

Investment Funds Act

Passed 9 April 1997

(RT I 1997, 34, 535),

entered into force 19 May 1997,

amended by the following Acts:

12.06.2003 entered into force 19.07.2003 - RT I 2003, 51, 355;

11.02.2003 entered into force 08.03.2003 - RT I 2003, 23, 133;

04.12.2002 entered into force 02.01.2003 - RT I 2002, 105, 612;

20.11.2002 entered into force 01.01.2003 - RT I 2002, 102, 600;

19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387;

05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336;

20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131;

14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565;

17.10.2001 entered into force 01.01.2002 - RT I 2001, 89, 532;

12.09.2001 entered into force 01.10.2001 - RT I 2001, 79, 480;

09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268;

14.06.2000 entered into force 01.01.2001 - RT I 2000, 57, 373;

18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55;

10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979.

Chapter 1

General Provisions

§ 1. Investment fund

An investment fund (hereinafter fund) means a pool of assets established for collective investment (hereinafter contractual fund) or a public limited company founded for collective investment on the basis of this Act, which is or the assets of which are managed, accordingly, on the principle of risk-spreading by a management company provided for in this Act.

§ 2. Business name or name of fund

(1) The word “investeerimisfond” [investment fund] or “fond” [fund] shall be used in the business name of a fund founded as a public limited company or in the name of a contractual fund. Other persons, agencies and associations are not entitled to use the word “investeerimisfond” or words or abbreviations with the same or a misleadingly similar meaning in Estonian or another language in their name.

(2) The business name or name of a fund shall be clearly distinguishable from the business names or names of other funds which are founded or established in Estonia, or the stocks or units of which are sold in Estonia.

(3) The requirements provided for in § 12 of the Commercial Code (RT I 1995, 26–28, 355; RT I 1998, 91–93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 34, 185; 56, 332 and 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388; 96, 564; 102, 600; 110, 657; 2003, 4, 19; 13, 64; 18, 100) apply to the name of a contractual fund.

(4) The business name or name of a fund shall not be misleading with regard to the investment policy of the fund as prescribed in its articles of association if the fund is founded as a public limited company or in its rules if the fund is a contractual fund.

§ 3. Management Company

(1) A management company is a public limited company whose sole area of activity is the management of funds. Management of a fund means organisation of the issue of stocks or units of the fund, investment of the assets of the fund, keeping account of the assets of the fund and other activities directly related to such activities.

(2) A management company is a financial institution within the meaning provided for in the Credit Institutions Act (RT I 1995, 4, 36).

(3) Only management companies are permitted to manage funds unless otherwise provided for in this Act.

(4) In addition to management of funds, a management company may provide the services provided for in clause 43 5) and subsection 44 (4) of the Securities Market Act.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(5) The provisions of §§ 51-83 and 107-119 of the Securities Market Act shall not apply to management companies.

(17.10.2001 entered into force 01.01.2002 - RT I 2001, 89, 532)

§ 4. Depositary

(1) A credit institution operating on the basis of the Credit Institutions Act which, pursuant to an activity licence issued by the Bank of Estonia or the Financial Supervision Authority, has the right to perform depositary transactions may be a depositary.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) A depositary holds the assets of a fund, performs transactions therewith, keeps account thereof and performs other duties pursuant to this Act and a depositary contract.

§ 5. Application of Act

(1) This Act, except the provisions provided for in Chapter 9, applies to funds, management companies and depositaries which are founded or established in Estonia and the seats of which are in Estonia.

(2) The requirements provided for in Chapter 9 of this Act apply to the public sale in Estonia of units and stocks of funds which are located outside of Estonia if the units or stocks of such funds are subject to redemption or re-purchase (hereinafter foreign funds).

Chapter 2

Management Company

§ 6. Application of Acts

The provisions of Acts regarding public limited companies and financial institutions apply to the foundation, activities and dissolution of management companies in so far as this Act does not provide otherwise.

§ 7. Activities of management company

(1) A management company invests the assets of a contractual fund in its own name and on behalf of the unit-holders collectively (hereinafter on behalf of a contractual fund), or the assets of a fund founded as a public limited company in the name of and on behalf of the fund, or in the name of the management company on behalf of the fund pursuant to a management contract.

(2) A management company may manage several funds.

(3) The activities of a management company shall comply with legislation, the articles of association of the management company, the fund rules of a contractual fund managed by the management company, or with the management contract entered into with a fund founded as a public limited company.

(4) Management companies shall act in the best interests of unit-holders of funds founded as public limited companies or of contractual funds.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

§ 8. Rights and obligations of management company

(1) A management company has the right, in accordance with the rules of a contractual fund or the management contract of a fund founded as a public limited company, to dispose of and possess the assets of the fund, and has other rights arising therefrom.

(2) A management company has the right and duty to submit a claim in its own name on behalf of unit-holders or a fund against a depositary or other person if failure to submit such claim will result or may result in significant damage to the fund or its unit-holders. A management company is not required to submit such claim if the fund or unit-holders have already submitted a claim.

(3) A management company shall compensate a fund or its unit-holders for damage caused wrongfully due to its activities or failure to act.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) Upon the investment of the assets of a fund, a management company shall:

1) obtain sufficient information on the assets into which the assets of the fund are to be invested or which have been acquired on behalf of the fund;

2) monitor the financial situation of the issuer whose securities the company plans to acquire or has acquired on behalf of the fund;

3) obtain sufficient information with regard to the solvency of the persons with whom they transact on behalf of the fund.

§ 9. Seat

A management company shall be entered in the commercial register in Estonia and its seat shall be in Estonia.

§ 10. Requirements for financial situation of management company

(1) The stock capital of a management company shall be at least 2 000 000 kroons.

(2) The value of the liquid assets of a management company shall be greater than three months' operating expenses of the company.

(3) In order to ensure the financial soundness of a management company and sufficient protection for the interests of investors, the Minister of Finance may establish additional requirements for:

1) the amount of equity capital and legal reserve of a management company depending on the value of the assets of the funds managed by the management company;

2) the valuation methods and size of the own funds of the management company if it provides investment services specified in subsection 3 (4) of this Act.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(4) (Repealed - 20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(5) The net assets of a management company shall not be less than the minimum amount of share capital provided for in subsection (1) of this section. The provisions of § 301 of the Commercial Code (RT I 1995, 26–28, 355; RT I 1998, 91–93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 34, 185; 56, 332 and 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388; 96, 564; 102, 600; 110, 657; 2003, 4, 19; 13, 64; 18, 100) apply upon violation of this requirement.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

§ 11. Stock

(1) All stocks of a management company shall be registered.

(2) The consent of the supervisory board of a management company is required for the transfer of stocks of the management company.

(3) The public issue of stock of a management company is not permitted.

§ 12. Separation of assets

(1) A management company shall manage the assets of a fund separately from its own assets and from the assets of other funds managed by the management company.

(2) The assets of a fund do not form a part of the bankruptcy estate of the management company, and the claims of creditors of the management company shall not be satisfied out of such assets. The stocks or units of a fund which are owned by the management company form a part of the bankruptcy estate of the management company.

(3) Assets which are acquired on the basis of rights belonging to the assets of a fund, in a transaction which is based on the assets of a fund or as compensation for a thing or right belonging to the assets of a fund also form a part of the assets of the fund.

§ 13. Requirements for members of directing bodies and stockholders

- (1) The members of the management board and supervisory board of a management company shall have the education and knowledge necessary for the performance of their duties and an impeccable business reputation.
- (2) Persons whose earlier activities caused the bankruptcy, compulsory dissolution or revocation of the activity licence of a fund, management company, professional securities market participant, insurance company or credit institution, or whose activities have shown that the persons are not capable of organising the activities of a management company such that the interests of the stockholders or unit-holders of a fund would be sufficiently protected, shall not be members of the management board or supervisory board of a management company.
- (3) The director or the chairman of the management board of a management company shall have completed higher education in economics or law, or have at least five years' experience in the financial field, in a management capacity.
- (4) The provisions of subsection (2) of this section also apply to stockholders who directly or indirectly hold more than 10 per cent of the votes represented by stocks of the management company. If such stockholder is a legal person, the provisions of subsection (2) of this section also apply to the members of the management board or the body substituting the management board, and of the supervisory board of the legal person.

§ 14. Restrictions on activities of members and employees of directing bodies

- (1) A member of the management board or the procurator of a management company shall not be a member of the management board or the supervisory board, or the procurator or an employee of the depositary of a fund managed by the management company.
- (2) Members of the management board and supervisory board, and employees and procurators of the depositary of a fund shall constitute not more than one quarter of the members of the supervisory board of the management company of the fund.

§ 15. Requirements for auditors

- (1) An auditor of a management company shall not be a member of the management board or supervisory board, or a procurator of the management company audited by the auditor, of the funds managed by the management company or of the depositaries of the funds.
- (2) An auditor of a management company shall not own stocks or units of the management company audited by the auditor or of the funds managed by the management company.

§ 16. Fund manager

- (1) The management board of a management company shall appoint a person for each fund being managed whose duties include investment of the assets of the fund (fund manager).
- (2) Fund managers shall have higher education, the knowledge and experience necessary for the performance of their duties, and impeccable reputation.

(18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55)

- (3) Fund managers may be employed by only one management company. The same person may be the fund manager of several funds managed by one management company.
- (4) A fund manager shall not enter into agreements with third persons pursuant to which the duties of the fund manager include the investment of assets, performance of securities transactions or other similar activities;

(5) A fund manager shall not be a member of the supervisory board or management board or employee of another management company, or a member of the supervisory board or management board or employee of a professional securities market participant.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

(6) The following shall not be fund managers:

- 1) persons who have been punished pursuant to criminal procedure for an economic criminal offence, criminal official misconduct or a criminal offence against property;
- 2) persons who have as a result of their wrongful acts or omissions caused the bankruptcy or compulsory dissolution of a company or the revocation of the activity licence of a company;
- 3) persons who have been deprived of the right to operate as a fund manager pursuant to a court judgment;
- 4) persons who have in their activities violated procedure provided by legislation to a material extent;
- 5) persons who have violated good business practices to a material extent.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

(7) A fund manager shall operate in the best interests of the shareholders of a fund founded as a public limited company or of the unit-holders of a contractual fund.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

(8) Only persons who hold a valid certificate for the corresponding qualifications (hereinafter certificate) may operate as fund managers. The issue and revocation of certificates shall be decided by the Minister of Finance on the basis of a proposal of the board formed by him or her for such purpose (hereinafter examination board). A certificate shall be issued for a period of five years. The format of the certificate shall be established by the Minister of Finance.

(18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55)

(9) A certificate shall not be issued if the applicant does not meet the requirements provided for in this Act or if he or she has not passed the qualifying examination (hereinafter examination). Examinations shall be conducted and decisions concerning the results of the examinations shall be made by the examination board. The examination program and the organisation of work of the examination board shall be established by the Minister of Finance.

(18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55)

(10) The Ministry of Finance shall organise the receipt of applications for the certificate, and the preparation and conduct of examinations. The format of the application and the list of documents and information to be submitted upon application shall be established by the Minister of Finance.

(18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55; 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(11) The validity of a certificate terminates upon expiry of the term of validity thereof or upon the revocation thereof if the person:

- 1) does not meet the requirements provided for in this section;

2) has submitted false information concerning circumstances of material importance with regard to the issue of the certificate;

3) has not been engaged for at least three consecutive months within the last twelve months in activities related to financial markets in a professional securities market participant, management company, the Bank of Estonia, the Ministry of Finance, the Securities Inspectorate or the Financial Supervision Authority.

(18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55; 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 17. Internal control

(1) Management companies shall implement sufficient internal control measures.

(2) The supervisory board of a management company shall appoint a person (hereinafter internal auditor) whose duty it is to monitor the conformity of the activities of the management company and its employees with legislation and good practice. Such person shall not be employed as a fund manager or perform other duties which create or may create a conflict of interest.

(3) A management company shall allow the internal auditor access to all documents and information of the management company which are necessary for the performance of the duties of the internal auditor. The internal auditor is required to notify promptly the chairman of the supervisory board of the management company or the person substituting for the chairman of any violations which are discovered.

§ 18. Restrictions on acquisition of participation

A management company may acquire units or stocks of a fund managed by the management company only during the foundation of the fund if it is founded as a public limited company or within one month after registration of the rules of the fund if it is a contractual fund.

§ 19. Activity licence

(1) A public limited company may engage in the management of funds only upon the existence of a corresponding activity licence or pursuant to the provisions of § 50 of this Act. A management company may provide investment services specified in subsection 3 (4) of this Act on the basis of an activity licence for the management of funds.

(17.10.2001 entered into force 01.01.2002 - RT I 2001, 89, 532)

(2) Activity licences are issued, their terms are extended, and activity licences are revoked by a decision of the management board of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) Activity licences may be issued for a specified term or an unspecified term.

(4) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) The management board of the Financial Supervision Authority shall make a decision to issue or extend an activity licence within six months after the receipt of a corresponding application by the Financial Supervision Authority however, not later than within two months after the receipt of all necessary documents and information. Upon refusal to issue or extend an activity licence and upon revocation of a licence, the justification shall be indicated in the decision.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(6) A copy of the decision of the management board of the Financial Supervision Authority and the activity licence shall be forwarded to the applicant for issue or extension of an activity licence within three working days after the decision is made.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(7) An activity licence is not transferable, and its acquisition or use by other persons is prohibited.

§ 20. Requirements for issue of activity licence

A public limited company is issued a management company activity licence if the company complies with all of the following requirements:

- 1) the public limited company complies with the requirements established for management companies in this Act and legislation arising therefrom;
- 2) the documents submitted by the public limited company comply with the requirements provided by law and legislation arising therefrom;
- 3) the stock capital of the public limited company is paid in full if the public limited company is being founded;
- 4) the members of the directing bodies, the fund manager, auditor, procurator and stockholders of the public limited company comply with the requirements provided by law and legislation arising therefrom;
- 5) the public limited company has the premises and working conditions required to operate as a management company, which comply with the requirements established by the Minister of Finance;
- 51) a public limited company has established internal rules which determine internal rules of procedure for application of international sanctions established on the basis of the International Sanctions Act;

(04.12.2002 entered into force 02.01.2003 - RT I 2002, 105, 612)

6) a management company activity licence issued to the public limited company has not previously been revoked or extension has not been refused on the grounds specified in subsection 25 (1) of this Act.

§ 21. Documents necessary for application for activity licence

(1) In order to apply for an activity licence, the founders of a management company being founded or the management board of a registered public limited company shall submit the following documents and information to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
- 2) the articles of association; in the case of an operating public limited company, also the resolution of the general meeting on amendment of the articles of association;
- 3) upon foundation of a management company, an officially certified copy of the foundation agreement and a document certifying the existence of the stock capital;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

4) in the case of an operating public limited company, an officially certified copy of the registry card, the last annual report and a statement from the local Tax Board Office certifying the absence of tax arrears;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

5) the business plan;

6) information on the members of the management board and supervisory board of the public limited company which sets out each member's given name and surname, personal identification code or date of birth in the absence of a personal identification code, residence, educational background, a complete list of places of employment and positions held during the last five years and, in the case of the members of the management board, a description of their duties;

7) information on the procurator and auditor of the public limited company which sets out their given name and surname, residence and personal identification code or date of birth in the absence of a personal identification code;

8) information on the fund manager which sets out the person's given name and surname, date of birth, personal identification code or date of birth in the absence of a personal identification code, residence, educational background, a complete list of places of employment and positions held during the last three years and a copy of the contract entered into by the fund manager under which the manager undertakes to commence performance of the functions of a fund manager in the public limited company after issue of the activity licence to the public limited company;

9) a list of stockholders of the public limited company which sets out information on the amount of contribution and the number of stocks and votes of each stockholder;

10) information on stockholders who directly or indirectly hold more than 10 per cent of the votes represented by stocks of the management company; in the case of legal persons, the last management report and a list of members of the management board or of the body substituting for the management board and, upon the existence of a supervisory board, a list of its members; in the case of natural persons, each person's given name and surname, personal identification code or date of birth in the absence of a personal identification code, residence, educational background and a complete list of places of employment and positions held during the last five years;

11) information on companies in which the participation of the public limited company, of a member of its management board or supervisory board, or of the procurator or fund manager of the public limited company is greater than 20 per cent; this information shall also include the amount of stock capital or share capital, a list of the areas of activity and the percentage of participation of the above-mentioned persons;

12) documents and information certifying arrangements for the use and the condition of premises necessary for the activities of the management company;

13) proof of payment of the state fee.

(2) If necessary, the Financial Supervision Authority shall request more specific information and documents concerning information subject to submission.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) If there are changes in the information specified in subsection (1) of this section, a management company shall promptly submit the corresponding updated information and documents to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 22. Refusal to issue activity licence

The issue of an activity licence is refused if:

- 1) a public limited company does not comply with the requirements provided for in § 20 of this Act;
- 2) all documents and information prescribed in § 21 of this Act are not submitted;
- 3) the information submitted is incorrect or incomplete.

§ 23. Extension of activity licence

(1) In order to extend an activity licence with a specified term, the management company shall, at least two months before the expiry of the activity licence, submit the following documents and information to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
- 2) a management report;
- 3) a statement from the local Tax Board Office certifying the absence of tax arrears;
- 4) confirmation that the information and documents specified in subsection 21 (1) of this Act submitted to the Financial Supervision Authority reflect the actual situation at the time of submission of the application;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 5) proof of payment of the state fee.

(2) If necessary, the Financial Supervision Authority shall request more specific information and documents concerning information subject to submission.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The extension of an activity licence is refused if the management company does not meet the requirements provided for in § 20 of this Act or on the grounds specified in subsection 25 (1) of this Act.

§ 24. Termination of activity licence

An activity licence terminates:

- 1) upon expiry of the term if the activity licence is not extended before the expiry of the term;
- 2) if a public limited company which holds a management company activity licence fails to operate as a management company for six consecutive months;
- 3) upon dissolution of the management company;
- 4) upon distribution of the management company;
- 5) upon revocation of the activity licence.

§ 25. Revocation of activity licence

(1) An activity licence may be revoked if it becomes evident that:

- 1) the information submitted upon application for the issue or extension of an activity licence which was of material importance in the decision to issue or extend the activity licence is false, also in cases where false

information has been intentionally submitted to the Financial Supervision Authority or upon repeated failure to submit information on time;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

2) the management company has published materially incorrect or misleading information or advertising concerning its activities or the members of its directing bodies;

3) the management company has violated the rules of a contractual fund managed by the management company or a management contract with a fund founded as a public limited company, where the interests of the unit-holders of the contractual fund or fund founded as a public limited company managed by the management company may be damaged due to such offence or administrative liability has been imposed on the management company;

4) the management company has failed to implement a precept of the Financial Supervision Authority by the deadline or to the extent prescribed;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

5) the management company has been punished pursuant to §§ 1411–1415 of this Act and a decision has entered into force concerning the matter or the Financial Supervision Authority has issued a precept to the management company, and the information concerning the punishment of the management company pursuant to §§ 1411–1415 of this Act has not been deleted from the punishment register pursuant to the Punishment Register Act (RT I 1997, 87, 1467; 2002, 82, 477; 2003, 26, 156).

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

(2) An activity licence is revoked at the request of the management company if the company no longer manages the assets of any fund and if the legitimate interests of the stockholders and unit-holders of the funds previously managed by the company are sufficiently protected.

(3) (Repealed - 09.02.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) Prior to a decision to revoke an activity licence on the basis of subsection (1) of this section, the Financial Supervision Authority may grant a management company a deadline for elimination of deficiencies which are the basis for revocation. The establishment of a deadline is communicated to the management company in writing indicating the basis for the establishment of the deadline and the date by which the deficiencies shall be eliminated.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) A copy of the decision of the management board of the Financial Supervision Authority by which the activity licence of a management company is revoked is promptly forwarded to the person specified in the decision, to the funds founded as public limited companies managed by the person and to the depositaries of contractual funds managed by the person.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 26. Merger, division and transformation of management company

(1) A public limited company which manages a fund shall not be transformed into a company of a different type.

(2) A management company may only merge with another management company. The merger of management companies whereby a new company is founded is not permitted.

(3) The division of a management company is permitted only in the case where the recipient companies are existing management companies.

(4) Prior permission of the Financial Supervision Authority is required for the merger or division of a management company. Permission shall be granted if the legitimate interests of the stockholders and unit-holders of the fund are sufficiently protected. The conditions and procedure for granting permission shall be established by the Minister of Finance.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 27. Termination of management authority

(1) The authority of a management company to manage a fund terminates:

1) upon transfer of the management in the case of a contractual fund pursuant to the procedure provided for in § 49 of this Act;

2) upon the termination of the activity licence of the management company;

3) upon the compulsory dissolution of the management company;

4) upon declaration of bankruptcy of the management company or abatement of bankruptcy proceedings commenced against the management company due to a lack of assets to cover the expenses of the bankruptcy proceedings;

5) by a resolution of the management board of the Financial Supervision Authority if the net asset value of a contractual fund is less than five million kroons six months after registration of the fund, or if it is necessary in the legitimate interests of the unit-holders;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

6) in other cases prescribed by law, the rules or articles of association in the case of a contractual fund, or by a management contract specified in § 72 of this Act.

(2) A management company is not permitted to resolve to dissolve itself or to submit a request specified in subsection 25 (2) of this Act before its authority to manage funds terminates.

Chapter 3

Contractual Fund

§ 28. Bases for activities

(1) The bases for the activities of a contractual fund and relationships between unit-holders with the fund manager are specified by this Act and the rules of the contractual fund (hereinafter fund rules).

(2) A contractual fund is established and the fund rules are determined by a management company.

(3) The location of a contractual fund is the seat of its management company.

§ 29. Fund and assets of fund

(1) A contractual fund is a pool of money collected through the public issue of units and other assets acquired through the investment of such money, which is owned jointly by the unit-holders (community of unit-holders).

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) A unit-holder's share in the assets of a contractual fund is determined by the ratio of the number of units held by the unit-holder and the total number of units held by all unit-holders. Upon a change in such ratio, the unit-holder's share changes accordingly.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) Assets received as a result of the issue of units and assets received by other means on account of the assets of a contractual fund are owned by the unit-holders as the assets of the contractual fund according to the size of the shares of the unit-holders provided for in subsection (2) of this section.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 30. Unit

(1) A contractual fund shall only have units of one class, which have the same nominal value and grant their holders equal rights.

(2) A unit represents a share in the common ownership of the assets of a contractual fund. Units shall be entered in the Estonian Central Register of Securities.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 57, 373)

(3) The nominal value of a unit shall be 1, 10, 100 or 1 000 kroons.

(4) A unit is indivisible.

(5) The provisions of §§ 225–234 of the Commercial Code concerning stocks correspondingly apply to units unless otherwise provided by this Act.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 57, 373)

(6) A contractual fund shall not own or acquire its own units.

§ 31. Rights attached to unit

(1) A unit-holder has the right to:

1) demand that the management company redeem the units pursuant to § 39 of this Act;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

2) freely transfer the units held by the unit-holder to third persons;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

3) receive, pursuant to law and the fund rules, a share of the income of the fund in proportion to the number of units held by the unit-holder;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

4) receive a share of the assets remaining upon liquidation of a contractual fund in proportion to the number of units held by the unit-holder;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

5) perform other acts prescribed by law or the fund rules.

(2) The provisions of §§ 72–79 of the Law of Property Act (RT I 1993, 39, 590; RT I 1999, 44, 509; 2001, 34, 185; 93, 565; 2002, 47, 297; 53, 336; 2003, 13, 64; 17, 95) do not apply to relationships between unit-holders. No unit-holder is entitled to demand termination of the community of unit-holders. Further, such right can not be exercised by the pledgee or creditor of a unit-holder upon compulsory execution or by the trustee in bankruptcy in the bankruptcy proceedings of a unit-holder.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 32. Liability of unit-holder

(1) A unit-holder is not personally liable for the obligations of a contractual fund assumed by the management company on behalf of the unit-holders collectively, or for obligations the performance of which the management company has the right to demand from the fund pursuant to the fund rules. Liability for performance of such obligations is limited to the assets of the contractual fund.

(2) A management company shall not assume obligations on behalf of unit-holders.

(3) In order to satisfy a claim against a unit-holder, a claim for payment may be made against the units of the unit-holder but not against the assets of the contractual fund.

(4) An agreement which derogates from the provisions of this section is void.

§ 33. Establishment of contractual fund

(1) The establishment of a contractual fund is decided and the fund rules are approved by the supervisory board of the management company.

(2) A resolution to establish a contractual fund shall set out:

- 1) the name of the fund;
- 2) the business name and seat of the management company;
- 3) the business name and seat of the depositary;
- 4) the name and residence of the auditor.

§ 34. Fund rules

(1) Fund rules shall set out:

- 1) the name of the fund;
- 2) the business name and seat of the management company and the depositary;
- 3) the objective of the activities and the fundamental principles of the investment policy of the fund, which shall indicate investments into different asset classes (stocks, bonds, money-market instruments, deposits and other assets), limitations on investment and specialisation in geographical or industrial sectors;
- 4) the rights and obligations attached to units;
- 5) the procedure for exercising the rights attached to units;
- 6) the rights and obligations of the management company in management of the assets of the fund;
- 7) the method of calculation and the rate of fees to be paid to the management company and the depositary;

- 8) a complete list and method of calculation of expenses to be paid out of the fund;
- 9) limits on the fees and expenses provided for in clauses 7) and 8) of this subsection;
- 10) the conditions and procedure for issue and redemption of units;
- 11) the method and frequency of calculation and publication of the net asset value of the fund and of the issue price and redemption price of fund units;
- 12) the procedure for publication (including advertising) of and reporting on information on the fund;
- 13) the procedure for application of the income of the fund;
- 14) the bases and procedure for liquidation of the fund, including the procedure for distribution of assets remaining upon liquidation among unit-holders;
- 15) the procedure for amendment of the fund rules and the place of publication of amendments;
- 16) other rules provided by law.

(2) Fund rules may prescribe other rules which are not contrary to legislation.

(3) Unit-holders have a right to review the fund rules at the location of the fund and to obtain a copy of the fund rules at the expense of the management company.

§ 35. Registration of fund rules

(1) Fund rules enter into force and a fund is deemed to be established after registration of the fund rules by the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) In order to register fund rules, a management company shall submit the following documents and information to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
- 2) the resolution to establish the fund;
- 3) the fund rules;
- 4) the prospectus;
- 5) the depositary contract;
- 6) the names of the members of the supervisory board and management board, and of the procurator and auditor of the depositary;
- 7) proof of payment of the state fee.

(3) Fund rules shall be registered if all documents and information specified in subsection (2) of this section comply with the requirements provided by law and if the fund rules are not contrary to the legitimate interests of the unit-holders.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

§ 36. Amendment of fund rules

(1) Amendment of the fund rules is decided by the supervisory board of the management company. The management board of the depositary shall be promptly notified of a decision to amend.

(2) Amendments to fund rules are registered by the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) In order to register amendments to fund rules, a management company shall submit the following documents and information to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
 - 2) the resolution to amend the fund rules;
 - 3) the amended text of the fund rules;
 - 4) the prospectus and the depositary contract if amendment of the fund rules results in amendments thereto;
 - 5) proof of payment of the state fee.
- (4) Amendments to fund rules shall be registered if the submitted documents comply with the requirements provided by law and the amendments do not prejudice the legitimate interests of the unit-holders.
- (5) After the registration of amendments to fund rules, the management company shall publish a notice concerning amendment of the fund rules in at least one daily national newspaper. The notice shall set out all the amendments to the fund rules.
- (6) Amendments to fund rules enter into force one month after publication of a corresponding notice unless the notice prescribes a later date for entry into force.

§ 37. Issue of units

- (1) Only the public issue of units is permitted.
- (2) Units are issued on a continuous basis and the volume of the issue of units and the number of units to be issued shall not be fixed.
- (3) Units are issued by a management company.
- (4) A unit may be issued only for the net asset value of a unit specified in subsection 44 (1) of this Act upon payment of money into the assets of a contractual fund. This subsection does not apply to the distribution of income by the issue of new units.

§ 38. Issue price of unit

- (1) Units are issued by a management company for the issue price.
- (2) The issue price of a unit is the net asset value of the unit to which the issue fee prescribed by the fund rules may be added.

§ 39. Redemption of units

- (1) At the request of a unit-holder, the management company shall redeem the holder's units. Only money shall be used as payment upon the redemption of units.
- (2) Upon the redemption of units, payment is made from the assets of the contractual fund within the time limit and pursuant to the procedure prescribed by the fund rules. The time limit shall not be longer than three months from submission of the request by the unit-holder unless otherwise provided by law.
- (3) Payments shall be made in the order that requests are submitted. Units and the rights and obligations attached thereto terminate from the date of payment therefor.

§ 40. Redemption price of units

A management company may redeem units only for the redemption price which is the net asset value of the unit from which the redemption fee prescribed by the fund rules may be deducted.

§ 41. Payment of issue fee and redemption fee

- (1) Fees for the issue and redemption of units are paid to the management company from the account of the person acquiring or redeeming units. Persons acquiring or redeeming units shall be notified in writing of the amount of the issue fee or redemption fee charged to their account.
- (2) Fees for the issue and redemption of units are determined as a percentage of the net asset value of a unit of the contractual fund.

§ 42. Publication of unit prices

A management company shall publicise the latest established issue prices and redemption prices for the units of contractual funds managed by the management company in at least one daily national newspaper each day that it issues or redeems units but not less than once every two weeks.

§ 43. Net asset value of contractual fund

- (1) The net asset value of a contractual fund is established on the basis of the market value of the securities and other things and rights belonging to the assets of the fund from which claims against the fund are deducted.
- (2) The specific procedure for establishment of the net asset value of contractual funds is established by the Minister of Finance.

§ 44. Net asset value of unit

- (1) The net asset value of a unit is equal to the net asset value of the contractual fund divided by the total number of units which have been issued but not redeemed at the time of calculation.
- (2) Until the net asset value of a contractual fund is established pursuant to the procedure provided for in § 43 of this Act, the net asset value of a unit is its nominal value.
- (3) Management companies shall establish the net asset value of units each working day.
- (4) Units are issued and redeemed on the basis of the net asset value of a unit which is established according to the fund rules either on the working day, the working day preceding or the working day following the day of receipt of the corresponding request.

§ 45. Suspension of redemption of units

(1) A management company may suspend payment of the redemption price for up to three months if the money in the accounts of a contractual fund is insufficient for payment of the redemption price, if the regular management of the fund may be harmed by the payment, if the securities or other assets of the fund cannot be promptly sold or if the interests of other unit-holders would be materially harmed thereby. A management company shall promptly notify the Financial Supervision Authority of a suspension of redemption and the reasons therefor.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The Financial Supervision Authority may require a management company to suspend the redemption of units if this is necessary in the legitimate interests of the unit-holders.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) A management company shall promptly publish a notice concerning a suspension of redemption in at least one daily national newspaper.

(4) No units shall be issued or redeemed during the time redemption is suspended.

(5) If the redemption of units is not resumed after expiry of the term specified in subsection (1) of this section or if the redemption of units is suspended again within one month after the redemption of units is resumed, the authority of the management company to manage the contractual fund terminates.

§ 46. Fees and expenses paid by contractual fund

(1) Fees to a management company for management of a fund (management fees) and to a depositary for provision of depositary services (depositary's charges) are payable by a contractual fund. The rate and method of calculation of such fees are prescribed by the fund rules, however they shall not be paid before the corresponding services are provided.

(2) Only the fees prescribed in the fund rules and directly associated with management of the fund are paid from a contractual fund.

(3) The total of fees and expenses specified in subsections (1) and (2) of this section shall not exceed the limit prescribed by the fund rules.

§ 47. Distributions to unit-holders

(1) Distributions may be made to unit-holders from a fund if this is prescribed by the fund rules. In such case, the fund rules shall prescribe the conditions and procedure for making distributions, and primarily the extent and frequency of distributions.

(2) Distributions to unit-holders are made in money pursuant to the fund rules through the depositary or by the issue of new units.

(3) A management company shall not give unit-holders any guarantees concerning income to be received by them from a contractual fund.

§ 48. Merger, division and transformation

The merger, division or transformation of a contractual fund is not permitted.

§ 49. Transfer of management

(1) A management company may upon agreement with another management company transfer management of a contractual fund to the other management company.

(2) A transfer of management of a contractual fund shall be concorded in advance with the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) In order to obtain approval for a transfer of management of a contractual fund, the management company shall submit the following documents and information to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) an application;

2) the contract for transfer of management of the fund;

3) proof of payment of the state fee;

4) other documents or information prescribed pursuant to the procedure specified in subsection (7) of this section.

(4) A transfer of management of a contractual fund shall be approved if the legitimate interests of the unit-holders are sufficiently protected.

(5) The management company shall publish a notice concerning the transfer of management of a contractual fund in at least one daily national newspaper after obtaining concordance.

(6) The rights and obligations arising from management of a contractual fund transfer to the new management company at the time prescribed by the management transfer contract but not before one month after publication of the notice specified in subsection (5) of this section.

(7) The specific procedure for the transfer of management of contractual funds is established by the Minister of Finance.

§ 50. Transfer of management authority to depositary

(1) If the authority of a management company to manage a contractual fund terminates on grounds other than that provided for in subsection 49 (1) of this Act, management of the fund transfers to the depositary of the fund. A depositary shall promptly give notice of the transfer of management of a fund in at least one daily national newspaper.

(2) Upon termination of the authority to manage a contractual fund, a management company shall promptly transfer management and documents of the fund to the depositary. In such a case, the depositary has, in the management of the fund, all rights and obligations of the management company unless otherwise provided by law, the fund rules or the depositary contract. A depositary is not permitted to issue or redeem units during the time the depositary manages the fund.

(3) A depositary shall transfer management of a contractual fund to another management company within three months after transfer of the authority to manage the contractual fund to the depositary. With the permission of the Financial Supervision Authority, this deadline may be extended to up to six months at the request of the depositary. The provisions of § 49 of this Act apply to such transfer of management of a fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 51. Liquidation

(1) If transfer of a fund is not possible, the depositary shall liquidate the fund pursuant to the procedure prescribed in this Act and in the fund rules.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(2) No units shall be issued or redeemed, and no other distributions shall be made to the unit-holders during liquidation except in the case provided for in § 54 of this Act.

(3) A depositary is liable for damage caused to the unit-holders, the management company and creditors of a contractual fund by failure to perform or unsatisfactory performance of its duties during liquidation.

(4) If a depositary does not complete the liquidation of a contractual fund within six months after transfer of management thereof to the depositary, the management board of the Financial Supervision Authority may appoint liquidators who shall complete liquidation of the fund by the deadline specified by the Director General. The provisions of subsections (1) and (2) of this section and §§ 52–55 of this Act correspondingly apply to liquidation.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 52. Notice of liquidation

(1) A depositary shall promptly notify the Financial Supervision Authority of the commencement of liquidation and shall publish a corresponding notice in at least one daily national newspaper.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) A notice of liquidation shall set out the term during which the creditors of the contractual fund are to submit their claims against the fund. The term shall not be shorter than two months after publication of the notice.

§ 53. Liquidation proceeding

(1) Upon liquidation of a contractual fund, the depositary shall transfer the assets of the fund as soon as possible and in accordance with the interests of the unit-holders, shall collect the debts of the fund, and satisfy the claims of creditors of the fund including performance of the obligations of the fund prescribed in the fund rules with respect to the management company and the depositary.

(2) If a known creditor has not submitted a claim or the due date for fulfilment of the claim of a creditor has not arrived and the creditor does not accept fulfilment, the money belonging to the creditor shall be deposited with the depositary.

(3) Up to 2 per cent of the net asset value of the fund as of the date that liquidation of the fund is commenced may be used from a contractual fund to cover the expenses of liquidation of the fund. If liquidation of a fund commences after the deadline provided for in subsection 50 (3) of this Act, the net asset value of the fund on the latest date by which the liquidation should have commenced is taken as the basis for calculation.

(4) If during liquidation it becomes evident that a contractual fund is insolvent, the management company shall be liable for all claims against the fund which are not satisfied except claims which arose after the transfer of management of the fund to the depositary.

(5) During liquidation of a contractual fund, the depositary may only conclude transactions on behalf of the fund which are necessary for liquidation of the fund.

§ 54. Distribution of assets

(1) After performance of all acts specified in § 53 of this Act, a depositary shall distribute the assets remaining after liquidation among the unit-holders according to the number of units owned by them. Payments to unit-holders may only be made in money. A unit and the rights and obligations arising therefrom are deemed to be terminated from the date on which payments are made.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

(2) A depositary shall publish a notice concerning distribution of money in at least one daily national newspaper or send the corresponding notice by registered mail to all the unit-holders at the addresses known to the depositary. A notice shall set out the amount to be distributed per unit and where, how and during what period the unit-holders will receive their money.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(3) If a unit-holder does not withdraw the unit-holder's money on time and it cannot be delivered to the unit-holder, the amount to be returned shall be deposited with the depositary.

§ 55. Liquidation report

Within one month after completion of liquidation, a depositary shall file a report with the Financial Supervision Authority concerning liquidation of a contractual fund in accordance with the requirements established by the Minister of Finance.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

Chapter 4

Fund Founded as Public Limited Company

§ 56. Application of provisions for public limited company

The provisions of law regarding public limited companies apply to the foundation, activities and dissolution of a fund founded as a public limited company unless otherwise provided by this Act.

§ 57. Activity

(1) The only area of activity of a fund founded as a public limited company shall be the investment of money received from the public issue of stock into assets specified in § 101 of this Act in order to generate income.

(2) A fund founded as a public limited company may operate in its area of activity only with the assistance of a management company. A fund founded as a public limited company shall conclude a management contract with a management company for this purpose.

(3) A fund founded as a public limited company which has issued stocks publicly shall not continue its activities as a public limited company which is not a fund.

§ 58. Foundation

(1) A fund being founded as a public limited company may be founded only without stock subscription.

(2) The foundation agreement of a fund founded as a public limited company shall, in addition to that provided for in the Commercial Code, include the business name of the management company and the business name of the depositary.

(3) By entry into the foundation agreement of a fund founded as a public limited company, the founders also approve the management contract and depositary contract on behalf of the fund.

§ 59. Articles of association

(1) The articles of association of a fund founded as public limited company shall, in addition to that provided for in the Commercial Code, set out the following information:

1) the objective of the activities and the fundamental principles of the investment policy of the fund, which shall indicate investments into different asset classes (stocks, bonds, money-market instruments, deposits, immovables and other assets), limitations on investment and specialisation in geographical or industrial sectors;

2) limits on fees payable to the members of the supervisory board or management board, or the director;

3) the procedure for publication of the activities and presentation of reports of the fund.

(2) Stock capital shall be specified in the articles of association of a fund as a minimum and maximum capital whereupon the minimum capital may be less than one-quarter but not less than one-tenth of the maximum capital.

§ 60. Concordance of foundation

(1) The foundation of a fund founded as public limited company shall be concorded with the Financial Supervision Authority before entry of the fund in the commercial register.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) In order to concord the foundation of a fund founded as a public limited company, the fund shall submit the following documents to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) an application;

2) the foundation agreement;

3) the articles of association;

4) the resolution of the management company concerning conclusion of the management contract;

5) the management contract;

6) the depositary contract;

7) the names of the members of the supervisory board and management board, and of the procurator and auditor of the depositary;

8) information on the members of the supervisory board and management board, which shall set out each member's given name and surname, personal identification code or date of birth in the absence of a personal identification code, residence, educational background, a complete list of places of employment and positions held during the last five years and, in the case of members of the management board, a description of their duties;

9) proof of payment of the state fee.

(3) The foundation of a fund being founded as a public limited company shall be concorded if all documents specified in subsection (2) of this section and the members of the supervisory board and management board of the fund comply with the requirements provided by law.

(4) The resolution on concordance of the foundation of a fund being founded as a public limited company shall be appended to the application for entry of the fund in the commercial register.

(5) If there are changes in the information specified in clause (2) 8) of this section, the management company shall promptly submit updated information to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 61. Concordance of amendments to articles of association

(1) Amendments to the articles of association of a fund founded as a public limited company shall be concorded with the Financial Supervision Authority before entry in the commercial register.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) In order to concord amendments to the articles of association of a fund founded as a public limited company, the fund shall submit the following documents to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
- 2) the resolution to amend the articles of association;
- 3) the amendments to and the amended text of the articles of association;
- 4) proof of payment of the state fee.

(3) Amendments to the articles of association of a fund founded as a public limited company shall be concorded if all documents specified in subsection (2) of this section comply with the requirements provided by law.

(4) The resolution on concordance of amendments to the articles of association of a fund founded as a public limited company shall be appended to the application for entry of the amendments to the articles of association of the fund in the commercial register.

§ 62. Specifications for competence of general meeting

(1) In addition to that provided for in the Commercial Code, the general meeting of a fund founded as a public limited company is competent to decide on entry into management contracts and depositary contracts and on amendment and termination thereof unless otherwise provided by this Act.

(2) A resolution specified in subsection (1) of this section is adopted if at least two-thirds of the votes represented at the general meeting are in favour. The articles of association may prescribe a greater majority requirement.

§ 63. Specifications for competence of supervisory board

(1) By a resolution of the general meeting, the right to adopt resolutions specified in subsection 62 (1) of this Act may be transferred to the supervisory board for a specified term if so prescribed by the articles of association of a fund. The term shall not exceed three years. In such case, the articles of association shall prescribe the method of calculation and the rate of fees to be paid to the management company and the depositary, and a list and method of calculation of expenses to be covered by the fund.

(2) If the articles of association grant the supervisory board the right to increase the stock capital of the fund, the provisions of subsection 347 (3) and the second sentence of subsection 349 (2) of the Commercial Code do not apply. Upon undersubscription of stocks, the supervisory board has the right to extend the subscription term or cancel stocks which are not subscribed for during the subscription term. If stocks are subscribed for by the new deadline given by the supervisory board, the subscription is deemed to be valid.

(3) A resolution of the supervisory board provided for in subsections (1) and (2) of this section is adopted if over two-thirds of the members of the supervisory board participating in the meeting vote in favour or, if a resolution of the supervisory board is made pursuant to the procedure provided for in § 323 of the Commercial Code, if more than two-thirds of the members of the supervisory board vote in favour. The articles of association may prescribe a greater majority requirement.

§ 64. Supervision by management board

The management board of a fund founded as a public limited company shall, to the extent and pursuant to the procedure prescribed by the management contract, exercise supervision over the activities of the management company which are related to the fund.

§ 65. Requirements for members of directing bodies and auditor

(1) The requirements provided for in subsections § 13 (1)–(3) of this Act apply to the members of the supervisory board and management board of a fund founded as a public limited company.

(2) The members of the supervisory board and management board and employees of the management company and the depositary shall collectively or individually comprise not more than one-third of the members of the supervisory board or management board of a fund.

(3) Members of the supervisory board or management board, and the procurator of the fund, management company or the depositary shall not be an auditor of a fund founded as a public limited company.

§ 66. Stocks of fund founded as public limited company

(1) A fund founded as a public limited company shall only have stocks of one class, which have the same nominal value and grant their holders equal rights. Shares shall be entered in the Estonian Central Register of Securities.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 57, 373)

(2) A fund founded as a public limited company shall not issue preferred stocks or convertible bonds, and shall not give any guarantees concerning income to be received from stocks.

(3) Stocks of a fund founded as a public limited company may be freely transferred. The provisions of subsection 229 (2) of the Commercial Code do not apply to the transfer of stocks of a fund.

(4) A fund founded as a public limited company shall not own or acquire its own stocks.

§ 67. Issue of stocks

(1) After foundation of a fund as a public limited company, only the public issue of the stocks of the fund is permitted.

(2) The primary distribution of each issue of stocks of a fund founded as a public limited company shall be for a specified term and shall last not more than three months.

(3) The selling price of stocks of a fund founded as a public limited company shall not be changed during an issue.

§ 68. Payment for stocks

- (1) Upon issue, stocks shall be immediately paid for in full.
- (2) Upon issue, stocks may only be paid for by monetary contribution. Stock capital may also be increased by a bonus issue.

§ 69. Net asset value of fund and stock of fund founded as public limited company

- (1) The net asset value of a fund founded as a public limited company is established on the basis of the market value of the securities, immovables and other things and rights belonging to the fund from which claims against the fund are deducted. The specific procedure for establishment of the net asset value of funds is established by the Minister of Finance.
- (2) The net asset value of a stock of a fund founded as a public limited company is equal to the net asset value of the fund divided by the total number of stocks issued at the time of calculation.
- (3) The management company of a fund founded as a public limited company shall establish and publish the net asset value of the fund and the stocks pursuant to the procedure and at the time provided for in the articles of association of the fund but not less than every thirty days.

§ 70. Management of assets of fund founded as public limited company

The assets of a fund founded as a public limited company are managed and disposed of by a management company to the extent prescribed by law and the management contract.

§ 71. Reimbursement of management fee and expenses

- (1) A fund founded as a public limited company pays the management company a management fee prescribed by the management contract for management of the assets of the fund founded as a public limited company.
- (2) A management company may pay, from a fund founded as a public limited company, only those expenses related to management of the fund which are directly related to management of the fund and are prescribed by the management contract.
- (3) A management company shall not pay fees and expenses other than those provided for in subsections (1) and (2) of this section from a fund founded as a public limited company.

§ 72. Management contract

- (1) A management contract is a contract entered into by a management company and a fund founded or being founded as a public limited company whereby the fund undertakes to transfer its assets to the disposal of the management company and the management company undertakes to invest the assets of the fund through a depository pursuant to the articles of association of the fund with the objective of generating income for the fund.
- (2) The entry into, amendment and termination of a management contract by a management company shall be decided by the supervisory board of the management company.
- (3) A management contract is entered into in writing. A management contract shall prescribe:
 - 1) the term of the contract;
 - 2) the rights and obligations of the parties;

- 3) the rate of and procedure for payment of the management fee and the procedure for payment of other expenses related to management of the fund;
- 4) the frequency and procedure for reporting on management of the assets of the fund by the management company to the fund;
- 5) the obligations and liabilities of the parties upon violation of the contract;
- 6) the procedure for resolution of disputes;
- 7) the conditions and procedure for amendment and termination of the contract;
- 8) other terms and conditions provided by law or arising from the articles of association of the management company or the fund.

(4) Other terms and conditions which are not contrary to legislation may also be prescribed by management contracts.

(5) A public issue of stocks of a fund founded as a public limited company without a management contract is void.

(6) The stockholders of a fund founded as a public limited company have a right to review the management contract at the seat of the fund and to obtain a copy of the management contract at the expense of the management company.

§ 73. Concordance of management contract

(1) A management contract and amendments thereto enter into force after concordance with the Financial Supervision Authority. Upon foundation of a fund as a public limited company, the management contract enters into force as of the entry of the fund in the commercial register.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) Upon foundation of a fund as a public limited company, the management contract shall be concorded pursuant to the provisions of § 60 of this Act.

(3) In order to concord amendments to a management contract, a fund founded as a public limited company shall submit the following documents to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
- 2) the resolution of the general meeting or supervisory board of the fund to amend the management contract;
- 3) the resolution of the supervisory board of the management company to amend the management contract;
- 4) the amendments to and amended text of the management contract;
- 5) proof of payment of the state fee.

(4) Amendments to a management contract shall be concorded if all documents specified in subsection (3) of this section comply with the requirements provided by law.

(5) After the concordance of amendments to the management contract, a fund shall promptly publish a corresponding notice in at least one daily national newspaper. The notice shall set out all amendments to the contract.

(6) The provisions of subsections (3)–(5) of this section also apply to entry into a new management contract.

§ 74. Termination of management contract

(1) A management contract terminates:

1) upon expiry of the term of the management contract;

2) upon termination by agreement of the parties;

3) in the case of a management contract with an unspecified term, upon one month's advance notice of cancellation by the fund and upon three months' advance notice of cancellation by the management company unless the contract prescribes a longer term;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

4) upon termination of the authority of the management company to manage the fund;

5) upon dissolution of the fund or the management company;

6) upon the declaration of bankruptcy of the fund or the management company or abatement of bankruptcy proceedings commenced against either due to a lack of assets to cover the expenses of the bankruptcy proceedings;

7) in other cases prescribed by law or the management contract.

(2) A fund founded as a public limited company shall promptly notify the Financial Supervision Authority of the termination of a management contract and shall publish a corresponding notice in at least one daily national newspaper.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 75. Transfer of management upon termination of management contract

(1) Upon termination of a management contract, a fund founded as a public limited company shall conclude a new management contract within one month except if a management contract terminates upon dissolution of the fund, upon the declaration of bankruptcy of the fund or upon abatement of bankruptcy proceedings commenced against the fund.

(2) If a fund founded as a public limited company does not conclude a new management contract within the term specified in subsection (1) of this section, the Financial Supervision Authority shall commence compulsory dissolution of the fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 76. Merger, division and transformation of fund founded as public limited company

(1) A fund founded as a public limited company shall not be transformed into a commercial undertaking of a different type.

(2) A fund founded as a public limited company may only merge with another fund founded as a public limited company.

(3) The division of a fund founded as a public limited company is not permitted.

(4) Prior permission of the Financial Supervision Authority is required for the merger of funds founded as public limited companies. The conditions and procedure for granting permission shall be established by the Minister of Finance.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 77. Liquidation report or bankruptcy report

The liquidators or trustee in bankruptcy of a fund founded as a public limited company shall, promptly after termination of the corresponding proceeding, present a report in accordance with the requirements established by the Minister of Finance to the Financial Supervision Authority; in addition, the liquidators shall present the final balance sheet of the fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

Chapter 5

Depository

§ 78. Activities of depository

(1) A depository:

- 1) holds the money, securities and other assets of a fund pursuant to a depository contract;
- 2) ensures that the issue and redemption of units is effected pursuant to the requirements prescribed by law and the fund rules;
- 3) ensures that the net asset value of a fund and its units or stocks is calculated pursuant to law, other legislation and the fund rules or articles of association of the fund;
- 4) executes the orders of a management company or a fund in so far as they are not contrary to this Act, other legislation, the fund rules or articles of association of the fund, or the depository contract;
- 5) verifies that the payments from a contractual fund provided for in § 47 of this Act are made and new units are issued out of the income of the fund in accordance with this Act and the fund rules;

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

6) ensures that all transfers (transactions) upon the transfer of fund assets and acquisition of assets for a fund are effected in full and within the term prescribed by legislation or, in the absence of a term, within the term ordinarily necessary for transfers.

(2) A depository shall act independently of the management company and in the interests of a fund founded as a public limited company or of the unit-holders of a contractual fund.

§ 79. Transactions with fund assets

(1) Transactions with the assets of a fund shall be performed only through a depository pursuant to the procedure prescribed by the depository contract.

(2) A depository shall open a separate bank account for each contractual fund managed by the depository.

(3) Money from the issue of units and stocks and the transfer of the assets of the fund, and dividends, interest and other income from the assets of the fund are deposited in the bank account of the fund opened with the depository.

(4) A depositary may make payments from the bank account of a fund only on the order of the management company or the fund in the case of a fund founded as a public limited company, pursuant to law, the depositary contract, management contract, the fund rules in the case of a contractual fund or the articles of association in the case of a fund founded as a public limited company.

§ 80. Separation of assets

(1) A depositary shall keep the assets of funds, except for the money in the bank accounts of funds, separate from its own assets and shall keep separate accounting of the assets of funds.

(2) The assets of a fund, except for the money in the bank account of the fund, do not form a part of the bankruptcy estate of the depositary, and the claims of creditors of the depositary shall not be satisfied out of such assets.

§ 81. Depositary's charges and expenses

A depositary may withdraw a fee for provision of depositary services and reimbursement of the expenses incurred upon provision of depositary services from a fund only on the order of the management company. An order is not required if the fund is managed by the depositary.

§ 82. Rights and obligations of depositary

(1) A depositary has the right and duty to submit a claim in its own name on behalf of unit-holders against a management company if submission of such claim is reasonable. A depositary is not required to submit such claim if the unit-holders have already submitted a claim.

(2) A depositary has the right and duty to present an objection in its own name if compulsory execution is performed against the assets of a fund in order to cover a claim for which the assets of the fund are not subject to liability.

(3) A depositary may demand a reasonable fee from a management company for the activities specified in subsections (1) and (2) of this section and reimbursement of expenses related to such activities.

§ 83. Notification requirement

If the activities of a management company are, to a depositary's knowledge, contrary to legislation, the fund rules, the articles of association of the fund, or the depositary contract or management contract, the depositary is required to notify promptly the Financial Supervision Authority and the management board of the fund if the fund is founded as a public limited company or, in the case of a contractual fund, the supervisory board of the management company.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 84. Assignment of rights and duties of depositary

(1) With the permission of the Financial Supervision Authority, a depositary has the right to enter into agreements with third persons for the holding of fund assets and the performance of transactions therewith, pursuant to the procedure prescribed in the depositary contract.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The entry into agreements specified in subsection (1) of this section does not relieve the depositary of the responsibility to perform the obligations prescribed by law and the depositary contract.

§ 85. Liability of depositary

A depositary is liable upon violation of its obligations for damage caused thereby to a fund, unit-holders and a management company.

§ 86. Depositary contract

(1) For the purposes of this Act, a depositary contract means a contract entered into by a fund founded as a public limited company and a depositary, or by a management company of a contractual fund on behalf of the unit-holders and a depositary, pursuant to which the assets of the fund are entrusted with the depositary for safe-keeping and the depositary undertakes to perform transactions therewith pursuant to the orders of the management company and the terms and conditions of the depositary contract.

(2) A depositary contract is entered into in writing. A depositary contract shall prescribe:

- 1) the term of the contract;
- 2) the rights and obligations of the parties;
- 3) the procedure for transactions;
- 4) the amount and procedure for payment of the fee payable to the depositary;
- 5) the extent of and procedure for payment of expenses incurred upon the provision of depositary services;
- 6) the obligations and liabilities of the parties upon violation of the contract;
- 7) the procedure for resolution of disputes;
- 8) the conditions and procedure for amendment and termination of the contract, including the conditions for the holding and transfer of assets after termination of the depositary contract;
- 9) other terms and conditions provided by law or arising from the fund rules or articles of association of the fund.

(3) A depositary contract may also prescribe other terms and conditions which are not contrary to legislation.

(4) The issue of units or stocks without a depositary contract is void, except upon the foundation of a fund founded as a public limited company.

§ 87. Concordance of depositary contract

(1) A depositary contract and amendments thereto enter into force after concordance with the Financial Supervision Authority. Upon foundation of a fund founded as a public limited company, the depositary contract enters into force upon entry of the fund in the commercial register.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) Upon foundation of a fund, the depositary contract shall be concoded pursuant to the provisions of § 35 or § 60 of this Act.

(3) In order to concord amendments to a depositary contract, the management company of a contractual fund or a fund founded as a public limited company shall submit the following documents to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
 - 2) the resolution of the general meeting of the supervisory board of the fund to amend the depositary contract if the fund is founded as a public limited company;
 - 3) the amendments to and amended text of the depositary contract;
 - 4) proof of payment of the state fee.
- (4) Amendments to a depositary contract shall be concorded if all documents specified in subsection (3) of this section comply with the requirements provided by law.
- (5) The provisions of subsections (1), (3) and (4) of this section also apply to entry into a new depositary contract but instead of the documents specified in clause (3) 3), the new depositary contract, the names of the members of the supervisory board and management board, and of the procurator and auditor of the fund shall be submitted.

§ 88. Termination of depositary contract

(1) A depositary contract terminates:

- 1) upon expiry of the term of the depositary contract;
- 2) upon termination by agreement of the parties;
- 3) in the case of a depositary contract with an unspecified term, upon cancellation by one party to the contract whereupon three months' advance notice of cancellation shall be given unless the contract prescribes a longer term for advance notice;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- 4) upon revocation or expiry of the activity licence of the depositary;
- 5) upon amendment of the activity licence of the depositary if a credit institution operating as a depositary can no longer conclude depositary transactions pursuant to the amended activity licence;
- 6) upon dissolution of the depositary or the fund;
- 7) upon the declaration of bankruptcy of the depositary or the fund, or abatement of bankruptcy proceedings commenced against either due to a lack of assets to cover the expenses of the bankruptcy proceedings;
- 8) in other cases provided by law or the depositary contract.

(2) A depositary contract does not terminate in the case provided for in § 50 of this Act.

§ 89. Entry into new depositary contract

- (1) Upon termination of a depositary contract, the management company of a contractual fund or a fund founded as a public limited company shall, within two weeks, enter into a new depositary contract, except if a depositary contract terminates upon dissolution of the fund, upon the declaration of bankruptcy of the fund or upon abatement of bankruptcy proceedings commenced against the fund;
- (2) If a fund founded as a public limited company does not enter into a new depositary contract within the term specified in subsection (1) of this section, the Financial Supervision Authority shall commence compulsory dissolution of the fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) If the management company of a contractual fund does not enter into a new depositary contract within the term specified in subsection (1) of this section, liquidators appointed by the Financial Supervision Authority shall liquidate the contractual fund pursuant to the procedure provided for in §§ 51–55 of this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 90. Obligation to replace depositary

The Financial Supervision Authority may, in order to guarantee the legitimate interests of the unit-holders, require the management company of a contractual fund to replace the depositary if the depositary does not perform the obligations arising from this Act and the depositary contract.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

Chapter 6

Public Issue and Prospectus

§ 91. Application of Securities Market Act (RT I 1993, 35, 543; 1995, 22, 328; 1996, 26, 528; 1997, 34, 535; 1998, 61, 979)

The provisions of the Securities Market Act regarding the public issue of securities apply to a public issue of units or stocks and the prospectus of a fund unless otherwise provided for in this Act.

§ 92. Specifications for registration of issue

Upon the foundation of a contractual fund, the issue of units is registered together with the fund rules pursuant to the provisions provided for in § 35 of this Act.

§ 93. Prospectus

(1) Units or stocks of a fund shall not be publicly issued without a prospectus.

(2) The prospectus of a contractual fund shall be approved by the management board of the management company, and the prospectus of a fund founded as a public limited company shall be approved by the management board of the fund.

(3) The prospectus of a contractual fund shall be signed by the members of the management board of the management company, and the prospectus of a fund founded as a public limited company shall be signed by the members of the management board of the fund.

§ 94. Prospectus requirements

(1) The prospectus of a fund shall contain the information provided for in §§ 95–98 of this Act.

(2) The fund rules or articles of association of the fund, the last approved annual report and semi-annual report, if this is approved after the annual report, shall be appended to the prospectus of a fund.

(3) The information specified in §§ 95–98 of this Act need not be set out in a prospectus if it is contained in the fund rules or articles of association of the fund.

(4) In addition to the mandatory information provided by law, a prospectus may contain other information which is not contrary to legislation.

§ 95. Information contained in prospectus on fund

(1) A prospectus shall contain the following information on a fund:

- 1) the name of the fund if it is a contractual fund or the business name of the fund if it is founded as a public limited company;
- 2) a notation indicating whether the fund is a contractual fund or founded as a public limited company;
- 3) the location or seat of the fund;
- 4) the date of foundation or establishment of the fund;
- 5) a brief description of the tax system to be applied to the fund, and to the stockholders or unit-holders of the fund;
- 6) the beginning and end date of the financial year of the fund;
- 7) the name of the auditor of the fund;
- 8) the rights attached to stocks or units of the fund and the procedure for exercising such rights;
- 9) exchanges and other regulated or public securities markets where the units or stocks of the fund are traded;
- 10) the conditions and procedure for issue and sale of units or stocks of the fund;
- 11) the procedure for distribution and application of income of the fund, and for the making of distributions and payment of dividends;
- 12) a description of investment objectives, including a description of financial objectives (for example capital growth, or distribution of income and payment of dividends), a description of investment policy (for example specialisation by geographical or industrial sectors), and possible limitations on investment policy;
- 13) a risk analysis based on the investment policy;
- 14) the admissibility of and procedure for borrowing on behalf of the fund;
- 15) the frequency and method of calculation and publication of the net asset value of the fund if it is a contractual fund;
- 16) the method for determination, calculation and payment of management charges, depositary's charges and other fees payable;
- 17) the procedure for publication of the activities of the fund;
- 18) the places where fund reports may be obtained;
- 19) the conditions for dissolution of the fund.

(2) In addition to that specified in subsection (1) of this section, the prospectus of a contractual fund shall set out the following information:

- 1) the conditions and procedure for issue and redemption of units;
- 2) the frequency and method of calculation of the issue price and redemption price of units;

- 3) the frequency and places of publication of the issue price and redemption price of units;
- 4) the prerequisites, procedure and conditions for suspension of the redemption of units;
- 5) information on fees related to the issue and redemption of units.

(3) In addition to that specified in subsection (1) of this section, the prospectus of a fund founded as a public limited company shall set out the following information:

- 1) the stock capital of the fund;
- 2) the list and a brief overview of the members of the management board and supervisory board of the fund;
- 3) the frequency and method of calculation of the net asset value of the stocks of the fund;
- 4) the frequency and places of publication of the net asset value of the stocks of the fund;
- 5) the method of determination and payment of remuneration to the members of the directing bodies of the fund;
- 6) the volume of the issue and the number, nominal value and sale price of stocks being issued;
- 7) the information specified in clause 6) of this section concerning previous issues of stocks of the fund.

§ 96. Information contained on management company in prospectus

A prospectus shall contain the following information on the management company;

- 1) the business name and registration number;
 - 2) the seat;
 - 3) the date of foundation;
 - 4) the amount of stock capital;
 - 5) the names of stockholders who hold more than 10 per cent of the stocks or more than 10 per cent of the votes represented by stocks;
 - 6) a list and brief introduction of the members of the management board and supervisory board;
 - 7) a list and brief overview of fund managers employed by the management company;
- (10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)
- 8) a list and outlines of other funds managed by the management company.

§ 97. Information contained on depositary in prospectus

A prospectus shall contain the following information on the depositary:

- 1) the business name and registration number;
- 2) the seat;
- 3) the date of foundation;

4) a list and brief overview of the members of the management board of the depositary.

§ 98. Information contained on investment adviser in prospectus

If the services of an investment adviser are used in the investment of the assets of a fund and these services are paid for by the fund, the following shall be set out in the prospectus:

- 1) the name of the adviser;
- 2) the location or residence of the adviser;
- 3) the terms and conditions of the contract entered into with the adviser which may be materially relevant to the interests of the stockholders or unit-holders of the fund.

§ 99. Announcement of issue

At least the following information shall be published in an announcement of an issue of stocks or units of a fund:

- 1) the name or business name and location or seat of the fund;
- 2) the business name and seat of the management company;
- 3) the business name of the depositary;
- 4) the volume of the issue of stocks of the fund if the fund is founded as a public limited company;
- 5) the commencement date and closing date of distribution of the stocks of the fund if the fund is founded as a public limited company;
- 6) the commencement date of distribution of units of the fund if the fund is a contractual fund;
- 7) the nominal value and sale price of stocks or units of the fund;
- 8) the places where prospectuses and stocks or units of the fund are distributed.

§ 100. Review of documents of fund

Before stocks or units of a fund are purchased, interested persons shall be given an opportunity to review the prospectus, the fund rules or articles of association of the fund, the last annual report and semi-annual report if it is published after the last annual report.

Chapter 7

Investment of Assets of Fund

§ 101. Investment of assets

(1) The assets of a contractual fund may only be invested in the securities provided for in § 2 of the Securities Market Act (hereinafter securities) and the deposits of credit institutions, taking into account the limitations provided for in this Act.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(2) In addition to the assets specified in subsection (1) of this section, the assets of a fund founded as a public limited company may also be invested in shares of private limited companies, immovables and the assets specified in subsection (3) of this section, in observance of the limitations provided by this Act.

(3) Other assets necessary for the day-to-day activities of the fund, up to 5 per cent of the market value of the assets of the fund, may be acquired or owned by a fund founded as a public limited company.

§ 102. Investment in securities

(1) The assets of a fund may only be invested in securities which are freely transferable and comply with one of the following conditions:

1) the securities are traded on a regulated securities market of Estonia or a State which is a Contracting Party to the EEA Agreement;

2) the securities are traded on a regulated securities market of a state not specified in clause 1) of this subsection which is a member state of the International Organisation of Securities Commissions (IOSCO) and specified in the rules or articles of association of the corresponding fund;

3) the securities are not traded on regulated securities markets of states provided for in clauses 1) or 2) of this subsection but, pursuant to their conditions of issue, the securities shall be quoted on the stock exchange of a state specified in clause 1) of this subsection within twelve months after issue.

(12.09.2001 entered into force 01.10.2001 - RT I 2001, 79, 480)

(11) In addition to the provisions of subsection (1) of this section, the assets of a fund may be invested in freely transferable securities which are specified in clause 2 (1) 5) of the Securities Market Act and do not comply with the conditions provided for in subsection (1) of this section.

(11.02.2003 entered into force 08.03.2003 - RT I 2003, 23, 133)

(2) (Repealed - 20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(3) The assets of a contractual fund, up to 10 per cent of the market value of the assets of the fund, may be invested in freely transferable securities not specified in subsections (1) and (11) of this section.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131; 12.06.2003 entered into force 19.07.2003 - RT I 2003, 51, 355)

(4) The assets of a fund founded as a public limited company, up to a total of 30 per cent of the market value of the assets of the fund, may be invested in securities not specified in subsection (1) of this section and shares of private limited companies.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(5) The assets of a contractual fund shall not be invested in securities which grant rights with regard to precious metals.

(6) No transactions with derivative instruments shall be performed on behalf of a fund except to the extent and pursuant to the procedure provided for in §§ 107 and 108 of this Act.

§ 103. Risk-spreading

(1) In acquiring and transferring assets on behalf of a fund, a management company shall ensure that the investments of the fund are sufficiently spread between different securities and other assets.

(2) The value of securities issued by one person belonging to the assets of a fund shall total not more than 10 per cent of the market value of the assets of the fund.

(3) If the value of securities issued by one person in the assets of a contractual fund is more than 5 per cent of the market value of the assets of the contractual fund, the aggregate value of such securities shall total not more than 40 per cent of the market value of the assets of the contractual fund.

(4) The value of securities issued by persons belonging to the same group of companies shall total not more than 20 per cent of the market value of the assets of a fund.

(5) The limitations provided for in subsections (2)–(4) of this section also apply to holding and acquiring shares of private limited companies on behalf of a fund.

(6) The limitations provided for in subsections (2)–(4) of this section do not apply in the cases provided for in § 104 of this Act.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

§ 104. Requirements for acquisition and holding of securities issued or guaranteed by state

(1) The value of securities issued by one person shall total not more than 25 per cent of the market value of the assets of a fund if the issuer or guarantor is:

1) the Republic of Estonia;

2) a Member State of the European Union;

3) another state which guarantees conditions for investment with a degree of risk similar or smaller than the states specified in clauses 1) or 2) of this subsection and which is set out in the fund rules or articles of association of the fund.

(2) The assets of a fund, over 25 per cent but not more than 50 per cent of the market value of the assets of the fund, may be invested in the securities of or guaranteed by the persons specified in subsection (1) of this section if:

1) this is approved by the Financial Supervision Authority; and

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

2) the assets of the fund comprise securities issued or guaranteed by such person during at least six different issues, and the value of securities acquired in a single issue totals not more than 30 per cent of the market value of the assets of the fund; and

3) the fund rules or articles of association of the fund, and the prospectus set out the issuers whose issues or the issues guaranteed by whom are targets for investment or are subject to investment in which more than 25 per cent of the assets of the fund are invested.

(3) The list of states specified in clause (1) 3) of this section is approved by the Minister of Finance.

§ 105. Limitations on participation

(1) A fund shall not be a partner of a general partnership or limited partnership, a member of a non-profit association or association, or a founder of a foundation. This limitation does not apply to membership in an apartment association if the fund owns an apartment ownership.

(2) Participation in the management company that manages a fund or in its subsidiary shall not be acquired or held on behalf of the fund and securities issued by such persons shall not be acquired or held on behalf of the fund.

(3) Participation in companies belonging to the same group of companies as the management company of a fund and securities issued by such persons shall be acquired on behalf of the fund only through a stock exchange.

(4) It is prohibited on behalf of a contractual fund to acquire or hold, directly or indirectly, more than 10 per cent of the following in a single commercial undertaking:

- 1) the nominal value of the preferred stocks or convertible bonds;
- 2) the stock capital;
- 3) the votes represented by stocks.

(5) It is prohibited on behalf of funds managed by the same management company to acquire or hold, directly or indirectly, more than 25 per cent of the following in a single commercial undertaking:

- 1) the nominal value of the convertible bonds;
- 2) the stock capital or share capital;
- 3) the votes represented by stocks or shares.

(6) The provisions of this section concerning securities do not apply to investment in units of a fund.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

§ 106. Limitations on holding stocks and units of fund

(1) It is prohibited on behalf of a fund to acquire or hold the stocks or units of other funds managed by the management company of the fund, except if all of the following conditions are complied with:

- 1) the investment policies of the funds differ significantly;
- 2) such possibility is prescribed in the fund rules or articles of association of the fund;
- 3) this is approved by the Financial Supervision Authority;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

4) the management company does not charge a redemption fee or issue fee therefor.

(2) It is prohibited on behalf of a contractual fund to acquire or hold stocks or units of other funds which total more than 5 per cent of the market value of the assets of the fund.

(3) It is prohibited on behalf of a fund to acquire or hold more than 10 per cent of the units of another contractual fund.

§ 107. Requirements for transactions with derivative instruments

(1) For the purposes of this Act, derivative instruments are options and futures.

(2) For the purposes of this Act, an option is a right to purchase (call option) or sell (put option) securities or currency at an agreed time and agreed price (exercise price).

(3) For the purposes of this Act, a future is an obligation to purchase or sell securities or currency at an agreed time and agreed price (exercise price).

(4) A transaction with derivative instruments on behalf of a fund is permitted only for the purpose of managing risks due to fluctuations in the price of objects in the assets of the fund and upon compliance with all of the following conditions:

- 1) the possibility of such transaction is prescribed in the fund rules or articles of association of the fund;
- 2) the person with whom the transaction is conducted and the derivative instruments which are the object of the transaction comply with the requirements established by the Minister of Finance;
- 3) the objective valuation of the derivative instruments is ensured.

(5) Management companies shall not, on behalf of funds:

- 1) write put options;
- 2) acquire or write derivative instruments, the execution of which brings or may bring about violation of limitations on investment provided for in this Act;
- 3) acquire or write derivative instruments the execution of which is not covered by the securities or currency in the assets of the fund.

§ 108. Transactions permitted by fund rules or articles of association of fund

(1) A management company has the right to guarantee an issue of securities on behalf of a fund if this is expressly prescribed by the fund rules or articles of association of the fund, provided that the limitations on investment provided for in this Act are observed.

(2) A management company has the right on behalf of the fund to enter into contracts for the purchase of proprietary objects into the assets or for the sale of proprietary objects out of the assets with a specified term and specified price, if it is expressly prescribed in the fund rules or articles of association of the fund, within limitations on investment provided for in this Act. Specific requirements for such contracts, and the method of calculation of limitations on investment upon entry into such contracts, shall be established by the Minister of Finance.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979; 20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

(3) Obligations assumed by a fund through the transactions specified in subsection (2) of this section and § 107 of this Act shall together exceed not more than 20 per cent of the market value of the assets of the fund.

(4) The limitation provided for in subsection (3) of this section does not apply to a transaction entered into for the purposes of managing foreign exchange risks up to a total equivalent to the assets acquired on behalf of the fund in the currency in which the transaction is made.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

§ 109. Investment in deposits

(1) Credit institution deposits shall total not more than 25 per cent of the market value of the assets of a fund. Credit institution deposits may total more than 50 per cent of the market value of the assets of a contractual fund if this is prescribed in the fund rules.

(2) The assets of a fund deposited in a single credit institution shall total not more than 10 per cent of the market value of the assets of the fund.

(3) The provisions of this section do not apply to money in a bank account specified in subsection 79 (2) of this Act.

§ 110. Limitations on investment in immovables

- (1) A fund founded as a public limited company may only acquire immovables which are located in the state or states specified in the articles of association of the fund.
- (2) For the purposes of this Act, an immovable means land together with its essential parts, an apartment ownership, a right of superficies, a right of superficies in an apartment or a legal share thereof.
- (3) A fund shall invest not more than 25 per cent of the market value of its assets in immovables which are located in states which do not have a registration system for immovables which complies with the requirements in force in Estonia.
- (4) A fund investing in immovables may also acquire objects which are necessary for management of the immovables.
- (5) The acquisition cost of an immovable together with the acquisition costs of objects specified in subsection (4) of this section shall, at the time of acquisition, total not more than 15 per cent of the market value of the assets of the fund. This requirement applies if at least eighteen months have passed after the foundation of the fund.

§ 111. Restrictions on transfer

- (1) The assets of a fund shall not be transferred to:
 - 1) the management company of the fund;
 - 2) the members of the management board or supervisory board, or the procurator, fund managers or employees of the management company of the fund;
 - 3) the members of the management board or supervisory board, or the procurator of the fund;
 - 4) other funds managed by the management company of the fund, except the transfer of securities through a stock exchange at the market price as at the time of transfer.
- (2) The assets of a fund shall not be transferred to persons who have an equivalent economic interest with persons specified in clauses (1) 1)–3) of this section.
- (3) Assets shall not be acquired on behalf of a fund from persons specified in subsections (1) or (2) of this section.
- (4) Securities which at the time of entry into the transfer deed do not belong to the assets of a fund shall not be transferred on behalf of the fund.

§ 112. Restrictions on grant of loans and borrowing

- (1) It is not permitted on behalf of a fund:
 - 1) to issue bonds;
 - 2) to grant loans;
 - 3) to assume obligations arising from a contract of suretyship or guarantee contract;
 - 4) to borrow from the persons specified in subsections 111 (1) and (2) of this Act.

(2) Borrowing on behalf of a fund founded as a public limited company may total up to 25 per cent of the market value of the assets of the fund provided such possibility is prescribed by the articles of association of the fund.

(3) A management company may borrow on behalf of a contractual fund up to a total of 10 per cent of the net asset value of the fund provided such possibility is prescribed by the fund rules. The term of a loan taken on behalf of a contractual fund shall not exceed three months.

(4) Objects belonging to the assets of a fund shall not be pledged or in other way encumbered or granted as security except in the case where the objective is to secure a loan specified in subsections (2) and (3) of this section.

§ 113. Violation of requirements and compensation for damage

(1) Violation of the requirements specified in §§ 102–110 and subsections 112 (2) and (3) of this Act upon the conclusion of a transaction does not make such transaction void, however the management company shall compensate the fund or the unit-holders of the fund for damage caused by the violation.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The limitations provided for in § 103 of this Act do not apply for six months after registration of the fund rules of a contractual fund and for nine months after the entry of a fund founded as a public limited company in the commercial register. These limitations apply once the net asset value of a fund exceeds 10 million kroons.

(3) The limitations provided for in subsection 102 (3), subsections 103 (2)–(5), subsection 104 (1), subsection 106 (2), § 108 and subsections 109 (1) and (2) of this Act may be temporarily exceeded for reasons independent of the management company such as exercising a right of pre-emption to acquire securities, a bonus issue, a change in the market value of securities and other such reasons. In such case, the objective of the transactions performed on behalf of the fund shall be to cease exceeding the limitations specified in the previous sentence, taking into account the interests of the stockholders or unit-holders of the fund.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

(4) A management company is required to promptly notify the Financial Supervision Authority of violation and cessation of the violation of the requirements provided for in §§ 101–112 of this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

Chapter 8

Accounting, Reporting, Disclosure

§ 114. Requirements for accounting of fund

(1) The accounting and reporting of funds shall be organised pursuant to the Accounting Act (RT I 2002, 102, 600) unless otherwise provided for in this Act. The provisions of § 14, subsections 15 (2) and 18 (3) and §§ 25 and 26 of the Accounting Act do not apply to the accounting and reporting of contractual funds.

(11.02.2003 entered into force 08.03.2003 - RT I 2003, 23, 133)

(2) The accounting of a contractual fund is organised by the management company.

(3) The accounting of a contractual fund shall be kept separate from the accounting of the management company and other contractual funds.

(4) The financial year of a contractual fund is the financial year of its management company.

§ 115. Audit

- (1) A contractual fund is required to have an auditor who is the auditor of the management company.
- (2) The corresponding provisions of the Accounting Act, Commercial Code and other legislation concerning audits apply to the audit of contractual funds.
- (3) Before approval, the annual report of a contractual fund shall be audited by the auditor.
- (4) The auditor shall, among other things, monitor compliance of the activities of the fund with the requirements prescribed by this Act and the fund rules or articles of association of the fund.
- (5) The auditor is required to notify the Financial Supervision Authority immediately in writing of any circumstances revealed in the course of an audit which result or may result in:
 - 1) material violation of legislation regulating the activities of management companies and depositaries of funds;
 - 2) interruption of the activities of the management company or significant damage thereto;
 - 3) a situation or the risk of a situation arising in which the management company or depositary of the fund is unable to perform its obligations;
 - 4) a qualified report by the auditor concerning the annual accounts of the management company;
 - 5) an act by a member of the management board or supervisory board or an employee of the management company which causes or may cause significant proprietary damage to the management company, to unit-holders or shareholders of investment funds managed by the management company or to other clients.

(12.09.2001 entered into force 01.10.2001 - RT I 2001, 79, 480)

- (6) The duty to maintain the confidentiality of information which is imposed on an auditor by legislation or a contract does not extend to information forwarded to the Financial Supervision Authority pursuant to subsection (5) of this section.

(12.09.2001 entered into force 01.10.2001 - RT I 2001, 79, 480)

§ 116. Requirements for reporting

- (1) A management company is required to prepare an annual report and semi-annual report on each contractual fund managed by the management company.
- (2) In addition to an annual report, a fund founded as a public limited company is required to also prepare a semi-annual report.
- (3) The provisions in the Accounting Act concerning annual reports apply to annual reports and semi-annual reports of funds founded as public limited companies unless otherwise provided by this Act.
- (4) The annual report of a fund is prepared for the previous financial year, and the semi-annual report is prepared for the first six months of a financial year.
- (5) The reports of a fund shall set out at least the information provided for in §§ 119–124 of this Act and other relevant information necessary for adequate evaluation of the performance of the fund and its activities.

(6) In addition to annual reports and semi-annual reports, the Financial Supervision Authority has the right, for the exercise of supervision, to request additional regular reporting or specific reports on a contractual fund from the management company or from a fund founded as a public limited company.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(7) The format of annual reports and semi-annual reports, and the requirements for and content of entries of notes to reports are established by the Minister of Finance.

(8) In addition to annual reports and semi-annual reports, a management company shall present regular reports on the activities of the management company and on the funds managed by the management company to the Financial Supervision Authority pursuant to the procedure established by the Minister of Finance.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(9) Management companies are required to use the balance sheet and income statement formats established for their area of activity. The balance sheet and income statement formats of fund managers, requirements for the content of the items, and the methods of preparation and the procedure for submission of financial statements shall be established by the Minister of Finance.

(20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

§ 117. Approval of reports

(1) The annual reports and semi-annual reports of a contractual fund shall be approved by the management board of the management company. The reports shall be signed by all members of the management board of the management company.

(2) The semi-annual reports of a fund founded as a public limited company shall be approved by the supervisory board of the fund.

§ 118. Disclosure of reports

(1) An approved report shall be submitted not later than four months after the end of a financial year or two months after the end of the first six months of a financial year to the Financial Supervision Authority and shall be displayed for review in the places specified in the prospectus.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) A semi-annual report or annual report of a fund shall be issued at the request of a unit-holder of a contractual fund at the expense of the management company, or at the request of a stockholder of a fund founded as a public limited company at the expense of the fund founded as a public limited company.

§ 119. Mandatory parts of annual report and semi-annual report of contractual fund

(1) The annual report and semi-annual report of a contractual fund shall be composed of the following parts which indicate the state of affairs at the end of the accounting period:

- 1) the balance sheet of the fund;
- 2) the statement of investments of the fund;
- 3) the statement of changes of assets of the fund;
- 4) the income and expense statement of the fund during the accounting period;

5) the statement on rights and obligations not indicated on the balance sheet, including the classes, exercise dates and exercise prices of derivative instruments held on behalf of the fund.

(2) In addition to that provided for in subsection (1) of this section, the annual report of a contractual fund shall contain:

1) the activity report for the accounting period;

2) a comparative statement for the last three financial years which indicates the net asset value of the fund and the net asset value per unit as at the end of each financial year.

§ 120. Mandatory parts of annual reports and semi-annual reports of fund founded as public limited company

(1) An annual report or semi-annual report of a fund founded as a public limited company shall among other things include the statement of investments specified in § 122 of this Act.

(2) A semi-annual report of a fund founded as a public limited company need not present the conclusions of the auditor, the profit distribution proposal or notes to the reports.

(3) The income statement of a fund founded as a public limited company shall indicate the fees paid to the management company and the depositary separately.

§ 121. Balance sheet of contractual fund

(1) Upon preparation of the balance sheet of a contractual fund, the assets and liabilities of the fund are evaluated at objectively fixed market prices as at the last day of the accounting period.

(2) The balance sheet of a contractual fund shall separately indicate the following entries:

1) assets:

investments in securities,

investments in deposits,

other assets;

2) liabilities:

liabilities,

net asset value of the fund.

§ 122. Statement of investments

(1) The statement of investments of a fund shall contain a list of all securities, deposits, shares, immovables and other property of the fund belonging to the assets of the fund. For each such asset, the class, book value and percentage of the investment in the assets of the fund shall be indicated in the statement.

(2) In addition to that provided for in the second sentence of subsection (1) of this section, the name of each issuer, the class of security, the nominal value and, if possible, market value, interest rate and other material features of each security shall be set out in the statement.

(3) In addition to that provided for in the second sentence of subsection (1) of this section, the following information shall be indicated in the statement with regard to each immovable belonging to the fund:

1) the class of immovable;

- 2) the area and location of the registered immovable;
- 3) in the case of an immovable with a building on it, the year of construction, year of acquisition, and the gross area and usable floor space of the structure;
- 4) the market price of the immovable;
- 5) other material information.

(4) The distribution of investments shall be indicated in the statement according to criteria which correspond to the investment policy of the fund (industrial sectors, geographical sectors, etc.).

(5) The share of the following classes of investments in the assets of a fund shall be indicated in a statement:

- 1) securities listed on exchanges;
- 2) securities traded on other markets specified in clauses 102 (1) 2) and 3) of this Act;
- 3) freely transferable securities specified in clause 102 (1) 4) of this Act;
- 4) securities not specified in clauses 1)–3) of this subsection;
- 5) deposits;
- 6) shares;
- 7) immovables.

(6) Changes in the structure of investments provided for in subsections (4) and (5) of this section during the accounting period shall be indicated in a statement.

§ 123. Income and expense statement of contractual fund

(1) The following shall be indicated separately on the income and expense statement of a contractual fund:

- 1) net gain (loss) on investments, including on stocks and bonds separately;
- 2) other income;
- 3) total income (clauses 1) and 2) of this subsection);
- 4) management charges;
- 5) depositary's charges;
- 6) brokerage fees and other transaction fees;
- 7) other expenses;
- 8) total expenses (clauses 4)–7) of this subsection);
- 9) total net gain (loss) of the fund.

(2) Among other items under clause (1) 1) of this section, accrued dividends, profit (loss) from the sale of assets, changes in the value of securities (unrealised appreciation and depreciation), interest income and expenditure shall be indicated separately.

(3) Brokerage fees paid to securities brokers and brokers of other assets shall be indicated as an average brokerage fee as a percentage of the transaction prices.

§ 124. Statement of changes in assets of contractual fund

The following shall be indicated separately in a statement of changes in the assets of a contractual fund:

- 1) the net asset value of the fund at the beginning of the accounting period;
- 2) income from units issued during the accounting period;
- 3) money paid for units redeemed during the accounting period;
- 4) net gain (loss) for the accounting period;
- 5) distributions paid to unit-holders during the accounting period from the assets of the fund;
- 6) the net asset value of the fund at the end of the accounting period;
- 7) the number of units outstanding at the end of the accounting period;
- 8) the net asset value per unit at the end of the accounting period.

§ 125. Requirements for disclosure and information

(1) The stockholders or unit-holders of a fund shall be able to review the following documents at the seat or location of the fund:

- 1) the fund rules or articles of association of the fund;
- 2) the last annual report of the fund;
- 3) the last semi-annual report of the fund if this is approved after the last annual report;
- 4) the prospectus of units or stocks of the fund;
- 5) a list of the members of the management board of the management company of the fund;
- 6) a list of the members of the supervisory board and management board of the fund if the fund is founded as a public limited company.

(2) All information concerning a fund presented in documents and other information published on the fund shall be truthful and not misleading in nature, and such information shall not give actual or ostensible guarantees concerning the income, or distributions or dividends from the fund, and shall not contain forecasts of the financial performance of the fund.

(3) All advertising which directly or indirectly invites persons to purchase stocks or units of a fund shall include a notation as to where the documents specified in § 100 of this Act can be reviewed.

(4) A management company shall promptly, pursuant to the procedure prescribed in the fund rules or articles of association of the fund, make public all circumstances which materially influence the net asset value of the stocks or units of a fund managed by the management company.

Chapter 9

Sale of Units or Stocks of Foreign Funds

§ 126. Registration requirement

The public sale of units or stocks of a foreign fund in Estonia shall be registered in advance with the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 127. Application for registration

(1) In order to register a sale of stocks or units, a foreign fund or the management company managing the fund shall submit the following documents to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) an application;
- 2) an activity licence issued by the competent supervisory authority of the home country of the fund and, with regard to a fund located in a Member State of the European Union, also a document certifying compliance with the requirements in force in the European Union;
- 3) the articles of association of the fund or the fund rules;
- 4) if the fund is managed by a management company, the articles of association and the last audited annual report of the management company;
- 5) the prospectus;
- 6) a contract for distribution of the units or stocks with a securities broker located in Estonia;
- 7) the last annual report of the fund audited by an auditor and the semi-annual report if it is approved after the annual report;
- 8) a description of the sale of units or stocks of the fund;
- 9) proof of payment of the state fee.

(2) The Financial Supervision Authority may, if necessary, request more specific information concerning the documents subject to submission and legislation in force in the home country of a fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) If there are changes in the documents specified in subsection (1) of this section, the management company or the fund is required to resubmit the corresponding documents promptly to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 128. Conditions for registration

A public sale of stocks or units of a foreign fund shall be registered if all the conditions provided for in this Chapter and all of the following conditions are complied with:

- 1) the seat or location of the fund is in a Member State of the European Union and the fund complies with the requirements established by the European Union, or the seat or location of the fund is in another state included in the list approved by the Minister of Finance, and the legislation applicable to the fund comply with the requirements established by the Minister of Finance;
- 2) the fund, and the management company if the fund is managed by a management company, are recognised by the competent supervisory authority of the home country of the fund;
- 3) the contract specified in clause 127 (1) 6) of this Act has been entered into;
- 4) upon the issue of units or stocks of the fund, the prompt receipt of the corresponding amount of units or stocks in the account of the purchaser is ensured after payment of the purchase price;
- 5) upon the re-purchase of stocks or redemption of units and the payment of dividends or making of distributions from the fund, the prompt receipt of funds by the stockholders or unit-holders of the fund is ensured;
- 6) the availability of information concerning the fund required in this Act is ensured.

§ 129. Registration of sale

(1) A sale of stocks or units of a fund located in a Member State of the European Union is deemed to be registered after six weeks, and the sale of stocks or units of a fund located in another state is deemed to be registered after four months after receipt of all the documents specified in § 127 of this Act by the Financial Supervision Authority unless, in the case of a fund located in a Member State of the European Union, the management board of the Financial Supervision Authority decides within six weeks or, in the case of a fund located in another state, the management board of the Financial Supervision Authority decides within four months after receipt of all of the documents specified in § 127 of this Act by the Financial Supervision Authority not to register the sale of stocks or units of the foreign fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) A copy of a decision shall be given or sent to the applicant not later than three working days after the decision is made. Upon refusal to register, the decision shall set out the reasons therefor.

§ 130. Determinativeness of Estonian wording

(1) The articles of association or fund rules, and the prospectus and reports of a foreign fund and other relevant documents and information concerning the fund shall be available in Estonian.

(2) If the documents specified in subsection (1) of this section are prepared in several languages and their wording differs, the Estonian wording is determinative.

§ 131. Specifications for sale and prospectus

(1) The provisions of Chapter 6 of this Act apply upon the sale of stocks or units, and to the prospectus of a foreign fund, taking into consideration the specifications provided for in this Chapter. The provisions of Chapter 6 regarding management companies apply only if a fund is managed by a management company.

(2) A prospectus of stocks or units of a foreign fund shall set out the name and seat of the distributor of the units or stocks, and the prospectus shall contain a notation indicating that the foreign fund is not subject to supervision by the Financial Supervision Authority. The Financial Supervision Authority shall send a copy of a precept issued to a management company or to a fund founded as a public limited company immediately to the depositary of the corresponding fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(3) The Financial Supervision Authority may, due to a sale of stocks or units of a fund in Estonia, demand that a prospectus be supplemented with other necessary information.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 132. Suspension of sale

(1) The Financial Supervision Authority shall suspend the sale of stocks or units of a foreign fund if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) the fund does not comply with the conditions provided for in § 128 of this Act;
- 2) it becomes evident that incorrect or incomplete information was submitted upon application for registration of or during a sale or information was not submitted on time;
- 3) the fund, its management company or the distributor of the stocks or units of the fund submits or publishes incorrect or misleading information, advertising or reports concerning the fund;
- 4) the terms and conditions prescribed in the prospectus are not complied with upon the sale of stocks or units of the fund;
- 5) legislation is violated upon the sale or redemption of stocks or units of the fund.

(2) The sale of stocks or units of a fund may be resumed with the permission of the Financial Supervision Authority after elimination of the reasons for suspension of the sale.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

Chapter 10

Supervision

§ 133. Bases of supervision

(1) The Financial Supervision Authority exercises supervision over the activities of management companies and funds pursuant the procedure provided for in the Securities Market Act, this Act and legislation arising therefrom.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The Financial Supervision Authority exercises supervision over the activities of credit institutions as depositaries pursuant to the procedure provided for in the Credit Institutions Act, this Act and legislation arising therefrom.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The purpose of supervision is to ensure that the foundation, activities and dissolution of funds and management companies comply with Acts and other legislation, with particular attention to protection of the interests and rights of the stockholders or unit-holders of funds.

(4) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 134. Duties of Financial Supervision Authority

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(1) In the exercise of supervision, the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) reviews the documents and information submitted for the issue or extension of management company activity licences, monitors the compliance thereof with the requirements established by legislation and makes decisions concerning the satisfaction or refusal of such applications;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

2) decides on the revocation of management company activity licences, or concerning establishment of the deadline provided for in subsection 25 (4) of this Act;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

3) registers the fund rules of contractual funds and amendments thereto;

4) concords the foundation of funds founded as public limited companies;

5) concords the transfer of management of contractual funds;

6) concords amendments to the articles of association of funds founded as public limited companies;

7) concords management contracts and depositary contracts and amendments thereto;

8) monitors the compliance with law of submitted reports, other documents, and the activities of management companies and funds on the basis of on-site inspections;

9) prepares reports on violations of this Act and legislation arising therefrom, pursuant to the provisions of § 143 of this Act;

10) issues, if necessary, mandatory precepts to management companies, funds founded as public limited companies and depositaries for termination of violations of the requirements arising from this Act;

11) performs other duties arising from Acts or other legislation.

(2) The management board of the Financial Supervision Authority shall make a decision concerning an application for registration or concordance specified in clauses (1) 3) and 4) or 5)–7) of this section within thirty or twenty days, accordingly, after receipt of the application. Upon refusal to register or concord, the decision shall contain the reasons for refusal. A copy of a decision shall be given or sent to the applicant not later than three working days after the decision is made.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The Financial Supervision Authority shall publish, to the extent and pursuant to the procedure established by the Minister of Finance, information concerning management companies, pension management companies, investment funds, pension funds, depositaries and fund managers on its web site

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 135. Precept

(1) A precept specified in clause 134 (1) 10) of this Act shall set out the following:

1) the name and official title of the official of the Financial Supervision Authority who prepared the precept;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 2) the date of preparation of the precept;
- 3) the name and seat of the recipient of the precept;
- 4) the bases for issue of the precept together with a reference to the relevant provisions of an Act;
- 5) the deadline for compliance with the precept;
- 6) the sanctions to be imposed upon failure to comply with the precept.

(2) A precept is issued promptly to a representative of a management company, a fund founded as a public limited company or a depositary, against a signature.

(3) The recipient of a precept shall, immediately after receipt of the precept, commence compliance therewith.

(4) A recipient of a precept has the right to appeal the precept in a court within fifteen days after receipt of the precept. Appeal against a precept in court does not suspend the requirement to comply therewith unless otherwise provided by law.

§ 136. On-site inspection

(1) The Financial Supervision Authority has the right to perform on-site inspections of management companies and funds founded as public limited companies.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) Upon on-site inspection, a fund or management company is required to enable the person authorised by the Financial Supervision Authority (inspector) to review the documents and files concerning the activities of the fund or management company without restrictions.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) Inspectors have the right to make copies of and extracts from documents.

(4) An inspector is required to prepare a report concerning an inspection which shall be submitted to the management board of the fund or management company for review. The chairman of the management board or director shall sign the report to confirm review thereof.

§ 137. Requirement to notify Financial Supervision Authority

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(1) A management company shall promptly notify the Financial Supervision Authority of all circumstances which materially affect the activities and financial situation of the management company or a fund managed by the management company.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) If the activities of a fund or management company do not comply with the requirements provided for in legislation, or in the articles of association of the fund or of the management company if the fund is founded as a public limited company, or in the fund rules if the fund is a contractual fund, the fund or the management company is required to promptly notify the Financial Supervision Authority thereof and of measures planned for resolving the situation.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) At the request of the Financial Supervision Authority, a management company or a fund founded as a public limited company shall promptly disclose the circumstances specified in subsection (1) of this section or the measures specified in subsection (2) of this section.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 138. Right to receive information from third persons

For the performance of duties provided for in this Act, the Financial Supervision Authority has the right:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) to receive information concerning the activities and dissolution of management companies and funds from depositaries, the Bank of Estonia, chief processors and authorised processors of state databases, liquidators or trustees in bankruptcy of management companies and funds, and from the persons specified in subsections 111 (1) and (2) of this Act;

2) to demand the submission of documents concerning management companies and funds at the disposal of the persons specified in clause 1) of this subsection.

§ 139. Calling meeting of directing bodies

(1) In order to protect the interests of the stockholders or unit-holders of a fund, the management board of the Financial Supervision Authority has the right to issue a precept to a management company to call a meeting of the supervisory board or management board of the management company, or to issue a precept to a fund founded as a public limited company to call a meeting of the management board, supervisory board or the general meeting of stockholders of the fund.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The management board of the Financial Supervision Authority has the right to send a representative to the general meeting of stockholders of a fund founded as a public limited company and, in the case specified in subsection (1) of this section, also to a meeting of the supervisory board or management board, who has the right to present his or her position and make proposals.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 140. Receipt of information concerning management company or fund and suspension of use of accounts thereof

(1) If it becomes evident that the requirements prescribed by legislation, the fund rules or the articles of association of a fund, or by a management contract or depositary contract are violated, the Financial Supervision Authority has the right to receive information from credit institutions concerning the transactions and balances of bank accounts of the fund or management company, and to file a petition with a court to seize the accounts of the fund or management company.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) After receipt of a petition specified in subsection (1) of this section, the court shall promptly review the matter and make a ruling for seizure of the accounts.

§ 141. (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

Chapter 11

Liability

§ 1411. Failure to submit mandatory reports, documents and information

(1) A fine in the amount of up to 300 fine units is imposed on a member of the management board or supervisory board, or an employee of a management company or of a fund founded as a public limited company for failure to submit or disclose, or for incomplete submission or disclosure of or failure to submit or disclose on a timely basis mandatory reports, documents or information to the Financial Supervision Authority, to the unit-holders of a fund managed by the management company or to the public; or for submission of false information in such reports.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 1412. Exploitative abuse of assets of fund

A fine in the amount of up to 50 000 kroons is imposed on a management company for covering expenses from the account of a fund which were not prescribed in the fund rules if the fund is a contractual fund or in the management contract between the fund and the management company if the fund is founded as a public limited company, and which were not directly related to management of the fund; for exceeding the limits prescribed by law in the investment of fund assets; for the violation of the restrictions prescribed in the fund rules, for the transfer of fund assets in violation of law or for the guarantee of an issue of securities on behalf of a fund if the fund is a contractual fund or in the management contract between the fund and the management company if the fund is founded as a public limited company and if such possibility is not prescribed by the fund rules or articles of association of the fund.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 1413. Violation of procedure for issue or redemption of units

A fine in the amount of up to 50 000 kroons is imposed on a management company for the issue or redemption of units of a contractual fund upon liquidation of the fund or during a period when redemption is suspended; or for the acquisition, without the approval of the Financial Supervision Authority, of the units or stocks of other funds managed by the management company of the fund; and on a pension management company for the acquisition or redemption, without the authorisation of the Financial Supervision Authority, of units of the pension fund managed by the pension management company.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 1414. Violation of obligations of depositary

A fine in the amount of up to 50 000 kroons is imposed on a depositary for violations during the liquidation proceedings of a contractual fund; or for failure to inform the Financial Supervision Authority and, the supervisory board of the management company, or in the case of a fund founded as a public limited company, the management board of the fund, if the activities of the management company were, to the depositary's knowledge, contrary to legislation, the fund rules or the articles of association of the fund, the depositary contract or management contract.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 1415. Procedure

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 105, 612; 2003, 4, 22) and of the Code of Misdemeanour Procedure (RT I 2002, 50, 313; 110, 654; 2003, 26, 156) apply to the misdemeanours provided for in §§ 1411–1414 of this Act.

(2) The Financial Supervision Authority is the extra-judicial body which conducts proceedings in matters of misdemeanours provided for in §§ 1411–1414 of this Act.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 142. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 143. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 144. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

Chapter 12

Implementation of Act

§ 145. Application of Act to funds and management companies being founded

As of the entry into force of this Act, funds shall be founded and established, and activity licences shall be issued to management companies only pursuant to the procedure provided for in this Act, and the provisions of this Act apply to such funds and management companies.

§ 146. Application of Act to operating administrative enterprises and funds

(1) Upon the entry into force of this Act, operating administrative enterprises are deemed to be management companies and closed funds are deemed to be funds founded as public limited companies.

(2) Within six months after the entry into force of this Act, the administrative enterprises and funds operating on the date of entry into force shall bring their activities and documents into conformity with the requirements of this Act. Contractual funds which do not comply with this requirement are subject to liquidation pursuant to the procedure provided for in this Act.

(3) The activity licence of an administrative enterprise which is valid on the date of entry into force of this Act terminates upon expiry or revocation of the licence or upon issue of a management company activity licence to the administrative enterprise but not later than after six months after the entry into force of this Act.

(4) Upon the entry into force of this Act, the activity licence of a fund becomes invalid upon expiry or revocation of the licence, or registration of the fund rules if the fund is a contractual fund or concordance of the amendments to the articles of association of the fund if the fund is founded as a public limited company.

§ 147. Implementation of stock capital requirements

(1) As of 1 January 1999, the stock capital of all management companies shall comply with the requirements provided for in subsection 10 (1) of this Act.

(2) As of the entry into force of the Act, the stock capital of a management company shall be at least 400 000 kroons.

§ 148. (Repealed - 20.11.2002 entered into force 26.12.2002 - RT I 2002, 102, 600)

§ 148.1. Application of Act to fund managers

(1) Until 1 July 2002, persons without higher education who have worked in a professional securities market participant or management company for at least the last eighteen months and have commenced the acquisition of higher education may also apply for the certificate of a fund manager and work as fund managers.

(2) Valid certificates which were issued before the entry into force of this Act become invalid upon expiry of the term of validity thereof or revocation thereof pursuant to this Act, but not later than within five years after the issue thereof.

(18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55)

§ 149. Privatisation vouchers

(1) Up to three months before the deadline specified in subsection 29 (2) of the Privatisation Act (RT I 1993, 45, 639; RT I 1997, 9, 78; 1998, 12, 153; 30, 411; 2000, 51, 324; 2001, 26, 149; 48, 265; 89, 532; 93, 565; 2002, 28, 157), stocks of funds founded as public limited companies may be paid for in privatisation vouchers upon the issue of stocks if this is prescribed in the articles of association of the fund. In such case, the prospectus of the fund shall set out the procedure for determination of the sale price of stocks of the fund in privatisation vouchers. The sale price of stocks of a fund in privatisation vouchers may change during an issue pursuant to the procedure provided for in the previous sentence.

(2) For the purposes of this Act, a privatisation voucher is deemed to be a freely transferable security not specified in subsections 102 (1) or (2) of this Act. The requirements provided for in subsection 102 (3) and §§ 103 and 104 of this Act do not apply to the holding and acquisition of privatisation vouchers on behalf of a fund.

(3) Privatisation vouchers shall total not more than 10 per cent of the market value of the assets of a contractual fund and not more than 25 per cent of the market value of the assets of a fund founded as a public limited company, except during three months after termination of the public issue of stocks of a fund founded as a public limited company specified in subsection (1) of this section.

§ 150. Specific provisions concerning immovable property

(1) During three years after the entry into force of this Act, structures and parts thereof entered in a register as movables are also deemed to be immovables.

(2) During the term provided for in subsection (1) of this section, a fund founded as a public limited company may be a member of an apartment association if the apartments belong to the members of the association as movables.

§ 151. Application of limitations on investment

(1) During three years after the entry into force of this Act, the value of securities issued by one person belonging to the assets of a fund may total more than 10 per cent but not more than 15 per cent of the market value of the assets of the fund if:

1) these securities are quoted in the main list of a stock exchange located in Estonia; and

2) the value of such securities belonging to the assets of the fund does not total more than 50 per cent of the market value of the assets of the fund.

(2) If it is explicitly prescribed in the fund rules or the articles of association of a fund, the value of securities issued by one person specified in subsection (1) of this section shall total not more than 20 per cent of the

market value of the assets of the fund during two years, and not more than 25 per cent during one year after the entry into force of this Act.

(3) The requirement provided for in subsection 103 (3) of this Act applies as of 1 July 2001.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

(4) During three years after the entry into force of this Act, the limitation on the market value of the assets of funds provided for in subsection 106 (2) of this Act is 10 per cent.

(10.06.98 entered into force 01.08.98 - RT I 1998, 61, 979)

§ 152. Clause 2 (1) 3) of the Securities Market Act (RT I 1993, 35, 543; 1995, 22, 328; 1996, 26, 528; 1997, 34, 535; 1998, 61, 979; 2000, 10, 55) is repealed.

§ 153. Amendments to the Republic of Estonia State Fees Act (RT 1990, 11, 118; RT I 1995, 36, 465; 57, 981; 58, 1005; 61, 1028; 87, 1540; 1996, 3, 56; 38, 752; 40, 773; 42, 811; 45, 848 and 851; 49, 953; 51, 969; 80, 1435; 1997, 5/6, 32; 48, 774; 80, 1344; 86, 1461; 87, 1467; 93, 1563; 2, 47; 4, 63; 23, 321; 36/37, 552, 553; 52/53, 771; 57, 859):

(1) Annex 1 to the Republic of Estonia State Fees Act is amended by adding clause 72 worded as follows:

"(72) For acts related to professional securities market participants, fund managers and investment funds:

1) for application for registration of a public issue of securities, 0,1% of the volume of the issue on the basis of the intended selling price, but not more than 50 000 kroons for one emission;

Note. Such fee is not applied upon registration of public issues of securities issued by the Estonian state, the Bank of Estonia or the Compensation Fund and upon registration of public tenders of securities conducted by the Privatisation Agency.

2) for application for the activity licence of a professional securities market participant or a fund manager, 10 000 kroons;

3) for extension of the term of the activity licence of a professional securities market participant or a fund manager, 5 000 kroons;

4) for application for registration of the rules of a contractual investment fund and amendments thereto, 10 000 kroons;

5) for application for concordance of the articles of association of an investment fund founded as a public limited company and amendments thereto, 5000 kroons;

6) for application for concordance of a management contract entered into by an investment fund founded as a public limited company and a fund manager and amendments thereto, except upon foundation of the investment fund, 2000 kroons;

7) for application for concordance of a depositary contract and amendments thereto, except upon foundation of the fund, 2000 kroons;

8) for application for registration of the sale of units or shares of an investment fund located in a member state of the European Union, 10 000 kroons;

9) for application for the sale of units or shares of an investment fund located outside the member states of the European Union, 25 000 kroons."

(2) Subclause 8 49) of Annex 1 is repealed.

§ 154. The Criminal Code (RT 1992, 20, 288; RT I 2001, 73, 452; 85, 510; 87, 526) is amended by adding section 14814 worded as follows:

"14814. Liability of fund manager of investment fund

A fund manager of an investment fund who, upon investment of the assets of the investment fund, intentionally violates the restrictions provided by law is punishable by a fine or imprisonment for up to one year."

1 RT = Riigi Teataja = State Gazette