information or documents provided to the depositary by the pension company or, where applicable, on the data contained in public registers and records.

(2) For the purposes of safe-keeping, the depositary shall ensure that all financial instruments and pecuniary assets referred to in the paragraph 1, items 1 and 2 of this Article are registered in the depositary's books within segregated accounts in accordance with the law governing the capital market and regulations adopted pursuant to that law in the part relating to the safeguarding of client assets, opened in the name of the pension company and for the account of the fund managed by the pension company, so that at all times the assets belonging to the fund can be clearly identified and distinguished from the assets of the depositary and from the assets of other clients.

(3) The depositary shall keep its records up to date.

(4) The Agency shall issue an ordinance prescribing in more detail the manner of safekeeping the assets of a fund by a depositary.

## *Separation of depositary's activities and keeping of fund's assets*

### Article 250

- (1) The safekeeping and administration activities and other activities that the depositary performs for the pension company shall be separated, in organisational terms, from other activities that the depositary performs in accordance with the law governing the establishment and operation of credit institutions.
- (2) The depositary shall safeguard and keep the assets of a fund in such a way that at all times the assets belonging to the fund can be clearly identified and distinguished from the assets of the depositary and from the assets of other clients.
- (3) When the assets of a fund have been entrusted to the depositary for safekeeping, the depositary shall implement appropriate measures to protect ownership rights and other rights of the fund, especially in the case of insolvency of the pension company and of the depositary.
- (4) The depositary and the sub-depositary referred to in Article 257 of this Act shall not use the fund assets referred to in the Article 249, paragraph 1, items 1 and 3 of this Act to effect transactions for their own account or to obtain any benefit for themselves, their founders or employees, or for any purpose other than for the benefit of the fund members.
- (5) The fund's assets referred to in Article 249, paragraph 1, items 1 and 3 of this Act may neither form part of the assets or liquidation or bankruptcy estate of the depositary or of a sub-depositary referred to in Article 257 of this Act, nor may they be subject to execution to satisfy claims against the depositary or a sub-depositary referred to in Article 257 of this Act.

## *Discharge of obligations by the depositary*

### Article 251

- (1) In discharging its obligations and duties provided for in this Act and in the depositary contract, the depositary shall act with due professional care in accordance with the principle of honesty and integrity, independently of the pension company, its own founder or a member of the pension company, and solely in the interest of the members of the fund for which it performs depositary tasks.
- (2) The depositary shall carry out the orders and instructions of the pension company only if they comply with the provisions of this Act, regulations made under this Act and the fund's prospectus and statute.
- (3) In carrying out the tasks, obligations and duties of the depositary provided for in this Act and in the depositary contract, the depositary shall, by means of its organisational structure and internal rules, avoid any conflict of interest between the depositary, its founder and/or a person possessing a qualifying holding in the depositary, a pension company member, and the pension company. A body of the depositary which is independent of the depositary's management body shall be responsible for supervising whether the depositary acts in accordance with this provision.

(4) Managers and other employees of the depositary, its procurators and authorised legal representatives shall not be employees of the pension company.

(5) Members of the board of directors of the pension company, its procurators, authorised legal representatives and other employees of the pension company shall not be employees of the depositary.

#### Article 252

(1) The depositary shall be liable to the pension fund and to the members of the pension fund for any loss of assets caused by the depositary or a third party to which it has delegated the safekeeping of financial instruments of the pension fund.

(2) In the case of a loss of assets held in custody, the depositary shall return to the fund's assets a financial instrument of an identical type or the corresponding amount of money without undue delay.

(3) The depositary shall not be liable for a loss of financial instruments held in custody if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to avoid them.

#### *Auditing the fulfilment of depositary's obligations*

#### Article 253

(1) The fulfilment of depositary's obligations shall be audited by an auditor once a year.

(2) The depositary shall appoint an audit firm within the period set out in the regulations governing auditing.

(3) The depositary shall without delay notify the Agency of the audit firm it has selected.

(4) Within one month of receiving the notification referred to in paragraph 3 of this Article, the Agency may order the depositary to appoint a new audit firm if it considers it necessary to do so in order to accomplish the purpose of the audit.

(5) Upon receiving the auditor's report, the depositary shall without delay submit the auditor's report to the Agency.

(6) The Agency shall issue an ordinance laying down the scope and contents of an auditor's report on the completed audit of the fulfilment of depositary's obligations.

(7) If the Agency establishes that an audit of the fulfilment of depositary's obligations has not been carried out or that the auditor's report has not been drawn up in accordance with this Act, regulations made under this Act, the legislation governing accounting and auditing activities and the rules of the auditing profession, or if it establishes, on the basis of a supervision of the operations of the depositary or otherwise, that the audit and the auditor's report on the fulfilment of depositary's obligations are not based on true and objective facts, it

may reject the auditor's report and require the depositary to have the audit carried out by certified auditors from another audit firm at the expense of the depositary.

### *Liability of the depositary*

#### Article 254

The depositary shall be liable to the pension company or to the fund members:

1. for the loss of assets by the depositary or a third party to which it has delegated the safekeeping of financial instruments of the fund;
2. for losses suffered as a result of the depositary's unjustifiable non-performance or improper performance of the duties provided for in the depositary contract, this Act, regulations made under this Act or in the fund's prospectus or statute, including where the depositary has delegated the performance of its duties referred to in Article 247, paragraph 1, item 1 of this Act to third parties;
3. for the loss of assets of the fund resulting from the depositary's negligence in the performance and fulfilment of its duties.

### *Assertion of claims and exercise of rights by and against the depositary*

#### Article 255

- (1) The depositary shall be empowered and obliged to assert and exercise, in its own name and for the account of the members of the fund, the fund members' claims and rights against the pension company, resulting from infringement of the provisions of this Act, regulations made under this Act and the fund's prospectus and statute. This shall not prevent the fund members from exercising individually and independently their property rights claims against the pension company for the same reasons as stated above.
- (2) The depositary shall return to the assets of the fund anything that has been paid out of such assets without a valid legal basis.
- (3) The pension company shall be empowered and obliged to exercise, in its own name, the fund members' rights against the depositary.
- (4) If the pension company fails to bring an action for the purpose of exercising the rights referred to in paragraph 3 of this Article within 60 days of the infringement of this Act, regulations made under this Act or the fund's prospectus and statute, the fund members shall have the right to initiate the appropriate procedure and to bring an action directly.

#### Article 256

- (1) The depositary shall pay to the pension company, from the account of the fund, the fee for the management of the fund and related costs, as well as an exit fee if provided for in the fund's prospectus and statute.

(2) The depositary may pay out from the fund's account a fee for the performed depositary tasks only with the approval of the pension company, in accordance with the provisions of this Act.

### *Delegation of depositary's functions to third parties*

#### Article 257

(1) The depositary may delegate some of its functions to a third party (sub-depositary), whereby the liability of the depositary shall not be excluded.

(2) The depositary functions referred to in paragraph 1 may only cover the tasks delegated to a third party in another Member State or in a third country which relate to the custody of the fund's assets invested in securities whose place of issue is not the Republic of Croatia, whereby the liability of the depositary shall not be excluded. If the depositary delegates some of its functions to a third party in another Member State or in a third country, that third party must be registered for performing custody tasks.

(3) The depositary may delegate to a third party only the tasks and duties referred to in Article 247, paragraph 1, item 1 of this Act (safe-keeping and/or record-keeping of the fund's assets), provided that the following conditions have been satisfied:

a) the tasks are not delegated with the intention of avoiding the obligations and requirements provided for in this Act;

b) the delegation is carried out for objective reasons and exclusively for the purpose of a more efficient performance of these tasks and duties;

c) the depositary must prove that due care was exercised in selecting the third party and must make it likely that the depositary will at all times monitor the performance of the delegated tasks and duties with due care and effectively;

d) the depositary must prove that the third party meets, and will continue to meet throughout the duration of the delegation contract, the following requirements:

- it has an internal structure and experience that are adequate and proportionate to the nature and complexity of the assets of the fund which have been entrusted to it for safekeeping in accordance with the provisions of Article 249 of this Act;

- the party is subject to prudential supervision and supervision under the provisions of the applicable law (including capital adequacy requirements) in relation to the delegation of the custody tasks referred to in Article 247, paragraph 1, item 1 of this Act;

- the party is subject to an external periodic audit to ensure and confirm that the financial instruments entrusted to it for custody are in its possession and/or control, in relation to the delegation of the custody tasks referred to in article in Article 247, paragraph 1, item 1 of this Act;

- it segregates the assets of the clients of the depositary from its own assets in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;

– it does not make use of the assets entrusted to it for safekeeping without the prior consent of the pension company and prior notification to the depositary;

– it complies with the obligations and prohibitions referred to in Articles 250 and 251 of this Act.

(4) The third party may, in turn, sub-delegate the delegated tasks and duties only if the requirements of this Article are met.

(5) The depositary shall be liable to the pension company and to the fund members for the selection of the third party.

(6) The third parties to which the depositary has delegated tasks and duties may only be foreign credit institutions or foreign custodians authorised by the competent authority for the pursuit of business of safe-keeping and administration of financial instruments for the account of clients, including custody tasks and related services, such as cash or collateral management, which are prescribed by the law governing the capital market.

#### Article 258

(1) A depositary that has delegated tasks and duties to third parties shall submit to the Agency:

a) without delay, all contracts concluded with third parties;

b) no later than 31 March each year, a list of all third parties with which it concluded delegation contracts.

(2) The depositary shall also submit the list referred to in paragraph 1, item b) of this Article to the pension company, and the depositary and the pension company shall, without delay, publish it on their respective websites.

#### Article 259

A depositary that has delegated tasks and duties to third parties shall:

1. effectively, continuously and with due diligence supervise the performance of the delegated tasks, and in particular potential risks associated with the fund's assets held in custody, and shall keep the pension company informed of the circumstances which can cause a change in these risks;

2. without delay notify the Agency and the pension company of any non-performance and/or improper performance of an obligation and of any negligence on the part of the third party that may have a significant impact on the fund's assets that have been placed in custody.

#### Article 260

Where the depositary has delegated tasks and duties to third parties, the fund's prospectus and statute shall contain, in the section relating to the depositary, the following particulars:

1. the agreements entered into between the depositary and third parties which may have impact on their liability to the members (for example, choice of applicable law);
2. a clear indication of the entities that will ultimately hold in custody and supervise the assets of the fund;
3. a description of the risks which the delegation could pose to the assets of the fund, particularly in the event of non-performance and/or improper performance of obligations and negligence on the part of a sub-depositary.

### *Replacement of a depositary*

#### Article 261

- (1) A depositary intending to cease carrying on business as a depositary or to cancel or terminate the depositary contract in respect of a fund shall, at least two months prior to the planned cessation of business activities or cancellation or termination of the contract, notify its intention in writing to the Agency and to the pension company for which it carries out the activities of a fund depositary.
- (2) If the pension company fails to conclude a depositary contract with another depositary within two months of the date of receipt of the notification referred to in paragraph 1 of this Article, the depositary shall, if it is in a position to do so, continue to provide depositary services for a further period of one month, in which period the pension company must conclude a contract with another depositary.
- (3) If the pension company fails to conclude a contract with another depositary within a further period of one month as referred to in paragraph 2 of this Article, its authorisation to conduct business shall be revoked.

#### Article 262

- (1) Subject to the Agency's approval and to the requirements of this Act, the pension company may replace the existing depositary with a new depositary.
- (2) The replacement of the depositary shall be made in such a way as to ensure continuity in the performance of depositary functions with respect to the assets of the fund.
- (3) The former depositary shall, within three days of receipt of the pension company's request for the termination or cancellation of the depositary contract, notify the Agency in writing of whether, to its best knowledge, there are any unresolved infringements of this Act or other regulations.

#### Article 263

In the event of termination or cancellation of the depositary contract, the depositary shall, within 30 days, transfer all the assets of the fund for safekeeping and administration to the new depositary with which the pension company has concluded a depositary contract, and shall also deliver the books of accounts, records and all other documents and materials

relevant to the operations of the fund for which it formerly performed the depositary functions, in written or electronic form, depending on the method of keeping these data.

#### Article 264

(1) In the event that bankruptcy proceedings have been opened or winding-up proceedings instituted in respect of the depositary, the pension company shall:

1. immediately give to the depositary a notice of termination or cancellation of the contract, and shall notify the Agency thereof;
2. immediately select a new depositary and apply for the appropriate approval from the Agency.

(2) If the pension company fails to take the measures referred to in paragraph 1 of this Article, the Agency shall order the replacement of the depositary, in which case Article 262, paragraph 2 and Article 263 of this Act shall apply accordingly.

(3) The Agency may order the pension company to replace the depositary if the financial or organisational structure of the depositary has become substantially impaired, thus representing a potential threat to the safety of the fund's assets.

(4) The Croatian National Bank shall notify the Agency of any case that could cause, according to the criteria of the Croatian National Bank, a significant impairment of the financial or organisational structure of the depositary.

#### Article 265

(1) The Agency shall withdraw or revoke its lawful decision approving the choice of a depositary in the following cases:

- a) if the approval was obtained on the basis of false, incorrect or misleading information, or in any other fraudulent manner;
- b) if the depositary no longer fulfils the conditions under which the approval was granted;
- c) if the Agency establishes that the depositary does not discharge its duties in accordance with the assumed obligations and/or the provisions of this Act and regulations made under this Act, in particular as regards delegated tasks, and where revoking the approval is more appropriate than replacing the depositary as referred to in Article 246, paragraph 2 of this Act;
- d) if there are circumstances which raise doubts as to the ability of the depositary to fulfil its duties properly, on time and in a high-quality manner in accordance with the assumed obligations and/or the provisions of this Act and regulations made under this Act, in particular as regards delegated tasks, and where revoking the approval is more appropriate than replacing the depositary as referred to in Article 246, paragraph 2 of this Act;
- e) if the depositary has systematically and/or seriously violated the provisions of this Act, regulations made under this Act or the fund's prospectus or statute.

(2) The approval of the choice of a depositary shall cease to be valid by operation of law:

a) on the day on which bankruptcy proceedings are opened or pre-bankruptcy settlement proceedings initiated against the depositary;

b) on the day on which proceedings for the voluntary or compulsory winding-up of the depositary commence.

(3) The Agency shall issue an ordinance laying down the actions to be taken by the pension company and the depositary in the cases where the depositary's authorisation to conduct business is withdrawn or revoked or where the approval of the choice of a depositary is withdrawn or revoked.

## PART FIVE

### CLOSED-END FUND WITH DEFINED BENEFITS

#### Article 266

(1) A pension company may establish and manage a closed-end fund with defined benefits only for the needs of a sponsor from another Member State, if the establishment of such funds is permitted by the law of that Member State.

(2) The pension scheme of a closed-end fund with defined benefits may not be offered in the territory of the Republic of Croatia.

#### *Technical provisions*

#### Article 267

(1) In order to ensure that the assumed obligations are fulfilled in accordance with its pension scheme, the pension company managing a closed-end fund with defined benefits must ensure that the closed-end fund with defined benefits at all times:

1. has an adequate amount of liabilities (technical provisions) corresponding to the financial commitments which arise out of the existing membership agreements;

2. has sufficient and appropriate assets to cover the technical provisions referred to in item 1 of this paragraph,

whereby all the closed-end funds with defined benefits managed by the pension company shall be taken in to account.

(2) The pension company shall not be liable for a deficit in the technical provisions if the deficit is a result of an insufficient payment of contributions by those liable to pay the contributions (employers).

#### *Calculation of technical provisions*

## Article 268

(1) Technical provisions of a closed-end fund with defined benefits shall be calculated by the pension company every year.

(2) The calculation of the technical provisions shall be executed and certified by a certified actuary according to the following principles:

1. the minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for payments in accordance with the pension scheme. Technical provisions shall be sufficient for future pensions and pensions already in payment to continue to be paid and shall reflect the commitments which arise out of accrued pension rights. The economic and actuarial assumptions chosen for the valuation shall also be chosen prudently taking in account an appropriate margin for adverse deviation;

2. the maximum rates of interest used shall be chosen with due professional care (prudent principles) by taking into account:

– the yield on the corresponding assets held by the closed-end fund with defined benefits and the future investment returns and/or

– the market yields of high-quality or government bonds;

3. the biometric tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics of the group of members and the pension schemes, in particular the expected changes in the relevant risks;

4. the method and basis of calculation of technical provisions shall remain constant from one business year to another, and discontinuities may be justified by a change of legal, demographic or economic circumstances underlying the assumptions.

(3) The Agency shall lay down additional criteria for the calculation of technical provisions for closed-end funds with defined benefits.

### *Assets covering technical provisions*

## Article 269

(1) Assets held to cover the technical provisions shall be invested in a manner appropriate to the nature and duration of the expected future pensions.

(2) The permitted investments and the investment limits for the assets referred to in paragraph 1 of this Article shall be subject to the limitations prescribed by the law governing the establishment and operation of pension insurance companies in the part relating to technical provisions.

(3) Furthermore, in addition to the limits referred to in paragraph 2 of this Act, assets held to cover the technical provisions shall be subject to the following limitations:

1. not more than 70 % of the assets covering the technical provisions may be invested in shares, transferable securities treated as shares and bonds admitted to trading on a regulated market;

2. not more than 30 % of the assets covering the technical provisions may be invested in assets denominated in currencies other than those in which liabilities are expressed.

### *Recovery plan*

#### Article 270

(1) The pension company shall adopt a concrete and realisable recovery plan for the closed-end fund with defined benefits which does not meet the requirements referred to in Article 267, paragraph 1, item 2 of this Act, to ensure that the requirements are met again.

(2) The recovery plan referred to in paragraph 1 of this Article shall fulfil to the following conditions:

1. it shall ensure the amount of assets required to cover fully the technical provisions within a specified period;

2. it shall be subject to approval by the Agency and made available to members;

3. it shall be drawn up with account being taken of the specific situation of the closed-end fund with defined benefits (the asset/liability structure, risk profile, liquidity plan, the age profile of the members entitled to receive pension benefits, start-up pension schemes and pension schemes changing from non-funding or partial funding to full funding)

4. in the event of termination of the closed-end fund with defined benefits and/or its incapacity to continue its operations during the period when it fails to meet the requirements referred to in paragraph 1 of this Article, the pension company shall inform the Agency and shall establish a procedure in order to transfer the assets and liabilities to another pension company.

(3) The pension company shall disclose to the Agency the procedure referred to in paragraph 2, item 4 of this Article, and a general outline of the procedure shall be made available to members in accordance with the principle of confidentiality.

### *Capital*

#### Article 271

(1) Where a closed-end fund with defined benefits provides cover against biometric risk and/or guarantees a given investment performance or a given level of benefits, the pension company managing that fund shall ensure that the fund holds on a permanent basis additional assets, i.e. additional capital, above the technical provisions referred to in Articles 267 and 268 of this Act to serve as a buffer.

(2) The amount of capital referred to in paragraph 1 of this Article shall reflect the type of risk and asset base of the closed-end fund with defined benefits, it shall be free of all foreseeable

liabilities and shall be formed for the purpose of absorbing discrepancies between the anticipated and the actual expenses and profits.

(3) The Agency shall lay down additional requirements relating to capital of the closed-end fund with defined benefits.

#### Article 272

Where the sponsor of a closed-end fund with defined benefits guarantees the payment of the pension benefits, it shall be committed to regular financing.

### PART SIX

## SUPERVISION OF BUSINESS OPERATIONS OF COMPANIES, FUNDS AND DEPOSITARIES

### *General provisions*

#### *Supervision*

#### Article 273

(1) For the purposes of this Act, supervision means verification of whether the supervised entity operates in accordance with the provisions of this Act and regulations made under this Act, in accordance with other regulations and regulations governing risk management, and in accordance with its own rules and standards and the standards of the profession, and, in general, in the manner allowing for the proper functioning of the supervised entity and for the implementation of measures and activities aimed at remedying the identified illegalities and irregularities.

(2) The main objectives of supervision shall be to check the legality and assess the security and stability of the supervised entity's operations, with a view to protecting the interests of fund members and the public interest, contributing to the stability of the financial system, and promoting and maintaining confidence in the capital market.

(3) Pursuant to the provisions of this Act, supervision shall be conducted *ex officio*.

### *Scope of supervision*

#### Article 274

(1) In the course of supervision, the Agency shall in particular:

1. verify the organisational conditions, strategies, policies and procedures that the supervised entity has established to ensure compliance of its business operations with the provisions of this Act and regulations made under this Act;

2. examine and assess the financial stability and standing of the supervised entity and the risks to which the supervised entity is exposed or could be exposed in its operation.

(2) In examining and assessing the financial stability and standing and in assessing the risks to which the supervised entity is exposed or could be exposed, the Agency shall take into account the nature, scale and complexity of the supervised entity's business.

(3) For the purposes of item 1 of paragraph 1 of this Article, the Agency shall monitor the adequacy of the pension company's credit assessment processes established in accordance with paragraph 5 of Article 58 of this Act, assess the use of references to credit ratings issued by credit rating agencies as defined in item (b) of paragraph 1 of Article 3 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009), in risk management policies relating to investments of the pension company and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

(4) On the basis of the supervision, examination and assessment referred to in paragraph 1 of this Article, the Agency shall determine whether the supervised entity operates in accordance with the laws, whether the supervised entity has put in place an adequate organisational structure and a stable system of management in the company and has the capital to ensure an adequate management and coverage of risks to which the supervised entity is or could be exposed in its operation.

(5) When establishing the frequency and intensity of supervision of an entity subject to supervision, the Agency shall take into account the size and importance of the company and the funds it manages, the scale and complexity of its activities and the performance indicators for those activities.

#### *Entities subject to supervisions*

##### *Article 275*

(1) Entities subject to supervision shall be supervised by the Agency in accordance with the Act on the Croatian Agency for Supervision of Financial Services, this Act, regulations made under this Act, and other laws and regulations made under those laws.

(2) The provisions of this Part of the Act shall apply to the procedures performed by the Agency within the scope of its competence, unless stipulated otherwise.

(3) The provisions of the General Administrative Procedure Act shall apply to the procedures referred to in paragraph 1 of this Article. In the procedures it conducts, the Agency shall as a rule make a decision without an oral hearing.

(4) The Agency shall, for the purposes of supervision, have the right of access to all information and documentation kept by the supervised entities.

(5) The following entities shall be subject to supervision by the Agency in accordance with the provisions of this Act:

1. pension companies and their branches outside the Republic of Croatia;
2. branches of pension companies from other Member States operating in the Republic of Croatia;

3. funds managed by the pension companies referred to in item 1 of this paragraph;
4. pension companies from another Member State, in respect of their activities performed directly within the territory of the Republic of Croatia;
5. funds managed by pension companies from another Member State;
6. depositaries of the funds referred to in item 3 of this paragraph;
7. persons who offer pension schemes.

### *Supervision procedure*

#### *Method of conducting supervision*

#### Article 276

(1) The Agency shall conduct supervision:

1. through on-site supervision at the premises of the supervised entity or a legal person to which the supervised entity is related, directly or indirectly, in terms of business, management or capital, by examining the original documents, examining and assessing of the overall operation, conducting interviews with members of the board of directors and supervisory board and with other relevant persons, and at the Agency's premises;
2. through off-site supervision at the Agency's premises, on the basis of an analysis of the reports that the supervised entities are required to submit to the Agency within the prescribed time limits, and by collecting and examining the documents, information and data obtained at a specific request of the Agency, as well as by collecting and inspecting data and information from other sources, and by the examination and assessment of the operations on the basis of the submitted reports and collected information, by conducting interviews with members of the board of directors and supervisory board and with other relevant persons.

(2) The on-site inspection referred to in item 1 of paragraph 1 of this Article may be regular or special.

#### *Persons authorised to perform supervision*

#### Article 277

(1) Supervision shall be performed by the Agency's employees (hereinafter: authorised persons of the Agency).

(2) By way of derogation from paragraph 1 of this Article, the Agency may request professional services of an auditor, an audit firm or other professionally qualified persons for the performance of tasks related to supervision, and in that case the legislation governing the confidentiality of data that applies to employees of the Agency shall apply *mutatis mutandis* to these persons.

#### *Providing information at the request of the Agency*

## Article 278

(1) At the request of the Agency, the supervised entity shall provide or make available the documents, reports and information about all the circumstances that are relevant to the purposes of supervision or for the purpose of exercising other powers and implementing other measures conferred upon the Agency under this Act, the law governing the establishment and operation of the Agency and regulations made under these laws.

(2) The documents, reports and information referred to in paragraph 1 of this Article shall be provided to the Agency by the members of the board of directors, supervisory board members, procurators and other relevant persons of the supervised entity.

(3) The Agency shall be authorised to request the persons referred to in paragraph 2 of this Article to submit a written statement on the circumstances referred to in paragraph 1 of this Article or may invite them to make an oral statement on these circumstances.

### *Notification of an on-site supervision*

## Article 279

(1) Before the beginning of an on-site supervision, the supervised entity shall be delivered a written notification of the on-site supervision containing at least the following information:

1. the scope of the supervision;
2. information about the persons authorised to perform the supervision;
3. an indication of the place where the supervision will be carried out;
4. the date of the beginning of the supervision;
5. the period that will be covered by supervision.

(2) The notification referred to in paragraph 1 of this Article may also specify which information the supervised entity is required to prepare for authorised persons of the Agency for the purpose of carrying out the on-site supervision.

(3) During the supervision, the Agency may supplement the notification of supervision. The provisions of paragraph 1 of this Article shall apply *mutatis mutandis* to the supplement to the notification of supervision.

(4) The notification of an on-site supervision shall be delivered to the supervised entity within a period of not less than three days before the beginning of supervision.

(5) By way of derogation from the provision of paragraph 4 of this Article, an authorised person of the Agency may deliver the notification of an on-site supervision on the very day of beginning the on-site supervision, if supervision needs to be urgently carried out or if the purpose of supervision cannot be otherwise achieved.

### *On-site supervision of business operations*

## Article 280

- (1) Following the receipt of a notification of supervision, the supervised entity shall enable an authorised person of the Agency to carry out the on-site supervision at the head office of the supervised entity and at other premises where the supervised entity itself, or any other entity authorised by it, performs activities and operations subject to supervision by the Agency.
- (2) The supervised entity shall allow the authorised person of the Agency performing supervision to carry out an inspection of business books, business documents and administrative or business records and of the IT system and its supporting technologies, to the extent necessary to carry out the supervision.
- (3) The supervised entity shall produce to the authorised person of the Agency performing supervision all the requested business documents, computer print-outs, copies of business books, phone call records and recordings, fax records, administrative or business records, in a paper form or in the form of an electronic record in the medium and format required by the authorised person. The supervised entity shall provide the authorised person with a standard interface allowing access to the database management system it uses, for the purpose of conducting computer-aided supervision.
- (4) The authorised persons of the Agency may, on giving a receipt, temporarily seize from the supervised entity the documents, print-outs, records and recordings referred to in paragraph 3 of this Article, financial instruments, cash or objects which can be used as evidence in criminal or minor offence proceedings, but only until the initiation of these proceedings, when they shall deliver them to the authority responsible for conducting these proceedings.
- (5) The relevant persons of the supervised entity shall cooperate with the authorised person of the Agency, attend an interview with that person at his or her request and give him or her any information that is important for the performance of the supervision and for the fulfilling of the objectives of the supervision.

### *Conditions for carrying out an on-site supervision*

## Article 281

- (1) The supervised entity shall provide an authorised person of the Agency with adequate premises where he or she can carry out the supervision of business operations without disturbance and without the presence of other persons.
- (2) At the request of an authorised person of the Agency, the supervised entity shall provide professional and technical support, give necessary clarifications and provide other conditions that are needed to carry out the supervision.
- (3) The supervision of business operations referred to in paragraphs 1 and 2 of this Article shall be conducted by an authorised person of the Agency during the supervised entity's business hours. If it is necessary due to the extent or nature of operations, the supervised entity shall enable the authorised person of the Agency to carry out supervision also outside the business hours.

### *Inspection of an IT system*

## Article 282

(1) The supervised entity which uses an IT system in its operations shall, at the request of an authorised person of the Agency, provide conditions for the inspection of the IT system and make it possible to check whether the data processed using information technology are processed in an appropriate manner.

(2) The supervised entity shall, at the request of an authorised person of the Agency, submit documentation that provides a complete description of the functioning of the IT system. The documentation must provide a clear view of the components of the IT system. The documentation must enable the authorised person to gain an insight into:

1. software solutions;
2. procedures for data processing using IT technology;
3. controls ensuring appropriate data processing; and
4. controls ensuring data confidentiality, integrity and availability.

### *Completion of an on-site supervision*

## Article 283

(1) After an on-site supervision is completed, a supervision report containing a detailed description of the established facts shall be prepared and delivered to the supervised entity. The board of directors of the supervised entity shall, without delay, submit the supervision report to the supervisory board or other appropriate supervisory body of the pension company.

(2) The supervised entity is entitled to file a complaint against the received report within 15 days from the day of receipt of the report.

(3) By way of derogation from the provision of paragraph 2 of this Article, the Agency may set a period shorter than 15 days for submission of complaints, where it is necessary in order to prevent potential material negative consequences for the pension company, fund, depositary, fund member or third party.

(4) If supervision reveals no illegalities or irregularities that would require the imposition of an appropriate supervisory measure, or if they have been identified but corrected by the time the report is prepared, these findings shall be entered in the report.

(5) In the cases referred to in paragraph 4 of this Article, the Agency shall issue a decision declaring that the supervision procedure has been completed.

### *Addendum to a report*

## Article 284

If the report referred to in Article 283 of this Act identifies illegalities or irregularities which would require the imposition of an appropriate supervisory measure, but which are corrected

before a decision imposing an appropriate supervisory measure has been issued, the Agency shall include this information in an addendum to the report and shall issue, after the expiration of the deadline for submission of complaints, a decision confirming that the illegalities and irregularities identified in the report and its addendum have been corrected and that the supervision has been completed.

### *Content of observations on a report*

#### Article 285

An objection to the report referred to in Article 283 of this Act must include a statement of the circumstances from which it follows that the report is wrong in concluding that there are certain deficiencies, illegalities or irregularities. An objection to the report must be accompanied by appropriate evidence, if such evidence is available to the party concerned.

### *Off-site supervision*

#### Article 286

(1) During an off-site supervision, an authorised person of the Agency shall:

1. verify whether the prescribed reports and other information have been submitted within the prescribed period and in the prescribed format;
2. verify whether the information contained in the reports and in other required documents is true, accurate and correct;
3. verify whether the supervised entity operates in accordance with the risk management legislation and in accordance with other regulations stipulated by this Act and regulations made under this Act, and other laws governing business operations of the supervised entity and regulations made under these laws;
4. examine and assess the financial stability and standing of the supervised entity and the risks to which the supervised entity is exposed or could be exposed in its operation.

(2) In examining and assessing the financial stability and standing and in assessing the risks to which the supervised entity is exposed or could be exposed, the Agency shall take into account the nature, scale and complexity of the supervised entity's business.

### *Off-site supervision report*

#### Article 287

(1) If deficiencies, illegalities and irregularities are identified in the operations of the supervised entity during an off-site supervision, an authorised person of the Agency shall prepare a report to that effect.

(2) The supervision report, containing a detailed description of the facts established during the supervision, shall be delivered to the supervised entity.

(3) The provisions of Articles 283 to 285 of this Act shall apply *mutatis mutandis* to off-site supervision reports.

(4) On the basis of the findings set out in the report referred to in this Article, the Agency shall be authorised to take all supervisory measures as in the case of on-site supervision.

### *Supervisory measures*

#### Article 288

(1) On the basis of the performed on-site or off-site supervision, the Agency may impose on the supervised entity the supervisory measures provided for in this Act.

(2) For the purposes of this Act, illegalities shall mean situations and procedures that are contrary to this Act, regulations made under this Act, other legislation and subordinate legislation and international acts and regulations.

(3) For the purposes of this Act, irregularities shall mean situations and procedures that are contrary to the supervised entity's own business policies and internal by-laws and the standards and rules of the profession, or these are not applied consistently, thus threatening business operations, especially as regards organisational requirements and risk management.

(4) When the Agency establishes that there are reasonable grounds to suspect that a criminal offence, has been committed, it shall report it, as appropriate, to the competent authority.

(5) When the Agency establishes that there are reasonable grounds to suspect that a misdemeanour has been committed, it shall report it to the competent authority if, in this specific case, it deems it justified and purposeful.

### *Inappropriate influence by a member of a pension company*

#### Article 289

(1) Where the inappropriate influence exercised by a member of a pension company is likely to operate against the sound and prudent management of the pension company, the Agency is authorised to take appropriate measures to prevent such influence.

(2) The measures referred to in paragraph 1 of this Article shall include, in addition to appropriate supervisory measures, the submission of a request to the competent court for imposition of interim measures related to the acquisition of the voting rights attaching to the shares or holdings held by the members of the pension company referred to in paragraph 1 of this Article.

### *Types of supervisory measures*

#### Article 290

The Agency may impose on a pension company the following supervisory measures, under the conditions prescribed by this Act:

1. recommendations to the board of directors of the pension company;
2. a warning;
3. instruction to remedy illegalities and irregularities;
4. special supervisory measures;
5. revocation or withdrawal of the decision granting authorisation to conduct business, as regards all or some activities and as regards the management of all or some funds.

*Recommendations to the board of directors of the pension company*

Article 291

(1) If during supervision and the examination and assessment of the financial stability and standing of a pension company, or of funds that it manages, and the examination and assessment of risks to which the pension company is or could be exposed in its operation, the Agency establishes weaknesses, deficiencies, faults and irregularities which do not constitute a breach of this Act or regulations made under this Act and other laws governing the operations of pension companies and regulations made under those laws, or if the Agency considers it necessary that the pension company takes measures and actions to improve its operation, financial stability and standing and to reduce risks to which it is or could be exposed in its operation or in the operation of funds it manages, the Agency shall give recommendations to the board of directors of the pension company.

(2) The recommendations shall specify the identified and assessed material risks and problems to which the pension company is or could be exposed, i.e. the identified weaknesses, deficiencies, faults and irregularities which do not constitute a breach of the provisions of this Act, and shall contain the guidelines for the pension company's board of directors to follow in order to remedy them and to improve the pension company's operation, financial stability and standing, and to reduce the risks to which the pension company is or could be exposed in its business operations.

(3) The pension company's board of directors shall submit to the Agency the plan, time limits and schedule for acting on the Agency's recommendations.

(4) In order to verify whether the operation, financial stability and standing have been improved and whether the risks to which the pension company is or could be exposed in its operation and in the operation of funds it manages have been reduced, the Agency may perform another supervision of the pension company.

*Warning*

Article 292

(1) Where, in the course of supervision, the Agency identifies illegalities and irregularities, and the nature and scope of the identified illegalities and irregularities do not have a material impact and consequences on business operations of the pension company and of funds, on the market and/or on fund members, the Agency may issue a warning to the pension company.

(2) The Agency may publicly disclose the warning.

(3) The Agency's warning may also contain an order to the pension company to remedy the identified illegalities and irregularities, the time limits within which the pension company is required to comply, and the frequency of reporting to the Agency on the actions and activities carried out.

(4) If the pension company fails to comply with the Agency's order referred to in paragraph 3 of this Article within the time limit set in paragraph 3 of this Article, the Agency shall issue a decision ordering the correction of the identified illegalities and irregularities.

(5) The Agency shall be authorised to perform another supervision of the pension company to the extent necessary to determine whether the pension company has acted in accordance with the Agency's order referred to in paragraphs 3 and 4 of this Article and whether the identified illegalities and irregularities have been corrected in the appropriate manner and to the appropriate extent.

#### *Correction of identified illegalities and irregularities*

##### Article 293

(1) Where, in the course of supervision, the Agency identifies illegalities and irregularities, it shall issue a decision ordering the pension company to take measures to correct the identified illegalities and irregularities or to stop acting in a way that constitutes a breach of the provisions of this Act or regulations made under this Act and of other laws governing the operation of supervised entities and regulations adopted under those laws.

(2) In the decision referred to in paragraph 1 of this Article, the Agency shall specify the time limits within which the pension company must correct the identified illegalities or irregularities.

#### *Pension company's report with an opinion of a certified auditor*

##### Article 294

Where, in the course of supervision, the Agency identifies illegalities and irregularities relating to the keeping of business books and other business documents that the pension company is required to keep pursuant to the provisions of this Act, regulations made under this Act or other laws governing the operations of the pension company and regulations made under those laws, or where it finds other major illegalities, it may order the pension company to submit a report on the correction of the illegalities and irregularities, which must be accompanied by an auditor's opinion clearly indicating whether the illegalities and irregularities have been corrected.

#### *Report on the correction of illegalities and irregularities*

##### Article 295

(1) The pension company shall correct the identified illegalities and irregularities and shall submit a report to the Agency on the measures taken for their correction, within the time limit set by the Agency.

(2) The pension company shall enclose with the report referred to in paragraph 1 of this Article the documents and other evidence showing whether the identified illegalities and irregularities have been eliminated.

(3) If the report referred to in paragraph 1 of this Article is not complete or the enclosed documents do not show that the illegalities have been corrected, the Agency shall order that the report be supplemented and shall specify the time limit within which the report must be supplemented.

(4) If, within 60 days of submission of the report, the Agency does not order that the report referred be supplemented as referred to in paragraph 3 of this Article, it shall be considered that the illegalities and irregularities have been corrected.

*Decision confirming that illegalities and irregularities have been corrected*

Article 296

(1) If the Agency concludes, based on the report referred to in Article 295 of this Act, the enclosed documents and other evidence, that the identified illegalities and irregularities have been corrected, it shall issue a decision confirming that the illegalities and irregularities have been corrected.

(2) Before issuing the decision referred to in paragraph 1 of this Article, the Agency may perform another supervision of the pension company or the supervised entity to the extent necessary to determine whether the identified illegalities and irregularities have been corrected in the appropriate manner and to the appropriate extent.

*Special supervisory measures*

Article 297

(1) The Agency is authorised to impose on a pension company, including members of the pension company's board of directors and supervisory board, special supervisory measures referred to in paragraph 2 of this Article in the following cases:

1. if the pension company has failed to act in accordance with the Agency's decision ordering the measures to correct illegalities and irregularities referred to in Article 293 of this Act;

2. if it has not set up, does not implement or fails to regularly maintain the organisational, technical, human resource or other operating conditions prescribed by Articles 54 to 66 of this Act or by ordinances specifying these conditions in more detail;

3. if the pension company's capital is less than the required minimum set forth in Article 19 of this Act;

4. if the pension company managing a closed-end fund with defined benefits has not ensured an adequate level of technical provisions in accordance with Article 267, paragraph 1, item 1 of this Act;

5. if the pension company managing a closed-end fund with defined benefits has not ensured sufficient and appropriate assets to cover the technical provisions in accordance with Article 267, paragraph 1, item 2 of this Act;

6. if a pension company that has its registered office in the Republic of Croatia and manages, in accordance with the provisions of Article 12 of this Act, a closed-end fund sponsored by a sponsor from another Member State, acts in contravention of the labour and social security legislation applicable to pension schemes in the host Member State;

7. if a pension company from another Member State that manages, in accordance with the provisions of Article 13 of this Act, a closed-end fund sponsored by a sponsor from the Republic of Croatia, acts in contravention of the labour and social security legislation applicable to pension schemes in the Republic of Croatia;

8. if the pension scheme does not comply with the provisions concerning the limits on investments of funds it manages or other limits prescribed by the provisions of this Act or by regulations made under this Act;;

9. in all other cases where deemed necessary by the Agency.

(2) If circumstances referred to in paragraph 1 of this Article arise, the Agency may impose the following special supervisory measures:

1. order the pension company to increase its capital to the level provided for in Article 19 of this Act, or to increase the guarantee deposit to the level provided for in Article 20 of this Act;

2. order the supervisory board or other competent body of the pension company to dismiss a member of the board of directors and/or appoint a new member;

3. order the pension company to convene an annual general meeting or a general meeting and to propose appropriate solutions, such as increase of capital, dismissal of a member of the supervisory board and/or appointment of a new member of the supervisory board;

4. temporarily prohibit the pension company from entering into transactions with individual shareholders or members, members of the board of directors, members of the supervisory board, procurators and companies that are linked to the pension company by close links;

5. order the pension company to put in place, implement or improve organisational, technical, human resource or other operating conditions prescribed by Articles 54 to 66 of this Act or by ordinances specifying these conditions in more detail;

6. order the pension company to improve its risk management strategies, policies and processes;

7. order the pension company to reduce in its future operations the risks associated with the operation of the pension company or the fund it manages;

8. order the pension company to reduce its operating costs, including restrictions on salaries and other remuneration of the members of the board of directors, members of the supervisory board, procurators and employees of the pension company;

9. order the supervisory board of the pension company to appoint appropriate committees for specific areas of business falling within the competence of the supervisory board;

10. order the pension company to change, reduce or stop performing a certain activity for which the Agency establishes that it has caused significant losses or that poses a major risk for the pension company or the funds it manages;

11. temporarily prohibit the performance of the function of a member of the board of directors of the pension company;

12. order the pension company to take other proportionate measures that are necessary in order for it to operate in accordance with the provisions of this Act and other laws governing the operations of pension companies and regulations made under those laws.

(3) In the decision referred to in paragraph 2 of this Article, the Agency shall set an appropriate deadline for taking the measures referred to in paragraph 2 of this Article.

(4) The company shall submit to the Agency a report on the implementation of the measures ordered as referred to in paragraph 2 of this Article, to which the provisions of Article 294 and Article 295, paragraphs 1 to 3 of this Act shall apply *mutatis mutandis*.

(5) If the adoption of special supervisory measures referred to in this Article of the Act is necessary in order to protect fund members or the public interests, and these measures cannot be postponed and the facts on which the measure is based have been ascertained or at least made probable, the Agency may decide on them directly in accordance with the General Administrative Procedure Act.

#### Article 298

A decision taken by the Agency in administrative matters falling within the scope of its responsibilities cannot be appealed, but an unsatisfied party may initiate an administrative dispute by bringing an action before the competent administrative court.

#### *Withdrawal or revocation of authorisation to conduct business*

#### Article 299

(1) The Agency may issue a decision withdrawing or revoking an authorisation to conduct business granted to a pension company:

1. if the authorisation was obtained on the basis of false, incorrect, withheld or misleading information or in any other fraudulent manner;

2. if the pension company no longer fulfils the conditions on the basis of which the authorisation was granted;

3. if the Agency assesses that the pension company's operations are not conducted with due skill, care and diligence and in accordance with sound business practice;
4. if the pension company has seriously or systematically violated the provisions of this Act or regulations made under this Act;
5. if the pension company does not maintain the capital referred to in Article 19 of this Act;
6. if the pension company has failed to act in accordance with the Agency's decision ordering measures to correct illegalities or irregularities referred to in Article 293 of this Act or special supervisory measures referred to in Article 297 of this Act;
7. if the pension company violates the provisions concerning timely and accurate reporting to the Agency on more than two occasions in the period of three years, or in some other way prevents the Agency from exercising supervision of its operations;
8. if the pension company carries out its activities in a manner that may worsen or jeopardise its liquidity or solvency or the liquidity of the funds it manages;
9. if the pension company has not organised its operation or does not keep its business books or business books of the funds it manages or administrative and other business documentation in such a manner that it is at all times possible to verify whether the pension company carries out its activities in accordance with risk management regulations and rules, and whether it manages the funds in accordance with the provisions of this Act and regulations made under this Act;
10. if the pension company systematically or seriously violates the organisational, technical, human resource or other operating conditions laid down in Articles 54 to 66 of this Act or in an Agency's ordinance specifying these conditions in more detail;
11. if the pension company does not start managing a fund within one year of the issue of the authorisation to conduct business;
12. if it fails to apply for registration in the court register within the time limit set out in Article 28, paragraph 2 of this Act;
13. if the pension company submits to the Agency a request for the termination, withdrawal or revocation of the granted authorisation to conduct business.

(2) The Agency may issue a decision withdrawing or revoking the decision granting to a pension company authorisation to conduct business if the pension company fails to conclude a contract with a depositary that meets the requirements of Article 245, paragraph 2 of this Act or if it concludes a contract with a depositary that does not meet these requirements.

(3) The Agency shall, without delay, notify the pension company and the depositary of the withdrawal or revocation of the pension company's authorisation to conduct business and of the reasons for the withdrawal or revocation of the authorisation, and if the pension company manages a closed-end fund it shall also notify EIOPA within 15 days.

(4) The pension company may re-apply for authorisation to conduct business in accordance with the provisions of this Act only after a period of one year has passed from the date of the withdrawal or revocation of the authorisation.

(5) The power of the Agency to issue a decision withdrawing or revoking a decision granting authorisation to conduct business shall not be time limited.

### *Responsibility of the Agency to supervise depositaries*

#### Article 300

(1) The Agency shall be responsible for supervising the depositary of a fund.

(2) For the purposes of paragraph 1 of this Act, supervision means verification of whether the depositary operates in accordance with the provisions of this Act and regulations made under this Act and in accordance with other regulations, its internal by-laws, and the standards and rules of the profession.

(3) In the course of supervision, the Agency shall examine and assess the risks to which the depositary is exposed or could be exposed when carrying out the activities under this Act and, in doing so, it shall take into account opinions of other supervisory and regulatory authorities that are responsible for supervising the depositary's operation.

(4) In addition to the provisions of this Act, the provisions of the law governing the capital market that concern supervision of credit institutions providing investment services and carrying on investment activities shall apply *mutatis mutandis* to the supervision referred to in paragraph 1 of this Article.

(5) Supervision of the operation of a credit institution acting as a depositary of a fund shall be performed, as regards the depositary activities of the credit institution, by the Agency independently or in collaboration with the Croatian National Bank.

(6) The Agency shall be authorised to request reports and data from persons to whom depositary tasks have been delegated and to inspect their activities, business books and documents and other documentation, print-outs, records and recordings referred to in Article 280, paragraph 3 of this Act, to the extent they relate to the delegated functions, and to temporarily seize them in accordance with Article 280, paragraph 4 of this Act.

### *Supervisory measures that the Agency may impose on a depositary*

#### Article 301

(1) The Agency may, under the conditions laid down in this Act, impose on a depositary the following supervisory measures:

1. recommendations to the board of directors of the depositary;
2. a warning;
3. instruction to remedy illegalities and irregularities;

4. withdrawal of the approval of the choice of the depositary, as referred to in Article 265 of this Act;

5. order the replacement of a sub-depositary, particularly in the event of non-performance and/or improper performance of obligations and negligence on the part of the sub-depositary or if there are circumstances which raise doubts as to the ability of the sub-depositary to fulfil its duties properly, on time and in a high-quality manner in accordance with the assumed obligations and the provisions of this Act or regulations made under this Act.

(2) The provisions of Articles 291 to 296 of this Act shall apply *mutatis mutandis* to the supervisory measures referred to in paragraph 1, items 1 to 3 of this Article that can be imposed on a depositary.

#### *Responsibility of the Agency to supervise legal persons offering pension schemes*

##### Article 302

(1) The Agency shall be responsible for supervising legal persons offering pension schemes referred to in Articles 149 to 153 of this Act, to the same extent as in the case of pension companies.

(2) When the Agency performs supervision of legal persons offering pension schemes, the pension company that has concluded agreements referred to in Article 149 of this Act with these persons shall provide to the Agency all the information required for supervision.

(3) The Agency shall perform the supervision referred to in paragraph 1 of this Article by examining business documents and other documentation, print-outs, records and recordings referred to in the Article 280, paragraph 3 of this Act, which it may temporarily seize in accordance with the Article 280, paragraph 4 of this Act to the extent they relate to the offering of pension schemes, and by taking statements from members of the board of directors and from other relevant persons of the supervised entity, as well as from members of the supervisory board and from procurators, where applicable.

(4) The Agency may order a legal person that offers pension schemes to take measures to correct the identified illegalities and irregularities, in which case the provisions of Articles 293, 295 and 296 of this Act shall apply accordingly.

(5) The Agency may order a pension company to terminate or cancel a business cooperation agreement concluded with a legal person offering pension schemes.

(6) The Agency shall be responsible for supervising legal persons offering pension schemes of the funds managed by a pension company referred to in Article 275, paragraph 5, item 1 of this Act, or by a pension company's branch referred to in Article 275, paragraph 5, item 2 of this Act, to the same extent as in the case of the pension company and in accordance with paragraphs 2 to 5 of this Article.

#### *Responsibility of the Agency to supervise other persons*

##### Article 303

The Agency shall be empowered to supervise other persons that carry on the activities of pension companies in the Republic of Croatia without having the authorisation provided for in Article 4, paragraph 1 of this Act, and to supervise persons that offer pension schemes in the Republic of Croatia without having entered into a business cooperation agreement referred to in Article 149, paragraph 1 of this Act.

*Supervision of a pension company that has its registered office in the Republic of Croatia and manages a closed-end fund sponsored by a sponsor from another Member State*

Article 304

(1) The competent authority of the host Member State shall carry out ongoing supervision of a pension company managing a closed-end fund in that Member State to verify whether its activities are in compliance with the provisions of the host Member State's labour and social security legislation relevant to the field of pension schemes, as referred to in Article 12, paragraphs 6 and 9 of this Act. Should this supervision reveal certain irregularities, the competent authority of the host Member State shall inform the Agency immediately. The Agency shall, in cooperation with the competent authority of the host Member State, take the necessary measures to ensure that the pension company puts a stop to breaches of the provisions of the labour and social security legislation relevant to the field of pension schemes.

(2) If, despite the measures referred in paragraph 1 of this Article taken by the Agency in cooperation with the competent authority of the host Member State, the pension company persists in breaching the provisions of the host Member State's labour and social security legislation relevant to the field of pension schemes, the competent authority of the host Member State may, after informing the Agency, take the necessary measures to prevent or penalise further irregularities, including, insofar as is necessary, prohibiting the pension company from further managing, in the territory of its state, a closed-end fund of the same sponsor.

*Supervision of a pension company that has its registered office in another Member State and manages a closed-end fund sponsored by a sponsor from the Republic of Croatia*

Article 305

(1) The Agency shall carry out ongoing supervision of a pension company from another Member State that manages a closed-end fund sponsored by a sponsor from the Republic of Croatia to verify whether its activities are in compliance with the provisions of the labour and social security legislation relevant to the field of pension schemes in the Republic of Croatia, as referred to in Article 13, paragraphs 3, 4 and 5 of this Act.

(2) Should supervision reveal certain irregularities, the Agency shall immediately inform the competent authority of the home Member State, which shall, in cooperation with the Agency, take the necessary measures to ensure that the pension company puts a stop to breaches of the provisions of the labour and social security legislation relevant to the field of pension schemes in the Republic of Croatia.

(3) If, despite the measures referred in paragraph 2 of this Article taken by the competent authority of the home Member State in cooperation with the Agency, the pension company from another Member State persists in breaching the provisions of the labour and social security legislation relevant to the field of pension schemes in the Republic of Croatia, the Agency shall, after informing the competent authority of the home Member State, take the necessary measures to prevent or penalise further irregularities, including, insofar as is necessary, prohibiting the pension company from further managing, in the territory of the Republic of Croatia, closed-end funds of the same sponsor.

(4) If, in the case referred to in paragraph 3 of this Article, the Agency prohibits the pension company from another Member State from managing a closed-end fund sponsored by a sponsor from the Republic of Croatia, it must notify the pension company and EIOPA thereof, stating detailed reasons for such prohibition.

#### Article 306

When the competent authority of the home Member State of a pension company managing a closed-end fund in the territory of the Republic of Croatia notifies the Agency that the authorisation to conduct business granted to that pension company has been withdrawn or revoked, in total or in relation to certain activities, the Agency may take appropriate measures to protect the interests of the fund members, including, among other things, a prohibition to carry on business activities or a prohibition to offer pension schemes in the territory of the Republic of Croatia.

#### *Professional association of pension companies*

#### Article 307

(1) Pension companies may associate with each other and form a professional and interest-led association of pension companies, under a form of association of their own choice.

(2) A pension company shall not enter into any written or oral agreement with another pension company or association of pension companies that could restrict the principle of free competition or competition in the business of pension companies.

(3) For the purposes of implementing paragraph 2 of this Article, an association of pension companies shall submit to the Agency its articles of association and all the agreements, ordinances and other by-laws.

### PART SEVEN

#### COOPERATION WITH OTHER COMPETENT AUTHORITIES

#### Article 308

(1) The Agency and other supervisory authorities of the Republic of Croatia that are responsible for supervising and monitoring pension companies, funds and credit or other financial institutions shall, at the request of a supervisory authority, submit to that authority

all the information concerning supervised entities that is necessary for conducting supervisory and monitoring procedures.

(2) Supervisory authorities shall notify one another of irregularities and other circumstances established by them, where such findings are relevant to the work of other supervisory authorities.

#### Article 309

(1) The Agency shall cooperate with the competent authorities of Member States with a view to exchanging information and developing best practices in the sphere of labour and social legislation in order to prevent distortions of competition and create the conditions required for the unhindered acquisition of membership in closed-end funds in Member States.

(2) The Agency shall notify EIOPA of the provisions of legislation of prudential nature relevant to the field of pension schemes, which are not covered by the legislation referred to in paragraph 1 of this Article.

(3) The Agency shall update the information referred to in paragraph 2 of this Article on a regular basis and at least every two years, and shall notify EIOPA of any change that occurs.

(4) The Agency shall cooperate with EIOPA for the purposes of implementing Directive 2003/41/EC, in accordance with Commission Regulation (EU) No 1094/2010.

(5) The Agency shall cooperate with the European Commission and the competent authorities of Member States with a view to facilitating supervision of pension companies and closed-end funds.

(6) The Agency shall without delay provide EIOPA with all information necessary to carry out its duties under Directive 2003/41/EC and under Commission Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation.

(7) The Agency shall inform the European Commission and EIOPA of any major difficulties that arise in relation to the implementation of Directive 2003/41/EC and shall, in cooperation with the European Commission and EIOPA, examine such difficulties as quickly as possible in order to find an appropriate solution.

#### Article 310

With regard to the exercise of rights under this Act, judicial protection can be sought before a regular court of the Republic of Croatia, unless this Act provides otherwise.

### PART EIGHT

#### PENAL PROVISIONS

##### *Serious misdemeanours committed by a pension company*

#### Article 311

(1) A pension company shall be guilty of a misdemeanour and shall be fined a sum between HRK 200 000.00 and HRK 500 000.00 if:

1. it operates in a form and/or manner other than that prescribed by Article 9 of this Act;
2. with regard to its business, it acts contrary to the provisions of Article 11, paragraphs 5 and 6 of this Act;
3. it carries out its activities contrary to the provisions of Article 16 of this Act;
4. with regard to its share capital, it fails to comply with the provisions of Article 18 of this Act;
5. with regard to its capital, it fails to comply with the provision of Article 19 of this Act;
6. with regard to its capital, it fails to comply with the provision of Article 20 of this Act;
7. it fails to notify the Agency within three days of any material change in information and of any significant facts in accordance with the provision of Article 34, paragraph 2 of this Act;
8. with regard to acquisition of shares and/or holdings and/or organisational connection, it acts contrary to the provisions of Article 35 of this Act;
9. it invests its assets contrary to the provisions of Article 37, paragraphs 1 and 2 of this Act;
10. it fails to bring its investments into compliance within the time set forth in Article 37, paragraph 4 of this Act;
11. it acquires a shareholding contrary to the provision of Article 38, paragraph 1 of this Act;
12. it makes a change in its status and/or registers the status change contrary to the provisions of Article 39, paragraph 1 of this Act;
13. the board of directors of the pension company is not composed and does not act in compliance with the provisions of Article 41 of this Act;
14. a member of the board of directors has not obtained approval in accordance with the provisions of Article 45 of this Act;
15. it acts contrary to the provisions of Article 69 of this Act;
16. it charges fees other than those provided for by the provision of Article 72 of this Act;
17. it fails to hold and/or keep the fund's assets separately from the pension company's assets in accordance with the provision of Article 104 of this Act;
18. it fails to manage a personal account in accordance with the provisions of Article 105, paragraphs 1, 2 and 3 of this Act;

19. it determines the value of the fund's assets and/or liabilities contrary to the provisions of Article 106, paragraphs 1 and 2 of this Act;
20. it acts contrary to the provision of Article 108 of this Act;
21. it acts contrary to the provision of Article 109 of this Act;
22. it fails to calculate the fund's net asset value or the price of units in accordance with the provisions of Article 110, paragraph 1 of this Act;
23. it fails to communicate to the depositary the accounting policies and valuation methodologies in accordance with the provision of Article 110, paragraph 2 of this Act;
24. it makes payments out of the fund's assets contrary to the provisions of Article 111 of this Act;
25. it fails to make a payment in accordance with the provisions of Article 117, paragraphs 2, 3, 4 and 5 of this Act;
26. with regard to access to or membership in a closed-end fund, it acts contrary to the provisions of Article 122, paragraph 1 of this Act;
27. it fails to transfer an amount from an account to a pension insurance company in accordance with the provision of Article 125, paragraph 1 of this Act;
28. it fails to pay out pensions and/or conclude an agreement in accordance with the provisions of Article 126 of this Act;
29. it fails to pay out a portion of the pension in the form of a lump sum payment in accordance with the provision of Article 127 of this Act;
30. it makes a payment contrary to the provisions of Article 128, paragraphs 1 and 2 of this Act;
31. it communicates information about the fund members, the number of units in the personal accounts of the fund members, amounts paid in, amounts paid out and transfers of accounts contrary to the provision of Article 131, paragraph 1 of this Act;
32. with regard to the closure of personal accounts and/or the transfer of the account of a fund member to another fund and/or the suspension of payments into and/or out of the fund, it acts contrary to the provisions of Article 134 of this Act;
33. with regard to state incentive payments, it fails to fulfil its obligations towards the Ministry of Finance in accordance with the provisions of Article 135, paragraph 6 of this Act;
34. with regard to state incentive payments, it fails to fulfil its obligations towards the Ministry of Finance in accordance with the provision of Article 136, paragraph 1 of this Act;
35. with regard to state incentive payments, it fails to fulfil its obligations towards the Ministry of Finance in accordance with the provision of Article 137, paragraph 1 of this Act;

36. it fails to record the received amount of state incentive payments in the fund's business books and/or fails to credit such amount to the personal accounts of fund members within eight business days of the receipt of that amount in accordance with the provision of Article 137, paragraph 3 of this Act;

37. it keeps state incentive payments on the personal account of a fund member contrary to the provision of Article 139 of this Act;

38. it invests the fund's assets contrary to the provisions of Article 155 of this Act;

39. it invests the fund's assets contrary to the provision of Article 156 of this Act;

40. it invests the fund's assets contrary to the provision of Article 157 of this Act;

41. it invests the fund's assets contrary to the provision of Article 158 of this Act;

42. with regard to borrowing/lending, it acts contrary to the provisions of Article 159 of this Act;

43. it uses financial derivatives contrary to the provisions of Article 160 of this Act;

44. with regard to additional investment limits for funds, it acts contrary to the provisions of Article 162 of this Act;

45. with regard to the fund's invested assets, it acts contrary to the provisions of Article 163 of this Act;

46. with regard to exceeding the investment limits, it acts contrary to the provisions of Article 164 of this Act;

47. it enters into transactions that are contrary to the provisions of Article 165 of this Act;

48. it makes a change in the fund's status contrary to the provision of Article 207 of this Act;

49. it makes a status change contrary to the provision of Article 208 of this Act;

50. the exchange of units in the case of a merger by acquisition or by the formation of a new fund has not been carried out in accordance with the provisions of Article 209 of this Act;

51. division of funds has not been carried out in accordance with the provisions of Article 210 of this Act;

52. the exchange of units in the case of a division has not been carried out in accordance with the provision of Article 211. of this Act;

53. in the case of the conversion of a fund, it fails to inform the fund members in accordance with the provisions of Article 214 of this Act;

54. with regard to the conversion of a fund, it acts contrary to the provision of Article 215 of this Act;

55. in its role as a company managing the merging fund, it carries out the procedure for a merger by acquisition without having obtained the Agency's approval for such merger in accordance with the provision of Article 217, paragraph 1 of this Act;

56. in its role as a company managing the receiving fund, it fails to inform the fund members about all the actions and circumstances concerning the merger by acquisition in accordance with the provision of Article 221, paragraph 2 of this Act, or it charges an exit fee in contravention of the provision of Article 221, paragraph 4 of this Act;

57. in its role as a company managing the merging fund, it fails to inform the fund members about all the actions and circumstances concerning the merger by acquisition in accordance with the provision of Article 221, paragraph 2 of this Act, or it charges an exit fee in contravention of the provision of Article 221, paragraph 4 of this Act;

58. in its role as a company managing the receiving fund, it fails to act in accordance with the provisions of Article 223, paragraph 3 of this Act with regard to a merger report;

59. the costs of audits have been paid out of the assets of the funds involved in the merger by acquisition, in contravention of the provision of Article 223, paragraph 6 of this Act;

60. in its role as a company managing the receiving fund, it fails to act in accordance with the provisions of Article 225 of this Act;

61. in its role as a company managing the merging fund, it fails to act in accordance with the provisions of Article 225 of this Act;

62. in its role as a company managing the receiving fund, it fails to notify the Agency in accordance with the provision of Article 226 of this Act;

63. in its role as a company managing a fund involved in a division, it fails act in accordance with the provisions of Article 235, paragraphs 1, 2 and 3 of this Act with regard to the provision of information on division to fund members;

64. in its role as a company managing a fund involved in a division, it fails act in accordance with the provision of Article 237, paragraph 3 of this Act with regard to an auditor's report;

65. in its role as a company managing a fund involved in a division, it carries out the division in contravention of the provisions of Article 239, paragraphs 1 and 2 of this Act;

66. in the event that bankruptcy proceedings have been opened or winding-up proceedings instituted in respect of the depositary, it fails to act in accordance with the provisions of Article 264, paragraph 1 of this Act;

67. it offers the pension scheme of a closed-end fund with defined benefits in the territory of the Republic of Croatia in contravention of the provisions of Article 266, paragraph 2 of this Act;

68. in its role as a company managing a closed-end fund, it fails to act in accordance with the provisions of Article 267 of this Act with regard to technical provisions;

69. in its role as a company managing a closed-end fund with defined benefits, it fails to act in accordance with the provisions of Article 268 of this Act with regard to technical provisions;

70. in its role as a company managing a closed-end fund with defined benefits, it fails to act in accordance with the provisions of Article 269 of this Act with regard to assets held to cover the technical provisions;

71. in its role as a company managing a closed-end fund with defined benefits, it fails to act in accordance with the provisions of Article 270 of this Act with regard to a recovery plan;

72. in its role as a company managing a closed-end fund with defined benefits, it fails to act in accordance with the provisions of Article 271 of this Act with regard to additional capital;

73. it fails to provide and/or make available, at the request of the Agency, the documents, reports and/or information in accordance with the provision of Article 278, paragraph 1 of this Act;

74. it fails to enable supervision to be carried out in accordance with the provisions of Article 280, paragraphs 1, 2 and 3 of this Act;

75. it fails to enable supervision to be carried out in accordance with the provisions of Article 281 of this Act;

76. it fails to enable supervision to be carried out in accordance with the provisions of Article 282 of this Act;

77. it fails to correct the illegalities identified by a decision of the Agency in accordance with the provisions of Article 293 of this Act;

78. it fails to correct the illegalities identified by a decision of the Agency in accordance with the provisions of Article 297, paragraphs 2 and 3 of this Act.

(2) The responsible person of the pension company shall be fined from HRK 20 000.00 to HRK 50 000.00 for committing a misdemeanour referred to in paragraph 1 of this Article.

*Minor misdemeanours committed by a pension company*

Article 312

(1) A pension company shall be guilty of a misdemeanour and shall be fined a sum between HRK 50 000.00 and HRK 100 000.00 if:

1. it fails to obtain the Agency's authorisation to conduct business in accordance with the provisions of Article 21, paragraphs 1 and 4 of this Act;

2. it fails to notify the Agency of any significant change in the information given in the application for authorisation to conduct business and/or of any significant facts in accordance with the provisions of Article 34, paragraph 2 of this Act;

3. it fails to keep minutes of the meetings and sessions in accordance with the provision of Article 40, paragraph 2 of this Act;
4. a member of the board of directors does not meet the requirements laid down by the provisions of Article 42, paragraphs 1 and 6 of this Act;
5. a member of the board of directors does not meet the requirements of Article 43, paragraphs 1 and 2 of this Act;
6. it acts contrary to the provisions of Article 53 of this Act;
7. it fails to set up the organisational units in accordance with the provisions of Article 54, paragraph 2 of this Act;
8. with regard to the monitoring of compliance with the relevant legislation, it fails to act in accordance with the provisions of Article 56 of this Act;
9. it fails to set up an internal audit function in accordance with the provisions of Article 57 of this Act;
10. with regard to a risk management system, it fails to act in accordance with the provisions of Article 58 of this Act;
11. with regard to the setting up and organisation of the investment process, it fails to act in accordance with the provisions of Article 59 of this Act;
12. with regard to corporate governance, it fails to act in accordance with the provisions of Article 60, paragraphs 1 and 2 of this Act;
13. with regard to the remuneration policy, it fails to act in accordance with the provisions of Article 62 of this Act;
14. with regard to document handling procedures, keeping of records and business documents, it fails to act in accordance with the provisions of Article 63 of this Act;
15. with regard to the preparation and submission of financial reports, it fails to act in accordance with the provisions of Article 73, paragraphs 1 to 4 of this Act;
16. with regard to the auditing of annual financial statements and/or their submission to the Agency, it fails to act in accordance with the provisions of Article 74 of this Act;
17. with regard to the delegation of tasks to third parties, it acts contrary to the provision of Article 76 of this Act;
18. it fails to determine and/or implement internal policies and procedures in accordance with the provision of Article 78, paragraph 2 of this Act;
19. it fails to notify the Agency of an acquisition or disposal of a qualifying holding in accordance with the provision of Article 84, paragraph 6 of this Act;

20. it fails to submit to the Agency a list of all shareholders or stockholders or holders of qualifying holdings in accordance with the provision of Article 84, paragraph 7 of this Act;

21. when transferring the fund management activities, it fails to act in accordance with the provisions of Article 87 of this Act;

22. with regard to the transfer of the fund management activities, it acts contrary to the provisions of Article 96 of this Act;

23. it fails to notify the Agency in accordance with the provision of Article 110, paragraph 10 of this Act;

24. it fails to notify the Agency in accordance with the provision of Article 110, paragraph 11 of this Act;

25. it has charged an exit fee in contravention of the provision of Article 128, paragraph 3 of this Act;

26. with regard to state incentive payments, it fails to fulfil its obligations towards the Ministry of Finance in accordance with the provisions of Article 138, paragraphs 1 and 2 of this Act;

27. it fails to notify the Ministry of Finance of the selection of the fund in respect of which state incentive payments are to be paid as required by the provisions of Article 140, paragraph 4 of this Act;

28. it fails to notify the Agency of contracts concluded with sales representatives as required by the provisions of Article 150 of this Act;

29. with regard to currency matching, it invests assets of a fund contrary to the provision of Article 161 of this Act;

30. with regard to immaterial changes to the prospectus, it fails to act in accordance with the provision of Article 178 of this Act;

31. with regard to the statement of investment principles, it fails to act in accordance with the provisions of Article 166 of this Act;

32. with regard to documents and information in respect of each fund it manages, it fails to act in accordance with the provisions of Article 167 of this Act;

33. the fund's prospectus does not contain the information in accordance with the provision of Article 169 of this Act;

34. with regard to the publication of the prospectus, it fails to act in accordance with the provision of Article 171, paragraph 2 of this Act;

35. with regard to the publication of the prospectus, it fails to act in accordance with the provision of Article 172 of this Act;

36. with regard to the publication of the prospectus, it fails to act in accordance with the provision of Article 173 this Act;

37. with regard to the publication of the prospectus, it fails to act in accordance with the provision of Article 174 of this Act;

38. with regard to material changes to the prospectus, it fails to act in accordance with the provisions of Article 176 of this Act;

39. with regard to material changes to the prospectus, it fails to act in accordance with the provisions of Article 177, paragraphs 2, 3 and 5 of this Act;

40. it fails to publish the fund's statute in accordance with the provisions of Article 185 of this Act;

41. with regard to key information, it fails to act in accordance with the provisions of Article 187 of this Act;

42. with regard to key information, it fails to act in accordance with the provisions of Article 188 of this Act;

43. with regard to key information, it fails to act in accordance with the provisions of Article 189 of this Act;

44. with regard to key information, it fails to act in accordance with the provisions of Article 190 of this Act;

45. the audit firm audits annual reports of the same fund contrary to the provisions of Article 193, paragraph 4 of this Act;

46. it fails to observe the time limits for the preparation of half-yearly and/or audited annual reports of a fund in accordance with the provisions of Article 194 of this Act;

47. with regard to the availability of half-yearly and audited annual reports of a fund, it fails to act in accordance with the provision of Article 195 of this Act;

48. it fails to provide fund members with key information in accordance with the provisions of Article 196 of this Act;

49. with regard to the fund's prospectus and statute, it fails to act in accordance with the provision of Article 197 of this Act;

50. it fails to prepare monthly reports on the operations of a fund in accordance with the provisions of Article 199 of this Act;

51. with regard to the disclosure of legal and business transactions, it fails to act in accordance with the provisions of Article 200, paragraphs 1, 2 and 3 of this Act;

52. with regard to the provision of supplementary information, it fails to act in accordance with the provisions of Article 201 of this Act;

53. with regard to the provision of supplementary information, it fails to act in accordance with the provisions of Article 202 of this Act;

54. with regard to the provision of information to members of a closed-end fund in the Republic of Croatia, it fails to act in accordance with the provisions of Article 204, paragraphs 1, 2 and 3 of this Act;

55. with regard to the language in which key information of a closed-end fund and other documents and information about a closed-end fund from another Member State are drawn up, it fails to act in accordance with the provisions of Article 205, paragraphs 1 and 2 of this Act;

56. in its role as a company managing the receiving fund, it fails to act in accordance with the provision of Article 224, paragraph 2 of this Act with regard to access to information on a merger by acquisition;

57. in its role as a company managing the receiving fund, it fails to publish information on the implementation of a merger by acquisition in accordance with the provision of Article 227 of this Act;

58. with regard to access to information about a division, it fails to act in accordance with the provision of Article 238, paragraph 2 this Act

59. in its role as a company that manages or has managed the fund being divided, it fails to notify the Agency and the depositary the next business day following the effective date of status change in accordance with the provision of Article 240 this Act;

60. in its role as a company that manages or has managed the fund being divided, it fails to publish on its website the information on the implementation of the status change in accordance with the provisions of Article 241 of this Act.

(2) The responsible person of the pension company shall be fined from HRK 10 000.00 to HRK 30 000.00 for committing a misdemeanour referred to in paragraph 1 of this Article.

*Misdemeanours committed by certain natural persons related to a pension company*

Article 313

A natural person shall be guilty of a misdemeanour and shall be fined a sum between HRK 20 000.00 and HRK 50 000.00 if:

1. as a proposed acquirer, he or she fails to submit to the Agency in writing an application for approval in accordance with the provision of Article 79 of this Act;

2. he or she fails to notify the Agency of the intention to reduce his or her qualifying holding in accordance with the provision of Article 80 of this Act.

*Serious misdemeanours committed by a depositary*

Article 314

(1) A depositary shall be guilty of a misdemeanour and shall be fined a sum between HRK 200 000.00 and HRK 500 000.00 if:

1. it fails to safeguard the fund's assets in accordance with the provisions of Article 249 of this Act;
2. it fails to carry out the safekeeping and administration activities and other activities that it performs for the pension company in accordance with the provisions of Article 250, paragraphs 1 to 4 of this Act;
3. in the case of a loss of assets held in custody, it fails to act in accordance with the provision of Article 252, paragraph 1 of this Act;
4. it fails to return assets to the fund in accordance with the provision of Article 255, paragraph 2 of this Act;
5. it makes payments out of the fund's account contrary to the provisions of Article 256 of this Act;
6. it fails to provide and/or make available, at the request of the Agency, the documents, reports and/or information in accordance with the provision of Article 278, paragraph 1 of this Act;
7. it fails to enable supervision to be carried out in accordance with the provisions of Article 280, paragraphs 1, 2 and 3 of this Act;
8. it fails to enable supervision to be carried out in accordance with the provisions of Article 281 of this Act;
9. it fails to enable supervision to be carried out in accordance with the provisions of Article 282 of this Act.

(2) The responsible person of the depositary shall be fined from HRK 20 000.00 to HRK 50 000.00 for committing a misdemeanour referred to in paragraph 1 of this Article.

*Minor misdemeanours committed by a depositary*

Article 315

(1) A depositary shall be guilty of a misdemeanour and shall be fined a sum between HRK 50 000.00 and HRK 100 000.00 if:

1. it fails to fulfil its duties in accordance with the provisions of Article 93, paragraphs 1 and 2 of this Act;
2. with regard to the selection of another pension company and the transfer of management activities, it fails to act in accordance with the provisions of Article 94, paragraphs 1, 2, 3, 6 and 7 of this Act;

3. with regard to the calculation of the fund's net asset value, it acts contrary to the provisions of Article 110, paragraph 3 of this Act;
4. with regard to the calculation of the fund's net asset value, it acts contrary to the provisions of Article 110, paragraph 4 of this Act;
5. with regard to the calculation of the fund's net asset value, it acts contrary to the provisions of Article 110, paragraph 5 of this Act;
6. with regard to the calculation of the fund's net asset value, it acts contrary to the provisions of Article 110, paragraph 6 of this Act;
7. in the event of a merger, it fails to prepare its statement on the merger in accordance with the provision of Article 220 of this Act;
8. in the event of a division of funds, it fails to prepare its statement on the division in accordance with the provision of Article 234 of this Act;
9. it fails to act in accordance with the provisions of Article 245, paragraphs 5 to 10 of this Act;
10. with regard to its duties and obligations, it fails to act in accordance with the provision of Article 247, paragraph 1 of this Act;
11. it fails to submit to the Agency records of violations and/or notifications concerning matters relevant to supervision in accordance with the provisions of Article 248, paragraphs 1 and 3 of this Act;
12. in discharging its obligations, it fails to act in accordance with the provisions of Article 251, paragraphs 1, 2, 4 and 5 of this Act;
13. with regard to the selection of an audit firm, it fails to act in accordance with the provision of Article 253, paragraph 3 of this Act;
14. it fails to submit the auditor's report in accordance with the provision of Article 253, paragraph 5 of this Act;
15. it delegates depositary tasks to third parties contrary to the provisions of Article 257, paragraphs 2, 3 and 6 of this Act;
16. it delegates depositary tasks to third parties contrary to the provisions of Article 258 of this Act;
17. when delegating tasks to third parties it acts contrary to the provisions of Article 259 of this Act;
18. when delegating tasks to third parties it acts contrary to the provisions of Article 260 of this Act;

19. prior to the intended cessation of business, it fails to act in accordance with the provisions of Article 261, paragraphs 1 and 2 of this Act;

20. it fails to notify the Agency in accordance with the provisions of Article 262, paragraph 3 of this Act;

21. in the event of termination of the depositary contract, it fails to act in accordance with the provision of Article 263 of this Act.

(2) The responsible person of the depositary shall be fined from HRK 10 000.00 to HRK 30 000.00 for committing a misdemeanour referred to in paragraph 1 of this Article.

#### *Misdemeanours committed by an auditor and audit firm*

##### Article 316

(1) The pension company's audit firm shall be guilty of a misdemeanour and shall be fined a sum between HRK 50 000.00 and HRK 100 000.00 if:

1. it fails to audit the loss compensation procedures in accordance with the provision of Article 70, paragraph 4 of this Act;

2. it fails to prepare a merger report in accordance with the provisions of Article 223, paragraphs 1 and 2 of this Act;

3. it fails to prepare a division report in accordance with the provisions of Article 237 of this Act;

4. when auditing annual reports, it fails to act in accordance with the provision of Article 110, paragraph 7 of this Act;

5. it fails to audit the fulfilment of the depositary's obligations in accordance with the provision of Article 253, paragraph 1 of this Act.

(2) The responsible person of the audit firm shall be fined from HRK 10 000.00 to HRK 30 000.00 for committing a misdemeanour referred to in paragraph 1 of this Article.

(3) An auditor operating as a sole practitioner shall be fined from HRK 10 000.00 to HRK 30 000.00 for committing a misdemeanour referred to in paragraph 1 of this Article.

#### *Misdemeanours committed by other persons*

##### Article 317

(1) A legal person shall be guilty of a misdemeanour and shall be fined a sum between HRK 50 000.00 and HRK 100 000.00 if:

1. it uses in its name the terms contrary to the provision of Article 10 of this Act;

2. it pursues the business of a pension company in the Republic of Croatia contrary to the provisions of Article 15 of this Act;
3. a member of the pension company does not meet the requirements of Article 31 of this Act;
4. as a third party, it sub-delegates the delegated tasks and duties contrary to the provision of Article 77, paragraph 2 of this Act;
5. as a proposed acquirer, it fails to submit to the Agency in writing an application for approval in accordance with the provision of Article 79 of this Act;
6. it fails to notify the Agency of the intention to reduce its qualifying holding in accordance with the provision of Article 80 of this Act;
7. when keeping the register of fund members, it acts contrary to the provision of Article 131 of this Act;
8. as a sales representative of the pension company, it fails to act in accordance with the provisions of Article 150 of this Act;
9. as a sales representative of the pension company, it fails to act in accordance with the provisions of Article 151 of this Act;
10. as a sales representative of the pension company, it fails to act in accordance with the provisions of Article 152 of this Act;
11. as a third party, it sub-delegates the delegated depositary tasks and duties contrary to the provision of Article 257, paragraph 4 of this Act.

(2) The responsible person of the legal person shall be fined from HRK 10 000.00 to HRK 30 000.00 for committing a misdemeanour referred to in paragraph 1 of this Article.

## PART NINE

### TRANSITIONAL AND FINAL PROVISIONS

#### *Compliance of pension companies and of funds*

#### Article 318

(1) Pension companies which on the date of entry into force of this Act have the authorisation and approval to manage voluntary pension funds, issued by the Agency pursuant to the Mandatory and Voluntary Pension Funds Act (Official Gazette 49/99, 63/00, 103/03., 140/05, 177/04, 71/07, 124/10, 114/11 and 51A/13), shall continue to operate as pension companies pursuant to this Act on the basis of the existing authorisation.

(2) The pension companies referred to in paragraph 1 of this Article shall be deemed to have the authorisation to manage those funds which they had managed before the entry into force of this Act.

(3) Pension companies that have drawn up the prospectuses of the funds they manage pursuant to the provisions of Article 107 or 114.c of the Mandatory and Voluntary Pension Funds Act (Official Gazette 49/99, 63/00, 103/03, 140/05, 177/04, 71/07, 124/10, 114/11 and 51A/13) shall bring the prospectuses of the funds they manage into compliance with the provisions of Articles 169 to 174 of this Act within three months from the date of entry into force of this Act.

(4) Pension companies shall prepare key information for fund members in respect of all the funds they manage within three months from the date of entry into force of this Act.

(5) Pension companies shall bring investments of the funds they manage into compliance with the provisions of this Act within three months from the date of entry into force of this Act.

(6) Pension companies shall draw up the fund's statute for all the funds they manage within six months from the date of entry into force of this Act. The Agency shall decide on an application for approval of the fund's statute within six months from the date of receipt of the complete application.

(7) Pension companies shall comply with the provisions of this Act within 12 months from the date of its entry into force.

#### Article 319

Persons who have passed an examination for certified pension fund managers before the entry into force of this Act shall have the same rights as those passing this examination pursuant to this Act.

#### Article 320

The provisions of Article 74, paragraph 3 and Article 193, paragraph 4 of this Act shall also apply to annual financial statements audited prior to the date on which this Act begins to apply.

#### *Members of the board of directors of a pension company*

#### Article 321

(1) A person who has obtained approval from the Agency to perform the function of a member of the board of directors of a pension company pursuant to the provisions of the Mandatory and Voluntary Pension Funds Act (Official Gazette 49/99, 63/00, 103/03, 177/04, 140/05, 71/07, 124/10, 114/11 and 51A/13) shall be deemed to have approval to perform the function of a member of the board of directors of a pension company issued pursuant to the provisions of Article 45 of this Act, but only for a term of office not exceeding five years from the date of appointment. In the case where more than five years have passed from the date of appointment of a member of the board of directors, the pension company shall ensure that the candidate member of the board of directors submits to the Agency an application for the issuance of approval to perform the function of a member of the board of directors within six months from the date of entry into force of this Act.

(2) The person referred to in paragraph 1 of this Article shall fulfil the requirements of Article 43 of this Act within six months from the date of entry into force of this Act.

### *Compliance report*

#### Article 322

(1) The pension companies referred to in Article 318, paragraph 1 of this Act shall submit to the Agency a compliance report within 30 days after the expiry of the time limit referred to in Article 318, paragraph 6 of this Act.

(2) The compliance report referred to in paragraph 1 of this Article shall be accompanied by:

1. information about the members of the board of directors of the pension company;
2. information about the identity of the shareholders or members of the pension company and information about the size of their holdings in both absolute and relative amounts;
3. in respect of the shareholders or members of the company that have a qualifying holding, the documents required by the ordinance referred to in Article 84, paragraph 4 of this Act
4. a list of related persons of the pension company and a detailed description of the nature of their relatedness;
5. a detailed overview of the organisational structure of the pension company, including a statement on the manner in which the requirements of this Act and regulations made under this Act have been met.

(3) If a pension company fails to act in accordance with the provisions of paragraphs 1 and 2 of this Article, the Agency may revoke the decision by which the pension company was granted the authorisation referred to in Article 319, paragraph 1 of this Act. In that case, the pension company shall cease to perform the activities in respect of which the authorisation was granted and shall remove these activities from the court register. The pension company may not submit a new application for authorisation in accordance with the provisions of this Act until one year has elapsed from the date on which the decision granting authorisation was revoked.

### *Compliance of depositaries*

#### Article 323

Depositaries shall bring their business into compliance with the provisions of this Act within 12 months from the date of its entry into force.

### *Agency procedures*

#### Article 324

Procedures initiated before the Agency prior to the date of entry into force of this Act shall be completed in accordance with the provisions of the Mandatory and Voluntary Pension Funds

Act (Official Gazette 49/99, 63/00, 103/03, 177/04, 140/05, 71/07, 124/10, 114/11 and 51A/13).

### *Adoption of implementing regulations*

#### Article 325

(1) Within six months from the date of entry into force of this Act, the Agency shall adopt regulations for the implementation of this Act, when empowered to do so by this Act.

(2) By way of derogation from paragraph 1 of this Article, implementing regulations referred to in Article 67, Article 73 paragraphs 4 and 5, Article 75 paragraph 3, Article 155 paragraph 2, Article 173 paragraph 3, Article 191 paragraph 3, Article 192 paragraph 2, Article 193 paragraph 2, Article 247 paragraph 2, Article 268 paragraph 3 and Article 271 paragraph 3 of this Act, shall be adopted by the Agency within one year from the date of entry into force of this Act.

(3) Pending the adoption of regulations pursuant to this Act, the regulations adopted pursuant to the Mandatory and Voluntary Pension Funds Act (Official Gazette 49/99, 63/00, 103/03, 177/04, 140/05, 71/07, 124/10, 114/11 and 51A/13) shall apply accordingly, unless they are contrary to the provisions of this Act in the part relating to the operation of voluntary pension companies and voluntary pension funds.

### *Legislation ceasing to have effect*

#### Article 326

On the date of entry into force of this Act, the Mandatory and Voluntary Pension Funds Act (Official Gazette 49/99, 63/00, 103/03, 177/04, 140/05, 71/07, 124/10, 114/11 and 51A/13) shall cease to have effect.

### *Entry into force*

#### Article 327

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 022-03/13-01/275

Zagreb, 31 January 2014

THE CROATIAN PARLIAMENT

The President of  
the Croatian  
Parliament

**Josip Leko, m. p.**

PROVISIONAL TRANSLATION