Securities Market Act

(RT[1] I 2001, 89, 532),

entered into force 1 January 2002,

amended by the following Act:

20.02.02 entered into force 01.07.02 - RT I 2002, 23, 131.

Part I

General Part

Chapter 1

General Provisions

§ 1. Scope of application

This Act regulates the public offer of securities, the activities of investment firms, the provision of investment services, the operations of securities markets and securities settlement systems as well as the exercising of supervision over the securities market and the participants therein.

§ 2. Security

(1) For the purposes of this Act, each of the following is a security, even without a document being issued therefor:

1) a share or other similar tradable right;

2) a bond, convertible bond or other tradable debt obligation issued, except a security referred to in clause 5) of this subsection;

3) a subscription right or other tradable right granting the right to acquire securities specified in clause 1) or 2) of this subsection;

4) an investment fund unit;

5) a debt obligation issued for a term of up to one year, which is usually traded on the money market (money market instrument);

6) a derivative instrument;

7) a tradable depositary receipt.

(2) For the purposes of this Act, a derivative instrument is a tradable security expressing a right or obligation to acquire, exchange or transfer, the underlying assets of which are securities specified in subsection (1) of this section or the price of which depends directly or indirectly on:

1) the stock exchange or market price of the security;

2) the interest rate;

3) the securities index;

4) currency exchange rates;

5) credit risk and other risks;

6) the exchange or market price of a commodity or precious metal.

(3) For the purposes of this Act, bills of exchange, cheques and other means of payment are not deemed to be securities.

§ 3. Regulated securities market

A regulated securities market (hereinafter regulated market) is a system of organisational, legal and technical measures directly or indirectly accessible to the public which is established for the purpose of enabling regular trade with securities and which enables different persons to make offers to each other, whether simultaneously or not, for conducting transactions with securities, and to conduct transactions with securities.

§ 4. Securities market participant

Issuers, investors and professional securities market participants are securities market participants.

§ 5. Issuer

For the purposes of this Act, an issuer is a person who has issued securities or has assumed an obligation to issue securities.

§ 6. Investor

(1) For the purposes of this Act, an investor is a person who owns a security or who has assumed an obligation to acquire securities.

(2) For the purposes of this Act, each of the following is a professional investor:

1) a credit institution;

2) an insurance company or other insurer established by legislation;

3) an investment firm;

4) a management company;

5) an investment fund;

6) the Bank of Estonia;

7) the Republic of Estonia through the Ministry of Finance;

8) foreign central banks and other foreign persons who are deemed to be professional investors by the legislation of their respective states.

(3) For the purposes of this Act, a financial institution not specified in subsection (2) of this section which is regarded as a professional investor by a professional securities market participant and which has provided written confirmation thereof to the professional securities market participant is also a professional investor.

(4) The Minister of Finance may, by a regulation, establish a list of legal persons in public law, foundations and companies with state participation which are also deemed to be professional investors for the purposes of this Act.

§ 7. Professional securities market participant

(1) Each of the following is a professional securities market participant:

1) an investment firm;

2) a credit institution;

3) an operator of the regulated market;

4) an operator of a securities settlement system;

5) other persons prescribed by law.

(2) For the purposes of this Act, an investment firm is a public limited company the permanent activity of which is to provide investment services to third parties whether separately from or together with non-core services.

§ 8. Supervision of securities market

Supervision over compliance with this Act and legislation established on the basis thereof shall be exercised by the Financial Supervision Authority (hereinafter Supervision Authority) on the basis of this Act and the Financial Supervision Authority Act.

§ 9. Qualifying holding

For the purposes of this Act, a qualifying holding is a direct or indirect holding which is held in a company by a person or persons belonging to the same group thereas and which represents 10 per cent or more of the share capital or votes represented by shares of the company or which grants the shareholder the possibility to significantly influence the management or operations of the company on the basis of an agreement or in any other manner.

§ 10. Procedure for calculating holding

(1) For the purposes of calculating voting rights (a holding) in a company, a person is deemed to hold the following votes:

1) votes determined by shares held by the person;

2) votes determined by shares held by a company controlled by the person;

3) votes determined by shares held by a third party with whom the person has entered into an agreement which obliges the parties to use concerted voting to adopt a common policy towards the management of the company;

4) votes determined by shares held by a third party which, pursuant to an agreement entered into between the person or a company controlled thereby and the third party, have been assigned temporarily to the person or if the person votes in the name of the owner of such shares.

(2) For the purposes of this Act, a controlled company is a company in which the person:

1) owns one half or more than one half of the votes represented by shares, or

2) being a shareholder of the company, has the right to appoint or remove a majority of the members of the supervisory board or management board of the company, or

3) being a shareholder of the company, controls more than one half of the votes represented by shares on the basis of an agreement entered into with other shareholders.

Part II

Public Offer of Securities

Chapter 2

General Provisions

§ 11. Offer of securities

(1) For the purposes of this Act, any proposal for the acquisition of securities is deemed to be an offer of securities.

(2) For the purposes of this Act, the following are also deemed to be offers of securities:

1) an invitation to make an offer;

2) an issue of securities;

3) offers according to the conditions of which securities would be issued or transferred to an investor by a third party

§ 12. Public offer of securities

(1) Unless otherwise prescribed in subsection (2) of this section, any offer of securities is a public offer.

(2) An offer of securities is not deemed to be public if the securities are offered solely:

1) to a professional investor, or

2) to not more than fifty persons whose names have been determined in advance, or

3) at an offer price of up to 40 000 euro in total as on the date of issue of the securities or the date on which the decision is taken to make the offer; or

4) for acquisition individually or as a pool for at least 40 000 euro per investor as on the date of issue of the securities or the date on which the decision is taken to make the offer.

§ 13. Issue of securities

(1) For the purposes of this Act, an issue of securities is a pool of securities of the same type issued on the basis of a single decision by the issuer (hereinafter issue).

(2) The issue of securities as a series is deemed to be one issue.

§ 14. Application of this Part

(1) The provisions of Chapters 3-6 of this Act regarding securities are applicable with respect to securities specified in clauses 2 (1) 1)-3) of this Act and the depositary receipts thereof.

(2) Unless otherwise prescribed in Chapter 5 of this Act the provisions of Chapters 3 and 4 of this Act are applicable with respect to the public offer in Estonia of securities of a foreign issuer.

Chapter 3

Public Offer Prospectus

§ 15. Obligation to make prospectus public

(1) Unless otherwise prescribed in § 17 of this Act, the person arranging the offer of securities by the issuer (hereinafter offerer) is required to make public a prospectus pertaining to the public offer of securities in Estonia (hereinafter prospectus).

(2) The prospectus shall be made public no later than on the day on which the public offer of securities (hereinafter offer) is announced.

(3) The prospectus shall be accessible to the public (primarily to all investors and other interested parties) for the term of the offer.

(4) The listing particulars referred to in § 157 of this Act (hereinafter listing particulars) may be made public instead of the prospectus.

§ 16. Obligation to register

The prospectus shall be registered with the Supervision Authority prior to being made public and the offer being announced.

§ 17. Exceptions

(1) The prospectus need not be made public or registered if at least one of the following conditions is met:

1) a prospectus has already been registered with respect to the securities issued within the framework of the same offer or with respect to the securities underlying the securities offered;

2) the securities issued by a company or a company belonging to the same group thereas are offered solely by one or several companies belonging to the group to the employees or members of the supervisory board and management board of this company;

3) the issuer of the securities is the Republic of Estonia, a State which is a Contracting Party to the EEA Agreement (hereinafter Contracting State), a full Member State of the Organisation for Economic Cooperation and Development or the central bank of any of these states, on the condition that the issuer of the securities offered has not had solvency problems in settling its obligations during the past five years;

4) securities specified in clause 2 (1) 2) of this Act or securities granting the right to acquire such securities (hereinafter debt securities) are offered on the condition that the securities are guaranteed by a state or central bank specified in clause 3) of this subsection;

5) the securities are offered in connection with a takeover bid for a company;

6) the securities are offered in connection with the merger of a company;

7) the securities are offered in connection with a bonus issue;

8) the securities offered are listed on a stock exchange operating in Estonia or the listing process with respect to the securities has been commenced on such a stock exchange;

9) shares, or securities regarded as being equal to shares, which are interchangeable with shares of the same public limited company are offered, provided that the offer does not result in an increase in the share capital of the public limited company.

(2) The Minister of Finance may, by a regulation, establish full or partial exceptions with regard to the obligation to make public and register the prospectus if:

1) the securities offered are issued or guaranteed by local governments of states specified in clause (1) 3) of this section or by international organisations of which at least one of the specified states is a member;

2) the debt securities offered are issued by a credit institution, a legal person in public law or a foundation established by the state;

3) the debt securities offered are issued by a legal person in private law whose solvency has been assessed by international rating agencies;

4) the information to be made public in the prospectus is accessible to the public for the term of the offer in connection with the listing of the securities on the stock exchange or by reason of the provisions of law;

5) the offer is of securities issued by an issuer registered in a Contracting State and, pursuant to the legislation of that state, there is no obligation to make the prospectus public.

§ 18. Application for registration

(1) In order to register a prospectus, a relevant application shall be submitted to the Supervision Authority. The format of such applications shall be established by a regulation of the Minister of Finance.

(2) The prospectus, the decision specified in § 19 of this Act (hereinafter decision to offer), proof of payment of the state fee and, if the issuer and the offerer have articles of association, copies thereof shall be appended to the application.

(3) If the documents submitted upon filing the application do not meet the requirements prescribed by legislation, the Supervision Authority shall demand that the documents be brought into compliance with the legislation within a reasonable term determined by the Supervision Authority.

§ 19. Decision to offer

The decision to offer shall include at least the following information regarding the securities offered and the offer:

1) the number and type of securities;

2) the nominal value of one security;

3) the term, if the securities are offered for a fixed term;

4) the rights and obligations deriving from the securities;

5) the sales price or a description of the principles for the determination thereof;

6) the consequences of oversubscription and undersubscription;

7) the expected time of the beginning and closure of the offer.

§ 20. Registration of prospectus

(1) The Supervision Authority shall make a decision concerning registration of or refusal to register a prospectus within twenty days as of the submission of the application for registration or the submission of documents brought into compliance with the legislation.

(2) In the event of refusal to register a prospectus, the decision shall contain justification for the refusal, and in the event that the prospectus is registered, the decision shall contain a registration number.

(3) The Supervision Authority shall immediately forward a decision concerning registration or refusal to register a prospectus to the applicant.

§ 21. Refusal to register

The Supervision Authority has the right to refuse to register a prospectus if:

1) the conditions of the offer are in contradiction of current legislation, the articles of association of the issuer or the rules and regulations of the regulated market;

2) the prospectus does not meet the requirements established by legislation and the deficiencies are significant;

3) the offerer does not, upon application, submit all the documents prescribed by legislation or the documents are contradictory with regard to each other, or the requirement prescribed in subsection 18 (3) of this Act has not been met.

§ 22. Requirements for prospectuses

(1) A prospectus shall contain all significant information needed to make an informed investment decision regarding the offer, the securities offered, the issuer, the financial situation and future prospects of the issuer, and other circumstances which influence or may influence the price of the securities offered.

(2) The information presented in the prospectus shall be accurate, unambiguous and not misleading. The prospectus shall be designed in a manner allowing users of the prospectus to find necessary information easily.

(3) The prospectus shall be in Estonian. The Minister of Finance may, by a regulation, establish exceptions where the Supervision Authority may permit the prospectus or a part thereof to be presented in another language.

(4) The date as of which the information presented in the prospectus derives shall be stated therein. The information presented in the prospectus shall not be of a date earlier than ten days prior to the submission of the prospectus for registration with the Supervision Authority.

(5) The requirements for the prospectus and information to be presented therein, as well as exceptions with regard to the composition of the information disclosed in the prospectus, shall be established by a regulation of the Minister of Finance. Upon establishing the exceptions, the Minister of Finance shall proceed from the special nature of the issuer, the securities offered and the offer, by

primarily taking into account the provisions of subsections 17 (2) of this Act and other circumstances which give grounds believe that information regarding the issuer of the securities offered or the solvency of the guarantor thereof is sufficiently accessible to the public or that the solvency of the issuer can be regarded as having been sufficiently proved.

(6) The Supervision Authority has the right to decide on the application of exceptions within the scope prescribed in the regulation of the Minister of Finance specified in subsection (5) of this section.

§ 23. Annex to prospectus

(1) Any circumstances which may affect the price of the securities and which become known after registration of the prospectus or during the period between the printing of the prospectus and the beginning of the offer shall be immediately stated by the offerer in an annex to the prospectus.

(2) An annex to a prospectus shall be submitted to the Supervision Authority and immediately made available to the public. An annex to a prospectus is an integral part of the prospectus.

(3) The provisions of §§ 22, 24, 32, 34 and 36 of this Act regarding prospectuses are also applicable to annexes to prospectuses.

§ 24. Approval of prospectus

(1) Each member of the management board of the issuer or of the body substituting therefor and at least one member of the management board of the offerer or of the body substituting therefor who has the right to represent the offerer shall certify the accuracy of the information presented in the prospectus by his or her signature.

(2) An auditor shall confirm the accuracy of the information presented in the annual or semi-annual reports contained in the prospectus by his or her signature.

§ 25. Obligation to compensate

(1) If the prospectus contains information which is significant for the purpose of assessing the value of the securities and such information proves to be different from the actual circumstances, the issuer or the offerer shall compensate the owner of the security for damage sustained thereby due to the difference between the actual circumstances and the information presented in the prospectus, provided that the issuer or offerer was or should have been aware of such difference.

(2) The provisions of subsection (1) of this section also apply if the prospectus is incomplete due to the omission of relevant facts, provided that the incompleteness of the prospectus results from the issuer or the offerer hiding of the facts.

(3) The obligation to compensate for damage prescribed in subsection (1) of this section also rests with the issuer or offerer if a third party is the source of the information presented in the prospectus.

§ 26. Extent of compensation

(1) A person who causes damage prescribed in § 25 of this Act has the right to compensate for the damage by acquiring the security from the person that sustained the damage for the price that the latter paid to acquire the offered security. By acquiring securities in this manner from the person that sustained the damage, the person causing the damage is released from the obligation to compensate for any other damage to the person that sustained the damage.

(2) An issuer or offerer shall not have the obligation to compensate for damage on the basis of § 25 of this Act if the person that sustained the damage was aware, at the moment of acquiring the security, that the prospectus which was the basis for the offer was incomplete or contained inaccurate information. The same applies if a professional investor that sustains damage should have realised, at

the moment of acquiring the security and by exercising due care in its activities, that the information contained in the prospectus was inaccurate or incomplete, unless liability for the damage caused derives from intentional acts of the person causing the damage.

§ 27. Limitation period

The limitation period for a claim prescribed in § 25 of this Act is five years as of the beginning of the offer of the relevant security on the basis of a prospectus which contains inaccurate information or is incomplete.

§ 28. Agreement to limit liability

Any agreements which exclude, limit or reduce compensation or the limitation period prescribed in §§ 25-27 of this Act shall be null and void.

Chapter 4

Announcement and Execution of Offers

§ 29. Announcement of offer

(1) Before an offer begins, the offerer shall announce the offer.

(2) In order to announce an offer, the offerer shall publish a relevant notice (hereinafter notice of offer) in at least one national daily newspaper.

§ 30. Notice of offer

A notice of an offer shall contain at least the following information:

1) the name and address of the issuer and the registry code of the issuer if the issuer has a registry code;

2) if the issuer is not the offerer, the name and address of the offerer and the registry code of the offerer if the offerer has a registry code;

3) the registration number of the prospectus if the prospectus is registered;

4) the type, number and nominal value of the securities offered;

5) the dates on which the offer begins and closes;

6) the sales price of the securities offered or a description of the principles for the determination of the sales price;

7) places where the prospectus can be obtained;

8) places where the securities offered can be subscribed for or acquired.

§ 31. Requirements for advertising

(1) A notice of an offer and any other advertising pertaining to the offer may not be misleading in character and may only contain information to be found in the prospectus.

(2) Advertising pertaining to an offer shall contain information about places where the prospectus can be obtained.

(3) A notice of an offer and any advertising materials pertaining to the offer shall be forwarded to the Supervision Authority prior to being made public.

(4) An offer may be advertised only after the announcement of the offer.

§ 32. Language

(1) A notice of an offer, the prospectus and other documents and notices pertaining to the issuer and the securities offered shall be published in Estonian or as notarised translations into Estonian. Documents and notices may also be published in other languages.

(2) Pursuant to the procedure prescribed by the regulation established on the basis of subsection 22 (3) of this Act and with the consent of the Supervision Authority, documents specified in subsection (1) of this section need not be published in Estonian if it is still reasonable to presume that the interests of investors are protected.

(3) If the documents and notices specified in subsection (1) of this section are compiled in Estonian and another language and if their wording differs or it is possible to interpret them differently, the wording of the relevant document in Estonian or its translation into Estonian takes precedence.

§ 33. Obligations of offerer

The offerer has the obligation to ensure that during the offer:

1) all potential investors receive information on an equal basis;

2) the printed prospectus is available to all investors free of charge in the places specified in clauses 30 7) and 8) of this Act.

§ 34. Making changes public

The offerer shall immediately inform the Supervision Authority of any significant changes that have occurred in the information presented in the prospectus during the period of the offer and publish such changes at least in the same national daily newspaper in which the notice of the offer was published.

§ 35. Obligation to repurchase

(1) If an offerer whose prospectus is registered with the Supervision Authority significantly changes the terms and conditions of the offer during the period of the offer, the offerer is required:

1) to cancel the subscription and return all funds received as a result of the subscription if so required by the persons that subscribed to the securities;

2) to repurchase the securities from investors who so require for at least the purchase price paid upon subscription.

(2) A claim to cancel the subscription or repurchase the securities on the grounds prescribed in subsection (1) of this section shall be filed with the offerer during the term of the offer prescribed in the notice of the offer.

(3) Funds received as a result of subscription or the repurchase of securities as prescribed in this section shall be returned on the basis of a decision by the Supervision Authority and at the time determined thereby.

§ 36. Suspension of offer

(1) An offerer is required to suspend an offer on the basis of a precept issued by the Supervision Authority if:

1) the offer is contrary to legislation which is in force;

2) the terms and conditions of the offer as prescribed in the prospectus have not been complied with;

3) the information submitted upon registration of the prospectus has been rendered inaccurate to a significant extent.

(2) When suspending an offer, the Supervision Authority shall issue a precept to oblige the offerer to eliminate the circumstances causing the suspension of the offer. While eliminating such circumstances, the offerer may resume the offer with the permission of the Supervision Authority.

(3) The offerer has the right to file a complaint with regard to a precept issued by the Supervision Authority for suspension of the offer. The filing of a complaint does not release the offerer from executing the decision to suspend the offer.

(4) With the prior consent of the Supervision Authority, the offerer may suspend the offer.

(5) The offer shall be suspended for a term determined by the Supervision Authority but not exceeding ten days. If the offer is not resumed after this term, the offerer is required to cancel the subscription and return the funds received as a result of the subscription to the subscribers within ten days as of the expiry of the term.

(6) The offerer shall immediately inform the public of the suspension or resumption of the offer or the cancellation of the subscription at least in the same national daily newspaper in which the notice of the offer was published.

Chapter 5

Offers by Foreign Issuers

§ 37. Application for registration

(1) In order for a prospectus of a foreign issuer to be registered, the following documents shall be submitted to the Supervision Authority:

1) an application for registration of the prospectus;

2) a certificate of registration of the prospectus issued by a competent authority of the home country of the issuer or another document permitting the prospectus to be made public or certifying the listing on the stock exchange, if the issue of such document is required;

3) notarised copies of the articles of association of the issuer and the offerer and copies of their audited annual reports for the previous economic year, together with translations thereof into Estonian;

4) the prospectus or a prospectus published in the foreign country;

5) upon submission of a prospectus published in a foreign country, a translation thereof into Estonian;

6) an agreement with a professional securities market participant located in Estonia to carry out the issue;

7) a description of the terms and conditions of the offer of securities;

8) proof of payment of the state fee.

(2) The Supervision Authority has the right to request additional and specifying information about the documents to be submitted and the legislation in force in the home country of the issuer and the offerer.

(3) If the information contained in the documents specified in subsection (1) of this section changes after the submission thereof, the offerer shall immediately submit documents containing the actual information to the Supervision Authority. Changes that have occurred after the end of the offer need not be reported to the Supervision Authority.

(4) The Minister of Finance may issue a regulation establishing simplified requirements for applications for registration of a prospectus of securities listed on a stock exchange recognised by a competent authority of a Member State of the International Organisation of Securities Commission (IOSCO) or located in a Member State thereof.

§ 38. Special requirements for prospectuses

(1) The requirements for a prospectus prescribed in §§ 22-24 of this Act and on the basis thereof are not applicable with respect to a prospectus of securities issued by a foreign issuer which is permitted to be published by a competent authority of a Contracting State or if such securities are listed on a stock exchange in that state.

(2) Upon application for registration of a prospectus specified in subsection (1) of this section, the offerer shall submit confirmation to the Supervision Authority that the information contained in the prospectus has not changed or shall submit a description of the relevant changes.

(3) Given the special nature of offering securities in Estonia and of organising such offers and for the purposes of informing investors, the Supervision Authority has the right to request that additions be made to a prospectus specified in subsection (1) of this section.

Chapter 6

Offers in Foreign States

§ 39. Notification requirement

(1) All Estonian local governments and other legal persons registered in Estonia (hereinafter Estonian issuers) are required to notify the Supervision Authority of any offer of securities issued and offered thereby in a foreign state.

(2) In order to perform the obligation specified in subsection (1) of this section, an Estonian issuer shall submit the following to the Supervision Authority:

1) a copy of the document issued to the Estonian issuer in the state where the offer is carried out permitting publication of the prospectus, if such document is issued;

2) a copy of the prospectus, compiled in accordance with the law of the state where the offer was carried out;

3) copies of other documents submitted to the competent authority of the state where the offer was carried out by the Estonian issuer in connection with the offer.

(3) The documents prescribed in subsection (1) of this section shall be submitted to the Supervision Authority within ten days as of the beginning of the offer.

Part III

Investment Firms

Chapter 7

General Provisions

§ 40. Investment firm

(1) An investment firm is a financial institution within the meaning of § 5 of the Credit Institutions Act (RT I 1999, 23, 349; 2000, 35, 222; 40, 250; 2001, 48, 268).

(2) An investment firm may engage in activities not specified in subsection 7 (2) of this Act only in cases prescribed by law or if such activities are directly necessary for the provision of investment services or non-core services.

(3) An investment firm may not be a partner in a general partnership or a general partner in a limited partnership.

§ 41. Protection of name

Only investment firms may use the word "*investeerimisühing*" [investment firm] or derivatives or foreign language equivalents thereof in their business names.

§ 42. Exceptions

The following shall not be regarded as an investment firm for the purposes of this Act:

1) a company providing investment services solely to undertakings belonging to the same group as the company or whose investment services are confined to the management of securities issued by undertakings belonging to the group to their own employees or members of their directing bodies;

2) an insurance company or other insurer established by legislation;

3) an investment fund;

4) a representative of a profession who, within the framework of the professional activities thereof, provides investment services which are not the principal activities thereof and who is a member of a professional association established under public law, the professional rights of which do not exclude the provision of investment services;

5) a company whose sole investment service is to forward orders for the acquisition or transfer of securities to an investment firm, credit institution, investment fund or management company, and which has no authority to acquire or possess the money or securities of the client when providing such investment services;

6) a company providing investment services only on the regulated market of derivative instruments to other participants in this market and whose obligations are guaranteed by the system of guaranteeing the conduct of transactions concluded in this market;

7) a company engaged in the intermediation of information pertaining to securities transactions to investment firms, which is not deemed to be the provision of investment services or non-core services within the meaning of this Act.

§ 43. Investment services

For the purposes of this Act, investment services are the following services provided to third parties:

1) purchase and transfer of securities in its own name and for the account of a client;

2) purchase and transfer of securities in the name and for the account of the client;

3) receipt of securities transaction orders (hereinafter transaction orders) from clients and forwarding or execution thereof for the account of the client;

4) trade in securities in its own name;

5) management of a portfolio of securities separately for each client in accordance with the instructions of the client (hereinafter securities portfolio management);

6) underwriting a securities issue;

7) organising the issuance of securities, public offers or the acceptance of securities for trading on a regulated market, except the activity specified in subsection 120 (1) of this Act.

§ 44. Non-core services

For the purposes of this Act, non-core services are the following services provided to third parties:

1) safekeeping of securities for a client;

2) grant of a loan to a client to conduct securities transactions on the condition that the lender itself participates in the securities transactions;

3) provision of services related to issuing securities and underwriting such issues;

4) provision of advice upon investment in securities;

5) provision of advice on issues concerning investments and business activities, and provision of advice and services related to the merger or acquisition of companies;

6) provision of foreign exchange services where these are connected with the provision of investment services.

§ 45. Provision of investment services

Investment services or non-core services specified in clause 44 1) of this Act may only be provided as a permanent activity by:

1) an investment firm;

2) a credit institution or a branch of a foreign credit institution in accordance with the provisions of the Credit Institutions Act;

3) a management company to the extent prescribed in the Investment Funds Act (RT I 1997, 34, 535; 1998, 61, 979; 2000, 10, 55; 57, 373; 2001, 48, 268; 79, 480);

4) persons or agencies specified in § 42 and subsection 47 (1) of this Act.

§ 46. Client

Within the meaning of this Act, a client of an investment firm is any person that uses or has used a service provided by the investment firm or a person that has turned to the investment firm with a view to using a service and that has been identified by the investment firm.

§ 47. Application of this Part

(1) The provisions of §§ 40-42, § 46 and §§ 48-119 of this Act relating to investment firms and the provision of investment services are not applicable with respect to the following persons and agencies:

1) the Ministry of Finance;

2) the Bank of Estonia;

3) Contracting States;

4) the central banks of Contracting States;

5) the debt manager of a Contracting State, established under public law;

6) the Registrar of the Estonian Central Register of Securities;

7) the Guarantee Fund;

(20.02.02 entered into force 01.07.02 - RT I 2002, 23, 131)

8) the Compensation Fund.

(2) The provisions of this Part relating to investment firms and the provision of investment services are applicable with respect to:

1) credit institutions and branches of foreign credit institutions to the extent that the Credit Institutions Act does not provide otherwise;

2) management companies to the extent that the Investment Funds Act or the Funded Pensions Act (RT I 2001, 79, 480) do not provide otherwise.

(3) The provisions of this Part are not applicable with respect to the management of investment funds.

Chapter 8

Right to Operate

Division 1

Activity Licences

§ 48. Activity licence

(1) In order to operate as an investment firm, a person shall hold a relevant activity licence (hereinafter in this Part activity licence).

(2) Activity licences are issued for an unspecified term.

(3) Activity licences are not transferable, and the acquisition or use thereof by other persons is prohibited.

§ 49. Scope of activity licence

(1) An activity licence is issued for the provision of individual investment services separately or for the provision of all investment services.

(2) An investment firm may only provide investment services for the provision of which it has been granted an activity licence. In order to provide other investment services, an investment firm shall apply for an additional activity licence.

(3) Unless otherwise provided by law, an investment firm may provide all non-core services.

§ 50. Activity licences of credit institution and management company

(1) A company which holds an activity licence of a credit institution need not apply for a separate activity licence for the provision of investment services.

(2) A company which holds an activity licence of a management company need not apply for a separate activity licence for the management of securities portfolios.

§ 51. Decision

(1) An activity licence shall be issued or revoked by a decision of the Supervision Authority.

(2) A decision regarding an activity licence shall at least set out:

1) the name and registry code of the person with regard to whom the decision is made;

2) the type or types of investment services with regard to which the decision is made;

3) the date on which the decision is made and the date on which it enters into force.

(3) A decision refusing to grant or revoking an activity licence shall contain the justification therefor.

§ 52. Notification regarding decision

(1) The Supervision Authority shall forward a decision regarding an activity licence to the person with regard to whom the decision is made immediately after making the decision.

(2) A decision regarding the issue or revocation of an activity licence shall be disclosed at the latest on the working day following the making of the decision pursuant to the procedure prescribed in § 237 of this Act.

(3) The Supervision Authority shall disclose information regarding the revocation of an activity licence through the broadcast media and in at least one national daily newspaper not later than on the third day after the decision to revoke the activity licence.

§ 53. Application for activity licence

(1) In order to apply for an activity licence, a relevant application shall be submitted to the Supervision Authority.

(2) An application shall consist of a written application and the annexes specified in § 54 of this Act. The format of applications shall be established by a regulation of the Minister of Finance.

(3) Confirmation regarding the accuracy of the information and documents submitted upon application, signed by all members of the management board of the applicant, shall be appended to the application and to any information submitted later in connection with the application. The accuracy of information and documents submitted with regard to natural persons specified in clauses 54 (1) 5) and 6) of this Act shall be confirmed by the above-mentioned persons by their signatures.

§ 54. Information submitted upon application

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

1) upon foundation of the applicant - a notarised memorandum of association or foundation resolution and a notice issued by a credit institution regarding the payment of share capital;

2) in the case of an operating company - a copy of the registry card from part B of the card register of the commercial register;

3) a copy of the articles of association and, in the case of an operating company, also the resolution of the general meeting on amendment of the articles of association;

4) a list of shareholders of the applicant, which sets out information on the size of the contribution and the number of shares and votes of each shareholder;

5) information specified in subsection 73 (2) of this Act relating to shareholders with a qualifying holding in the applicant;

6) information on the members of the supervisory board and management board of the company and other persons belonging to the management (hereinafter managers), and on the internal auditor of the company, which sets out at least the person's given name and surname, personal identification code or, in the absence thereof, date of birth, residential address, educational background, a complete list of places of employment and positions held as well as participation in business during the last ten years, and punishments entered in the punishment register with regard to him or her;

7) information on companies in which the holding of the applicant or any member of its management board or supervisory board exceeds 20 per cent, which also sets out the amount of share capital, a list of the areas of activity and the size of the holding of the above-mentioned persons;

8) the given name, surname, personal identification code and residential address of the auditor of the applicant and the number of the auditor's professional licence;

9) the last approved annual report of the applicant;

10) the balance sheet and income statement of the applicant as at the end of the month prior to submission of the application if, upon submission of the application, more than seven months have passed since the end of the financial year;

11) a statement from the local Tax Board Office certifying the absence of tax arrears with respect to the applicant and the persons specified in clauses 5) and 7) of this subsection;

12) the applicant's three-year business plan which sets out at least a description of the applicant's planned activities, organisational structure, places of business, information systems and other technical facilities, and a description of its economic indicators;

13) the draft accounting policies and procedures of the applicant and the draft policies and procedures specified in § 82 of this Act;

14) the code of conduct and internal audit rules to monitor compliance with the code of conduct as prescribed in subsection 13 (2) of the Money Laundering Prevention Act (RT I 1998, 110, 1811; 2000, 84, 533);

15) proof of payment of the state fee.

(2) Upon application for an additional activity licence, an investment firm shall submit the information specified in clauses (1) 2), 3), 9), 10), 12), 13) and 15) of this section.

§ 55. Review of application

(1) If an applicant has failed to submit all the information and documents specified in § 54 of this Act or if such information or documents are incomplete or have not been prepared in accordance with the requirements, the Supervision Authority shall demand elimination of the deficiencies by the applicant.

(2) The Supervision Authority may demand the submission of additional information and documents if it is not convinced on the basis of the information and documents specified in § 54 of this Act as to whether the applicant has adequate facilities for the provision of investment services or whether it meets the requirements for investment firms prescribed by law or on the basis thereof.

(3) In order to verify the information submitted by the applicant, the Supervision Authority may demand the submission of additional information and documents and may carry out an on-site inspection.

(4) The data referred to in subsections (1)-(3) of this section shall be submitted during a reasonable term determined by the Supervision Authority.

(5) The Supervision Authority shall make a decision regarding the issue of or refusal to issue an activity licence within six months after the Supervision Authority receives a corresponding application, but not later than within two months after receipt of all the necessary documents and information.

(6) The Supervision Authority shall make a decision regarding the issue of or refusal to issue an additional activity licence within one month after the Supervision Authority receives a corresponding application and all the necessary information and documents.

§ 56. Refusal to issue activity licence

The Supervision Authority shall refuse to issue an activity licence if:

1) the information or documents submitted upon application for the activity licence do not meet the requirements provided for in this Act or legislation established on the basis thereof or are inaccurate, misleading or incomplete;

2) the applicant fails, within the prescribed term, or refuses to submit the information and documents subject to submission upon application for a permit or as are requested by the Supervision Authority to the Supervision Authority;

3) the applicant does not meet the requirements provided for in this Act or legislation established on the basis thereof;

4) in the opinion of the Supervision Authority, the manager or internal auditor of the applicant or a person having a qualifying holding in the applicant does not meet the requirements provided for in this Act;

5) the applicant has materially or repeatedly violated requirements provided for in legislation or if the activities or omissions of the applicant are in contradiction with good business practices.

§ 57. Termination of activity licence

An activity licence terminates:

1) if a decision is taken to dissolve the investment firm;

2) if the activity licence is revoked;

3) in the event of a merger of investment firms, if it is held by the firm being acquired;

4) if the investment firm is declared bankrupt.

§ 58. Revocation of activity licence

(1) Revocation of an activity licence is the total or partial deprivation of a right acquired by a decision to issue an activity licence. An activity licence may be revoked completely or by individual investment services, whereupon the rights of which the holder of the activity licence is deprived upon revocation of the activity licence shall be specified.

(2) The Supervision Authority may revoke an activity licence if:

1) the investment firm does not commence the activities specified in the licence within twelve months as of the issue of the activity licence or if the activities of the investment firm are suspended for more than twelve months;

2) it has been established that misleading or inaccurate information or falsified documents were submitted upon application for the activity licence or if the investment firm has later submitted such information or documents;

3) the investment firm violates the provisions of this Act or legislation established on the basis thereof;

4) in the opinion of the Supervision Authority, the manager or internal auditor of the investment firm or a person having a qualifying holding in the investment firm does not meet the requirements provided for in this Act;

5) the investment firm has materially or repeatedly violated other requirements provided for in legislation or if its activities or omissions are in contradiction with good business practices;

6) the investment firm fails to comply with a precept issued by the Supervision Authority in full or within the specified term;

7) the investment firm is unable to perform the obligations it has assumed or if, for any other reason, its activities significantly damage the interests of investors or other clients or adversely affect the regular functioning of the securities market;

8) the investment firm fails to pay the contributions to the Investor Protection Sectoral Fund prescribed in the Guarantee Fund Act (RT I 2002, 23, 131) within the specified term or in full.

(20.02.02 entered into force 01.07.02 - RT I 2002, 23, 131)

(3) An activity licence shall be revoked on the application of the investment firm if it no longer provides investment services and if the legitimate interests of its clients are thereby adequately protected.

(4) Prior to making a decision to revoke an activity licence on the basis of subsection (2) of this section, the Supervision Authority may issue a precept to the investment firm establishing a term for elimination of the deficiencies which are the basis for revocation of the activity licence.

Division 2

Activities Abroad

§ 59. Subsidiary and branch abroad

(1) If an investment firm registered in Estonia wishes to found a subsidiary or branch providing investment services abroad or acquire a holding in a foreign investment firm, as a result of which the latter becomes a subsidiary of the Estonian firm, relevant permission (hereinafter in this Division permission) shall be sought from the Supervision Authority.

(2) In order to apply for permission, a written application and the following information shall be submitted to the Supervision Authority:

1) the name of the state in which the subsidiary or branch is to be founded or in which the investment firm in which a holding is to be acquired is registered;

2) the business name and address of the subsidiary or the name and address of the branch;

3) the annual reports for the past two financial years of the foreign investment firm in which a holding is to be acquired, accompanied by a translation into Estonian signed by the person submitting the reports;

4) the business plan of the subsidiary or branch specified in clause 54 (1) 12) of this Act, accompanied by a description of the relationship with the founding investment firm;

5) the information specified in clause 54 (1) 6) of this Act on the members of the directing bodies of the subsidiary or the director of the branch;

6) the information specified in subsection 73 (2) of this Act on persons having a qualifying holding in the subsidiary.

§ 60. Processing of application for permission

(1) Unless otherwise provided in this Division, applications for permission and the processing thereof shall be subject to the provisions of §§ 51-53 and 55 of this Act regulating activity licences and applications therefor.

(2) The Supervision Authority shall inform the securities market supervisory agency of the relevant foreign state of the submission of an application for permission within two months as of the receipt of the application. If no co-operation agreement exists between the Supervision Authority and the securities market supervisory agency of the relevant foreign state, the Supervision Authority shall enter into an agreement with the agency regarding the exercise of supervision over the subsidiary or branch of the investment firm.

(3) The Supervision Authority shall make a decision regarding the grant of or refusal to grant permission within two months as of submission of all the necessary information and documents, but not later than within six months as of submission of the application. Upon refusal to grant permission, the decision shall contain the justification for refusal.

(4) The Supervision Authority shall immediately forward the decision regarding the grant of or refusal to grant permission to the applicant. The securities market supervisory agency of the relevant foreign state shall also be notified of the grant of permission.

(5) An investment firm registered in Estonia which has a subsidiary or branch in a foreign state is required to notify the Supervision Authority and the securities market supervisory agency of the relevant state at least one month in advance if it intends to amend the information specified in clauses 59 (2) 2), 4) and 5) of this Act.

§ 61. Refusal to grant permission

The Supervision Authority may refuse to grant permission if:

1) the information or documents submitted upon application for permission do not meet the requirements provided for in this Act or legislation established on the basis thereof or are inaccurate, misleading or incomplete;

2) the applicant fails, within the prescribed term, or refuses to submit the information and documents subject to submission upon application for permission or as are requested by the Supervision Authority to the Supervision Authority;

3) the members of the directing bodies of the subsidiary or the director of the branch do not meet the requirements for members of the management board of an investment firm as established by this Act;

4) persons having a qualifying holding in the subsidiary in which a holding is being acquired do not meet the requirements provided for in § 72 of this Act;

5) the financial situation of the subsidiary or applicant is not sufficiently sound;

6) foundation of the subsidiary or branch or acquisition of the holding or implementation of the business plan submitted by the applicant may damage the interests of investors the financial situation of the investment firm or its reliable activities in Estonia or in the relevant foreign state;

7) no agreement specified in subsection 60 (2) of this Act has been entered into or the legislation of the relevant foreign state does not enable adequate supervision to be exercised and the data necessary therefor to be acquired.

§ 62. Revocation of permission

(1) The Supervision Authority may revoke permission if circumstances prescribed in clauses 58 (2) 2), 3) or 6) or clauses 61 3)-7) of this Act emerge.

(2) The Supervision Authority shall immediately notify the investment firm which applied for permission and the securities market supervisory agency of the relevant foreign state of the revocation of permission.

§ 63. Opening of representative office abroad

(1) An investment firm shall notify the Supervision Authority of the opening of a representative office abroad at least ten days prior to the opening of the representative office.

(2) The list of information to be submitted in the event of the opening of a representative office and the procedure for the submission thereof shall be established by a regulation of the Minister of Finance.

§ 64. Specifications for opening of branch in Contracting State

(1) Unless otherwise prescribed in this section, the provisions of §§ 59-61 of this Act regulating the foundation of a branch in a foreign state shall apply with regard to the foundation of a branch in a Contracting State.

(2) In order to obtain permission to found a branch in a Contracting State, an investment firm registered in Estonia shall submit a written application to the Supervision Authority together with the information specified in clauses 59 (2) 1), 2), 4) and 5) of this Act, the address of the securities market supervisory agency of the Contracting State and any information and documents which, pursuant to the legislation of that state, may be demanded by the agency upon the foundation of a branch.

(3) The Supervision Authority shall make a decision regarding the grant of or refusal to grant permission within two months after submission of all the necessary information and documents referred to in subsection (2) of this section. The decision shall be immediately forwarded to the applicant.

(4) The Supervision Authority may refuse to grant permission if circumstances specified in clauses 61 1), 3), 5) or 6) of this Act become evident.

(5) The Supervision Authority shall notify the securities market supervisory agency of the relevant Contracting State immediately of a decision to grant permission. Such notice shall be accompanied by information characterising the investment firm, the branch to be founded and their financial situation, as well as information on the investor protection scheme applied with respect to clients of the branch of the investment firm.

(6) The Supervision Authority shall immediately notify the securities market supervisory agencies of all Contracting States in which investment firms registered in Estonia have opened a branch of any changes to the investor protection scheme applicable in Estonia.

(7) An investment firm may open a branch and commence operations after receipt of the relevant information from the securities market supervisory agency of the Contracting State or after two months have passed since receipt of the information specified in subsection (5) of this section by the securities market supervisory agency of the Contracting State.

§ 65. Provision of cross-border investment services in Contracting State

(1) An investment firm registered in Estonia shall notify the Supervision Authority of its intention to start providing cross-border investment services in a Contracting State.

(2) The notice referred to in subsection (1) of this section shall set out at least the name of the Contracting State where cross-border investment services are intended to be provided and the business plan with a description of the planned activities.

(3) The Supervision Authority shall notify the securities market supervisory agency of the relevant Contracting State of the intention of an investment firm to provide cross-border investment services within one month as of receipt of the relevant notice. After the expiry of this term, the investment firm may start providing cross-border investment services, taking into account the requirements established in the relevant Contracting State and made known to the investment firm.

(4) An investment firm providing cross-border investment services shall notify the Supervision Authority and the securities market supervisory agency of the relevant Contracting State in writing and well in advance of any changes intended to be made in the business plan specified in subsection (2) of this section.

Division 3

Activities of Foreign Investment Firms in Estonia

§ 66. Application for permission to found branch of foreign investment firm in Estonia

(1) In order to found a branch in Estonia, an investment firm registered in a foreign state shall apply for the relevant permission (hereinafter in this Division permission) from the Supervision Authority.

(2) The provisions of this Division shall not apply to the founding of a branch of a foreign credit institution in Estonia which is providing investment services.

(3) Upon application for permission, a written application and the following information and documents shall be submitted to the Supervision Authority:

1) the name and address of the branch:

2) information on the director of the branch in accordance with the provisions of clauses 387 10) and 11) of the Commercial Code (RT I 1995, 26-28, 355; 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);

3) the information required in subsection 73 (2) of this Act on persons having a qualifying holding in the investment firm;

4) the information and documents provided for in clauses 386 (2) 1), 3), 4) and 5) of the Commercial Code;

5) the annual reports of the applicant for the past two financial years;

6) the business plan of the branch as referred to in clause 54 (1) 12) of this Act, together with a description of its relationship with the founding investment firm.

(4) In addition to the information specified in subsection (3) of this section, a foreign investment firm shall submit the following to the Supervision Authority from the securities market supervisory agency of its home country:

1) permission to open a branch in Estonia;

2) confirmation to the effect that the investment holds a valid activity licence in its home country and that it pursues its activities in a correct manner and in accordance with good business practices;

3) information on the financial situation of the applicant, including the size of its own funds, capital adequacy and solvency, and on the investor protection scheme in its home country.

(5) The foreign language information and documents specified in this section shall be legalised by a foreign investment firm pursuant to the procedure prescribed in the Consular Act (RT I 1998, 113/114, 1874; 2001, 23, 126) and submitted together with a signed translation into Estonian.

§ 67. Processing of application for permission and revocation of permission

(1) Unless otherwise provided in this Division, applications for permission and the review, grant and revocation thereof shall be subject to the provisions of §§ 51-53, subsections 55 (1)-(5), § 56 and § 58 of this Act regulating the activity licences and applications therefor.

(2) In addition to the reasons provided for in § 56 of this Act, the Supervision Authority may refuse to grant permission if the legislation or the securities market supervisory agency of the home country of the applicant do not guarantee adequate supervision of the applicant or if no agreement specified in subsection 60 (2) of this Act has been entered into and co-operation between the Supervision Authority and the securities market supervisory agency of such country is insufficient.

(3) An investment firm which is registered in a foreign state and which has a branch in Estonia is required to notify the Supervision Authority and the securities market supervisory agency of the relevant state of its intention to change the information listed in clauses 66 (3) 1), 2), and 6) of this Act at least one month in advance.

(4) The Supervision Authority may revoke permission if circumstances provided for in § 58 of this Act or in subsection (2) of this section become evident.

§ 68. Representative office of foreign investment firm

(1) In the event that an investment firm registered in a foreign state intends to open a representative office in Estonia, it shall submit a relevant notice to the Supervision Authority together with the following information and documents:

1) confirmation from the securities market supervisory agency of its home country to the effect that the investment firm holds a valid activity licence;

2) an action plan for the representative office;

3) an authorisation document certifying the authorisation of the representative;

4) a document concerning the registration of the investment firm in its home country (an extract from the commercial register or a copy of the certificate of registration);

5) the articles of association of the investment firm;

6) the seat, address and telecommunications numbers of the representative office.

(2) The documents specified in subsection (1) of this section shall be submitted to the Supervision Authority together with a notarised translation into Estonian.

§ 69. Branch of Contracting State in Estonia

(1) Unless otherwise prescribed in this section, the provisions of subsections 66 (1), (3), (4) and (5) and subsections 67 (1) and (2) of this Act regulating the foundation of a branch of a foreign investment firm shall not apply with regard to the founding in Estonia of a branch of an investment firm registered in a Contracting State.

(2) An investment firm registered in a Contracting State shall notify the Supervision Authority of its intention to open a branch in Estonia through the securities market supervisory agency of its home country. The information specified in clauses 66 (3) 1), 2) and 6) and subsection 65 (4) of this Act shall be annexed to the notice.

(3) Within two months after receipt of the information specified in subsection (2) of this section, the Supervision Authority shall notify the investment firm registered in a Contracting State of the operating requirements applicable in Estonia to the provision of investment services.

(4) An investment firm may open a branch and commence operations after receipt of the information specified in subsection (3) of this section from the Supervision Authority or after two months have passed since receipt of the information specified in subsection (2) of this section by the Supervision Authority.

(5) Confirmation from the Supervision Authority concerning receipt of the information specified in subsection (2) of this section shall be submitted upon the entry of a branch in the commercial register.

§ 70. Provision of cross-border investment services in Estonia

(1) For the purposes of this section, cross-border investment services are investment services provided by a person who is not or whose branch is not registered in Estonia.

(2) An investment firm registered in a Contracting State may start providing cross-border investment services in Estonia after the securities market supervisory agency of the relevant Contracting State has forwarded the information specified in subsection 65 (2) of this Act to the Supervision Authority.

(3) An investment firm registered in a Contracting State and providing cross-border investment services in Estonia shall observe the requirements for the provision of investment services prescribed in and on the basis of this Act, of which it shall be informed by the Supervision Authority after receipt of the information specified in subsection (2) of this section.

(4) An investment firm providing cross-border investment services shall notify the Supervision Authority and the securities market supervisory agency of the relevant Contracting State in writing and well in advance of any changes intended to be made to the business plan specified in subsection (2) of this section.

(5) With the permission of the Supervision Authority (hereinafter in this section permission to provide cross-border services), a member of a stock exchange operating in a foreign state may provide cross-border investment services to persons residing or located in Estonia through the intermediation of a stock exchange located in Estonia without coming within the scope of the provisions subsections (2)-(4) of this section.

(6) A relevant application shall be submitted to the Supervision Authority for permission to provide cross-border services. The format for applications and the list of information to be set out therein shall be established by a regulation the of the Minister of Finance. The provisions of §§ 51 and 52 of this Act shall apply to applications for permission to provide cross-border services and to the review thereof. The Supervision Authority has the right to demand that information and documents necessary for making the decision be submitted.

(7) The Supervision Authority shall make a decision regarding the grant of or refusal to grant permission to provide cross-border services within one month as of submission of the application, information and documents specified in subsection (6) of this section. The Supervision Authority shall refuse to grant permission to provide cross-border services or revoke permission already granted if adequate supervision of the applicant is not possible or if the interests of the client are not sufficiently protected upon the provision of cross-border services.

Chapter 9

Shares, Shareholders, Management

§ 71. Shares

(1) The shares of an investment firm are freely transferable.

(2) The pre-emptive right of a shareholder provided for in subsection 229 (2) of the Commercial Code does not apply upon the transfer of the shares of an investment firm.

§ 72. Requirements for persons having qualifying holding

Qualifying holdings in an investment firm may be held by persons who are able to ensure the sound and prudent management of the investment firm and whose business connections and structure of owners are transparent and do not prevent supervision from being exercised efficiently.

§ 73. Application for permission

(1) If a person intends to acquire a qualifying holding in an investment firm or to increase a qualifying holding so that the proportion of the share capital or votes represented by shares in the investment firm held by the person would exceed 20, 33 or 50 per cent or so that the investment firm would become a subsidiary of the person as a result of the transaction, the person is required to apply to the Supervision Authority beforehand for permission (hereinafter in this Chapter permission).

(2) In order to obtain permission, an application shall be submitted to the Supervision Authority which sets out the size of the current holding and of that to be acquired. The following shall be appended to the application:

1) the name, registry code and location of the applicant if the applicant is a legal person, and also the documents specified in clauses 54 (1) 2) and 3) of this Act if the applicant is a company;

2) information specified in clause 54 (1) 6) of this Act regarding the members of the management board and supervisory board of the acquiring company as well as confirmation from the applicant regarding the reliability and impeccable reputation of such persons;

3) the annual reports of the acquiring company for the past two financial years and an audited interim report for the first six months if more than nine months have passed since the end of the previous financial year. The auditor's report shall be added to the reports;

4) if the qualifying holding is being acquired by a company which is a member of a group, a description of the group structure, stating the shares of the holdings of the companies belonging to the group, and the annual reports and auditor's reports of the group for the past two financial years;

5) if the qualifying holding is being acquired by a natural person, information specified in clause 2) of this subsection and information concerning the origin of the money;

6) proof of payment of the state fee.

(3) If a foreign investment firm, credit institution, insurance company or investment fund wishes to acquire a qualifying holding, confirmation from the relevant foreign supervisory authority to the effect that the foreign firm holds a valid activity licence and observes the established requirements shall also be submitted to the Supervision Authority in addition to the documents specified in subsection (2) of this section.

§ 74. Processing of application for permission

(1) The Supervision Authority may demand the submission of additional information and documents if it is not convinced on the basis of the information and documents specified in subsections 73 (2) and (3) of this Act as to whether the applicant for permission meets the requirements prescribed in this Act.

(2) In order to verify the information submitted by the applicant, the Supervision Authority may demand the submission of additional information and documents and may carry out an on-site inspection.

(3) If the applicant is an investment firm, credit institution, insurance company or investment fund registered in a Contracting State, the Supervision Authority shall seek the opinion of the relevant supervisory agency of the Contracting State regarding the grant of permission prior to making a decision.

(4) The Supervision Authority shall make a decision regarding the grant of or refusal to grant permission within three months after submission of the relevant application, but not later than within one month after submission of all the necessary documents and information. The decision shall be sent immediately to the applicant at the address stated in the application.

(5) When granting permission, the Supervision Authority may establish a reasonable term during which the qualifying holding is to be acquired or the holding is to be increased. Any decision to refuse to grant permission shall contain the justification therefor.

§ 75. Refusal to grant permission

The Supervision Authority may refuse to grant permission to acquire or increase a qualifying holding in an investment firm, if:

1) the acquisition or increase of the holding could significantly restrict competition on the securities market;

2) it becomes clear that the person acquiring the holding does not meet the requirements of § 72 of this Act;

3) the acquisition or increase of the holding could significantly damage the interests of investors or the compliance of the investment firm with the requirements prescribed by this Act;

4) the applicant's accounting reports do not enable the financial situation of the applicant to be adequately evaluated;

5) the applicant is seeking to acquire more than 50% of the share capital or votes represented by shares of the investment firm and the financial situation of the applicant is not sufficient to ensure the reliable and regular operation of the investment firm;

6) the applicant fails to submit on time or refuses to submit the information or documents prescribed by this Act or requested by the Supervision Authority to the Supervision Authority.

§ 76. Consequences of acquiring qualifying holding without permission

(1) A transaction by which a qualifying holding is acquired or increased and which is conducted without the permission of the Supervision Authority is null and void. In such case, the person who conducted the transaction shall not acquire the voting rights accompanying the acquired shares and the votes thus acquired shall not be taken into account when determining the quorum of the general meeting.

(2) If voting rights representing a qualifying holding acquired or increased by a transaction conducted without the permission of the Supervision Authority are included in the quorum of the general meeting and influence the adoption of a resolution of the general meeting, a court may declare the resolution of the general meeting invalid on the basis of a petition of the Supervision Authority, another shareholder or a member of the management board or supervisory board of the company, if the petition is submitted within three months as of the adoption of the adoption of the resolution of the general meeting.

§ 77. Revocation of permission

(1) The Supervision Authority may revoke permission to acquire a qualifying holding if:

1) the applicant has submitted misleading or inaccurate information or documents upon application for permission;

2) the activities of the shareholder who has a qualifying holding or the representative thereof cause a significant risk to the sound and prudent management of the investment firm.

(2) The provisions of § 76 of this Act shall apply with respect to the revocation of permission.

§ 78. Giving notification of qualifying holding

(1) If a person intends to transfer shares in an amount which would result in its losing a qualifying holding in an investment firm or decreases its holding below the rate prescribed in subsection 73 (1) of this Act, the person shall inform the Supervision Authority thereof within ten days as of the relevant transaction being conducted.

(2) Upon learning of a transaction to acquire a qualifying holding, an investment firm shall immediately inform the Supervision Authority thereof. This obligation also applies to transactions specified in subsection (1) of this section and if the holding is increased beyond the rate specified in subsection 73 (1) of this Act.

(3) An investment firm is required to present the names of shareholders who have a qualifying holding and the size of their holding to the Supervision Authority together with its annual report.

§ 79. Requirements for managers

(1) Only persons who have the education, experience and professional qualifications necessary to manage an investment firm and who have an impeccable reputation may be elected or appointed managers of investment firms.

(2) The management board of an investment firm shall have at least two members.

(3) Members of the management board of an investment firm shall have an academic degree or education corresponding thereto, and the experience necessary for managing an investment firm.

(4) A person whose prior activities or omissions have led to the bankruptcy or compulsory liquidation of a company or the revocation of an activity licence issued to a company or who is subject to a prohibition on business or whose activities have demonstrated inability to organise the management of a company in a manner which would sufficiently protect the interests of shareholders, members, creditors and clients may not be manager of an investment firm, nor a member of the management board of the parent undertaking of an investment firm.

(5) The managers and employees of an investment firm are required to act with the prudence and competence expected of them and according to the requirements for their positions and the interests of the investment firm and its clients.

§ 80. Giving notification of officers and auditor

(1) Upon the election or appointment of a manager of an investment firm, the person to be elected or appointed shall present the following to the investment firm:

1) information specified in clause 54 (1) 6) of this Act;

2) confirmation that no circumstances prescribed in this Act which would preclude his or her right to act as manager apply to him or her,.

(2) An investment firm is required to inform the Supervision Authority of the election or appointment of managers and an auditor, and of their resignation or the initiation of their removal before the expiry of their term of office, and to submit the documents specified in subsection (1) of this section within ten days as of the relevant decision being made or the relevant application being received.

§ 81. Removal of manager

(1) The Supervision Authority may issue a precept to an investment firm to remove a manager if:

1) the manager does not meet the requirements provided for in this Act;

2) misleading, incomplete or incorrect information or documents have been submitted in connection with his or her election or appointment;

3) the activities of the manager in managing the investment firm have demonstrated his or her inability to organise the management of the investment firm such that the interests of investors, other clients and creditors are sufficiently protected.

(2) If an investment firm fails to comply with a precept specified in subsection (1) of this section in full or within the prescribed term, the Supervision Authority has the right to demand the removal of the manager by a court.

§ 82. Policies and procedures

(1) An investment firm shall establish policies and procedures or rules of procedure regulating the activities of managers and employees (hereinafter policies and procedures), the aim of which is to ensure that legislation regulating the activities of the investment firm is complied with and that decisions taken by the directing bodies thereof are duly observed.

(2) The policies and procedure shall include:

1) the procedure for prevention of conflicts between the interests of the investment firm and the personal economic interests of the managers and employees;

2) the procedure for the communication of information and movement of documents within the investment firm;

3) the procedure for the provision of investment services and non-core services, including restrictions valid for a definite or indefinite period of time on the conduct of transactions;

4) relationships of subordination, the procedure for reporting and the delegation rights, and shall provide the separation of functions upon assumption of obligations in the name of the investment firm, the recording of services for accounting and reporting purposes and the assessment of risks.

(3) The Minister of Finance may specify the requirements for the preparation of policies and procedures and for the contents thereof by a regulation.

§ 83. Internal control

(1) An investment firm shall have in place an adequate internal control system which covers all management and operations levels of the investment firm.

(2) An investment firm shall establish an independent internal audit unit, appoint an independent employee or enter into an agreement with an auditor for performance of the functions of internal auditor. Persons conducting internal control (hereinafter internal auditors) shall meet the requirements for managers established in this Act. An internal auditor may not be dependent upon or associated with other employees or structural units of the investment firm which perform the functions monitored by the internal auditor.

(3) An internal auditor shall monitor the compliance of the activities of the investment firm with legislation, precepts issued by the Supervision Authority, the rules and regulations of the regulated market, good practices, and the policies and procedures of the investment firm and decisions taken by the directing bodies of the investment firm.

(4) The management board of an investment firm shall ensure that the internal auditor has the rights and working conditions necessary to perform his or her duties, including the right to obtain

explanations and information from the managers of the investment firm and to observe the elimination of any deficiencies discovered and compliance with any precepts issued.

(5) The internal auditor is required to communicate in writing any information which becomes known to him or her and which points to a violation of law or to damage to the interests of clients to the supervisory board and management board of the investment firm, the relevant operator of the regulated market and the Supervision Authority immediately.

Chapter 10

Requirements for Activities of Investment Firms

§ 84. Application of this Chapter

(1) The requirements for investment firms established in this Chapter also apply to foreign persons who provide investment services to persons whose residence or location is in Estonia.

(2) The requirements for investment firms established in this Chapter do not apply to foreign persons specified in subsection (1) of this section who provide investment services solely in a foreign state and whose investment services are not offered to persons in Estonia.

(3) Investment services are deemed as being offered to persons in Estonia if the services are advertised in Estonia or if the manner of the offer or the contents thereof, including the language of the offer, enable the conclusion to be made that the offer is aimed at persons whose residence or location is in Estonia.

§ 85. Obligations of investment firms

An investment firm is required:

1) to provide investment services and non-core services with due professionalism, precision and care, proceeding primarily from the best interests of the client;

2) to take the reliable and regular operation of the securities market into consideration when pursuing its activities;

3) to refrain from conducting transactions in which the interests of the investment firm are in conflict with those of the client (conflict of interests) and, in the event a conflict of interests cannot be avoided, to act in the interests of the client;

4) when providing investment services, to ensure that conflicts of interests between the investment firm and the client or between different clients of the investment firm are avoided or as small as possible;

5) execute the transaction orders of a client in the order they are received without undue delay and under the best possible conditions for the client, by taking into account the possible special nature of the transaction order deriving from the volume and price of the transaction.

§ 86. Notifying client

(1) Each client of an investment firm has the right to access all information subject to mandatory disclosure and the investment firm is required to present such information to the client at the request thereof.

(2) At the request of a client, an investment firm is required to provide information to the client:

1) on shareholders having a qualifying holding in the investment firm (with regard to legal persons - at least the business name and the registry code if applicable; with regard to natural persons - at least the given name and surname, and personal identification code or date of birth in the absence of a personal identification code) and the size of their holding in the share capital of the investment firm;

2) on managers of the investment firm (given name and surname, personal identification code or date of birth in the absence of a personal identification code, educational background, and a complete list of places of employment and positions held during the last five years);

3) in addition to the provisions of clause (2) of this subsection, on the duties of the members of the management board of the investment firm.

§ 87. Notification upon provision of services

Upon the provision of services, an investment firm is required:

1) to request information from its clients regarding their knowledge of or experience in investment services and non-core services, and regarding the goals and circumstances of their business transactions;

2) to convey to its clients all relevant information pertaining to transactions which are being contemplated and risks related thereto, taking into account the interests and expertise of the client and the type and volume of the transactions which are being contemplated;

3) to notify the client of the investor protection scheme applicable;

4) to inform the client of any situation where the client is the other party to a transaction conducted on the basis of the client's transaction order, unless the investment firm and the client have expressly agreed otherwise in writing;

5) upon the request of the client, to provide the client at least once every three months with information regarding the transactions conducted with the assets of the client when managing the securities portfolio, and regarding the value of the assets, the composition of the securities portfolio and other circumstances related to the provision of services.

§ 88. Maintenance and protection of assets of client

(1) An investment firm is required to keep the assets of the client entrusted to it separate from its own assets and those of other clients of the investment firm, unless the investment firm and the client have expressly agreed otherwise in writing. The express written agreement of the client is also necessary to hold the securities of the client in a nominee account.

(2) An investment firm is required to take adequate measures to protect assets belonging to the client and the rights of the client and to ensure that the assets of the client are maintained and invested in accordance with the agreed conditions.

(3) An investment firm is required not to use assets belonging to a client in its own interests, unless:

1) the client has expressly agreed to this in writing, or

2) the money is being used for the account and in the name of a credit institution in accordance with the provisions of subsections 4 (1) and (2) of the Credit Institutions Act.

(4) An investment firm may pledge assets of a client in its own name only with the express written agreement of the client.

(5) An investment firm which keeps the assets of clients in a nominee account or in a securities account or bank account opened in the name of the investment firm is required to keep separate account of the assets of each client.

(6) Assets of clients managed by an investment firm, including assets of clients maintained in the name of the investment firm as well as assets acquired on account of such assets, belong to the respective clients and shall not be included in the bankruptcy estate of the investment firm, nor shall the claims of the creditors of the investment firm be satisfied on account of such assets.

§ 89. Prohibited activities upon conducting transactions

(1) It is prohibited for an investment firm and a company associated therewith to:

1) recommend transactions with securities to a client of the investment firm if such recommendations are not in the interests of the client of which the investment firm is aware or if the purpose of the transaction is to manipulate the market in the meaning of § 200 of this Act;

2) conduct transactions for own account or for the account of a third party or in the name of a third party at a price which is equal to or better than the price proposed by clients in transaction orders for the same security before the investment firm has executed all such orders of clients for conducting transactions with the same security, and also to conduct transactions for own account if the investment firm is aware that the client wishes to submit an order to conduct a transaction of a similar nature or if this may harm the client in any other manner.

(2) It is prohibited for an investment firm, the managers and employees thereof and other persons who are entrusted with the task of conducting securities transactions, carrying out securities analyses or providing investment consultations to manipulate the market in the meaning of § 200 of this Act, including:

1) conducting a securities transaction for a client of the investment firm or providing recommendations for the conduct of a transaction, with the objective of creating a misleading impression of the price of a security or the volume of transactions or of influencing securities prices in a specific direction;

2) disclosing unfounded or misleading information, failing to disclose information which is subject to disclosure or unfounded delay in the disclosure thereof if such information and the disclosure thereof may have a significant impact on the price of a security or the volume of transactions;

3) any activity which may create a wrong or misleading impression of the demand for a security in the market, its price or the accompanying rights or which may induce another person to conduct a transaction with such security or refrain from doing so or induce a person to use the rights accompanying the security or refrain from using such rights.

§ 90. Registration and preservation obligation

(1) An investment firm is required to register the following information when providing investment services:

1) the name of the person issuing the order;

2) the order together with the instructions of the client;

3) information regarding execution of the order;

4) the name of the employee who received the order of the client;

5) the date and time of receipt and execution of the order.

(2) The Minister of Finance may, by a regulation, establish a more precise procedure for the registration of information and a list of information subject to registration in addition to that prescribed in subsection (1) of this section, if this is necessary for the Supervision Authority to exercise supervision over the performance of the obligations of the investment firm.

(3) Registered information shall be preserved for at least seven years.

§ 91. Giving notification of transactions

(1) An investment firm is required to notify the operator of the regulated market in which the investment firm participates of each transaction with securities which are admitted for trading on the regulated market, if such transactions are conducted in connection with the provision of investment services (hereinafter in this Chapter transaction).

(2) The operator of the regulated market shall be notified of each transaction at the latest on the working day following the transaction and by means of data carriers or the public data communication network, unless a shorter term is set out in the rules and regulations of the relevant regulated market.

(3) The following information shall be presented upon notification:

1) the name and identification number of the security;

2) the date and time the transaction is conducted;

3) the price and volume of securities;

4) the investment firms participating in the transaction, whereupon the acquirer and transferor and the client in whose name the transaction is conducted shall be set out individually;

5) the name of the regulated market in the case of a regulated market transaction;

6) a code for identifying the transaction.

(4) Transactions conducted by an investment firm for own account shall be marked as such.

(5) The Minister of Finance may, by a regulation:

1) specify the requirements regarding the content, scope and format of notification, as well as the permitted data carriers and methods of transmission;

2) establish a list of additional information subject to notification, if this is needed to exercise supervision over the regulated market;

3) lift the requirement to communicate information or to communicate aggregate information in the case of transactions the objects of which are bonds or a specific type of derivative instruments;

4) lift the requirement to give notification of transactions conducted in a regulated market of a Contracting State, if that State imposes the same requirements with respect to the notification obligation.

§ 92. Specification of requirements

More specific criteria for deciding whether the requirements prescribed in §§ 85, 87, 88 and 89 of this Act for the operations of investment firms have been met in routine cases may be established by a regulation of the Minister of Finance.

Chapter 11

Prudential Requirements

§ 93. Share capital

(1) The share capital of an investment firm shall be equivalent to at least:

1) 125 000 euro, if the firm is providing services specified in clauses 43 1), 2), 3), 5) or 7) of this Act;

2) 730 000 euro, if the firm is providing services specified in clauses 43 4) or 6) or clause 44 1) of this Act.

(2) If an investment firm provides securities portfolio management services and its share capital is less than 730 000 euro, it has the right to conduct transactions or maintain the securities for own account only if:

1) this position arose from the inability of the investment firm to execute the client's order;

2) the total market value of all such positions does not exceed 18 750 euro;

3) the position is of occasional and temporary nature;

4) the duration of the position is strictly limited to the time needed to conduct the unsuccessful transaction in question;

5) the investment firm meets the requirements provided for in §§ 103 and 105 of this Act.

§ 94. Prudential ratios

(1) In order to reduce the risks related to providing investment services, an investment firm is required at all times to adhere to prudential rates which set out:

1) the minimum amount of net own funds;

2) the capital adequacy ratio;

3) limitations on concentration of exposures;

4) limitations on net open currency positions.

(2) The prudential ratios for investment firms, the instructions for assessment thereof and the procedure for reporting shall be established by a regulation of the Minister of Finance.

(3) Investment firms are required to take measures rendering it possible to assess the prudential ratios at all times with sufficient precision.

§ 95. Prudential ratios of consolidation group

(1) If an investment firm is a member of a consolidation group, the capital adequacy rate and limitations on concentration of exposures shall be complied with and observed both separately with regard to each investment firm and also on a consolidated basis.

(2) The consolidation group of an investment firm comprises the investment firm, its parent undertaking and financial institutions belonging to the same group, as well as financial institutions in which the investment firm owns at least 20% of the share capital or votes represented by shares.

(3) If at least one credit institution belongs to the consolidation group of an investment firm, the consolidation group is deemed to be the consolidation group of the credit institution and the provisions of the Credit Institutions Act and legislation established on the basis thereof shall apply with respect to the group.

(4) With the consent of the Supervision Authority, the consolidation group of an investment firm shall not include an undertaking:

1) whose inclusion in the consolidation group would, in the opinion of the Supervision Authority, distort the actual financial and economic situation of the consolidation group of the investment firm;

2) which is not located in a Contracting State and from which the possibility of obtaining the necessary reports is restricted due to the legislation of its home country or for other reasons.

§ 96. Own funds of investment firm

(1) The following are the own funds of an investment firm:

1) Tier 1 own funds;

2) Tier 2 own funds;

3) Tier 3 own funds.

(2) Tier 1 and Tier 2 own funds together constitute gross own funds.

(3) In order to calculate net own funds, the following shall be deducted from gross own funds pursuant to the procedure established by the Minister of Finance:

1) holdings in other credit and financial institutions;

2) subordinated claims and other claims of a capital nature which are similar thereto and held in respect of credit and financial institutions and which are part of the own funds of such institutions;

3) amounts which exceed the limitations on the concentration of exposures.

§ 97. Subordinated debt

(1) Subordinated debt is a claim against an investment firm which, in the event of the dissolution of the investment firm or the declaration of the investment firm bankrupt, is satisfied after the justified claims of all other creditors have been satisfied.

(2) Subordinated debt may be included in the own funds of an investment firm if it meets the following conditions:

1) the investment firm does not issue a guarantee for the performance of such obligation;

2) the provisions do not include a condition pursuant to which the investment firm would, under certain circumstances, be required to repay the loan before the agreed due date, except in the case of the dissolution of the investment firm;

3) the provisions do not include a condition which could make the loan more expensive than originally agreed;

4) the contract does not prescribe fixed costs;

5) the amounts of the subordinated debt can be used without restrictions to cover ordinary risks prior to determining loss;

6) the contract prescribes the right of the investment firm not to pay interest if the own funds of the investment firm are insufficient to comply with the prudential ratios specified in § 94 of this Act.

(3) Repayment of subordinated debt included in the own funds of an investment firm before the agreed due date is only permitted on the initiative of the borrower and on the basis of prior written consent from the Supervision Authority.

(4) The Supervision Authority shall grant its consent to an investment firm for repayment of the subordinated debt specified in subsection (3) of this section before the agreed due date only on the condition that, after repayment, the own funds of the investment firm will be sufficient to comply with the prudential ratios specified in § 94 of this Act.

(5) In the event of the bankruptcy of an investment firm, the accepted claims deriving from the own funds prescribed in §§ 99 and 100 of this Act shall be satisfied after satisfaction of accepted claims not filed by the due date.

§ 98. Tier 1 own funds

(1) Tier 1 own funds consist of:

1) paid-in share capital, except for amounts paid for preferred shares prescribed by the Commercial Code;

2) share premium accounts;

3) reserves formed on the basis of law and the articles of association on account of the profits, and reserve capital;

4) retained profits or losses from previous years;

5) profits for the current financial year, approved by an auditor;

6) other financial instruments which are similar to those specified in clauses 1)-3) of this subsection, are of capital nature and are accepted as Tier 1 own funds by the Supervision Authority.

(2) In order to calculate the size of the Tier 1 own funds, the following shall be deducted from the total of the entries specified in subsection (1) of this section:

1) the acquisition cost of own shares;

2) the residual value of intangible assets;

3) losses for the current financial year.

(3) The Tier 1 own funds specified in subsection (1) of this section shall be available to the investment firm for immediate and unrestricted use to cover losses or risks.

§ 99. Tier 2 own funds

(1) Only amounts actually received shall be taken into account as Tier 2 own funds.

(2) Tier 2 own funds consist of:

1) subordinated debt in the meaning of § 97 of this Act

2) preferred shares in the meaning of the Commercial Code;

3) other commitments which are similar to those specified in clauses 1) and 2) of this subsection, are of a capital nature and are accepted as Tier 2 own funds by the Supervision Authority.

(3) Tier 2 own funds are divided into:

1) upper Tier 2 own funds;

2) lower Tier 2 own funds.

(4) Instruments included in upper Tier 2 own funds shall meet the following conditions:

1) the term for repayment is not provided in the contract (contract concluded for an unspecified term);

2) the contract provides that the repayment of debt is subject to at least five years' notice.

(5) Lower Tier 2 own funds include instruments specified in subsection (2) of this section if, pursuant to the contract, the term for repayment thereof is longer than five years.

(6) During the five years before the date of expiry or termination of the contract, the amount included in lower Tier 2 own funds shall be reduced each year by 20 per cent of the original amount of debt. The reduction shall be calculated on a quarterly basis.

§ 100. Tier 3 own funds

(1) Tier 3 own funds consist of subordinated debt in the meaning of § 97 of this Act which has been placed at the full disposal of an investment firm in the form of monetary contributions, on the condition that each of the following conditions is met:

1) the term for repayment of the subordinated debt prescribed in the contract is at least two years;

2) the right of the investment firm not to repay the loan or pay interest upon the maturity thereof is prescribed in the contract, if the own funds of the investment firm are insufficient to comply with the prudential ratios specified in § 94 of this Act.

(2) An investment firm is required to notify the Supervision Authority of the repayment of loans and payment of interest included in Tier 3 own funds if its own funds are less than 120 per cent of the own funds corresponding to the capital adequacy ratio prescribed in subsection 103 (2) of this Act.

§ 101. Trading portfolio of investment firm

The trading portfolio of an investment firm consists of each of the following instruments:

1) securities, goods and derivative instruments which have been acquired with a view to re-sale and earning profits on differences between the actual and expected purchase and selling prices or on other fluctuations in prices and interest rates during short periods;

2) commitments made and instruments acquired in order to cover risks related to instruments specified in clause (1) of this section;

3) instruments which are of a similar nature to those specified in clauses 1) or 2) of this section.

§ 102. Limitations on own funds

(1) The total amount of subordinated debt and of preferred shares prescribed in the Commercial Code included in Tier 2 own funds specified in § 99 of this Act shall not exceed 50 per cent of Tier 1 own funds.

(2) The total amount of Tier 2 own funds which are used to cover risks unrelated to the trading portfolio shall not exceed 100 per cent of the Tier 1 own funds used for the same purpose.

(3) The total amount of Tier 2 and Tier 3 own funds shall not exceed 100 per cent of the Tier 1 own funds of an investment firm.

(4) The total amount of Tier 2 and Tier 3 own funds used to cover risks related to the trading portfolio shall not exceed 200 per cent of the Tier 1 own funds used to cover risks related to the trading portfolio.

(5) Tier 2 and Tier 3 own funds in excess of the limitations provided for in subsections (1)-(4) of this section shall not be taken into account for the purposes of assessing the prudential ratios specified in § 94 of this Act.

§ 103. Capital adequacy

(1) Capital adequacy is an expression of the correspondence of the own funds of an investment firm to risks arising from the trading portfolio and business activities of the investment firm in general.

(2) The own funds of an investment firm shall at all times be equal to or larger than the following amounts:

1) the amount of own funds required to cover credit risk;

2) the amount of own funds required to cover the position risk of the trading portfolio;

3) the amount of own funds required to cover the transfer and counter-party risk of the trading portfolio;

4) the amount of own funds required to cover the foreign exchange risk arising from business activities in general;

5) the amount of own funds required from amounts exceeding the limitation on the concentration of exposures.

(3) On the basis of a corresponding written application from an investment firm, the Supervision Authority has the right to release the investment firm from the obligation to calculate the amount of own funds required to cover the position, transfer and counter-party risks of the trading portfolio, subject to the following circumstances:

1) the value of the trading portfolio of the investment firm does not exceed 5 per cent of the total amount of total assets and off-balance sheet items for more than five days;

2) the value of the trading portfolio of the investment firm does not exceed 15 million euro for more than five days;

3) the value of the trading portfolio of the investment firm does not at any time exceed 20 million euro or 6 per cent of the total amount of total assets and off-balance sheet items.

(4) On the basis of a corresponding written application from an investment firm, the Supervision Authority has the right to release the investment firm from the obligation to calculate capital adequacy if the investment firm does not have any proprietary obligations with respect to any client at any time during the provision of investment services.

§ 104. Liquidity

(1) An investment firm shall invest its assets such that the satisfaction of justified claims of creditors, i.e. the liquidity, is guaranteed at all times. For that purpose, an investment firm shall maintain the necessary ratio of liquid assets and current liabilities.

(2) If necessary due to the nature of the services provided by an investment firm or the financial situation of an investment firm, the Supervision Authority may establish a separate liquidity requirement for each investment firm.

§ 105. Limitations on concentration of exposures

(1) Concentration of exposures is the ratio of the total of the claims, including claims arising from derivative instruments, holdings and off-balance sheet items, of a client of an investment firm or a group of connected parties to the net own funds of the investment firm. The concentration of exposures is deemed to be large if this ratio is greater than 10 per cent.

(2) The concentration of exposures of an investment firm with respect to a client or group of connected persons shall in no case exceed 25 per cent of the net own funds of the investment firm.

(3) The following are deemed to be groups of connected persons:

1) two or more persons who constitute a single risk to an investment firm or the consolidation group thereof because one of the persons, whether directly or indirectly, has control over the activities of the other or others, or

2) two or more persons between whom there is no relationship specified in clause (1) of this subsection but who constitute a single risk to an investment firm or the consolidation group thereof because they are so interconnected that, if one of the persons were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties.

(4) If a client is or groups of connected persons are the parent undertaking, subsidiaries or affiliated undertakings of an investment firm or a subsidiary of the parent undertaking of the investment firm, the concentration of exposures with respect thereto shall not exceed 20 per cent. This limitation does not apply to the parent undertaking and subsidiaries subject to supervision on a consolidated basis.

(5) The total of large concentrations of exposures of an investment firm within the meaning of subsection (1) of this section shall not exceed 800 per cent.

§ 106. Notification obligation

(1) An investment firm shall immediately inform the Supervision Authority and provide an explanation if:

1) the size of the net own funds of the investment firm decreases by more than 5 per cent;

2) the capital adequacy of the investment firm decreases by more than 1 per cent;

3) the investment firm exceeds the limitations provided for in § 102 or subsections 105 (2), (4) and (5) of this Act or fails to comply with the prudential ratios provided for in subsections 98 (3), 103 (2) or 104 (2) of this Act.

(2) An investment firm shall immediately inform the Supervision Authority of the repayment of any subordinated debt and other similar obligations specified in subsection 100 (2) of this Act, if the size of the own funds provided for in subsection 103 (2) of this Act falls below 120 per cent of the prudential ratio.

(3) An investment firm shall inform the Supervision Authority of any large concentrations of exposures at least once a year, whereupon the Supervision Authority shall be notified in the course of the year of each new large concentration of exposure and of each increase of at least 20 per cent in existing large concentrations of exposures in comparison with the preceding notification.

Chapter 12

Accounting and Reporting by Investment Firms

§ 107. Organisation of accounting

(1) The accounting and reporting of investment firms shall be organised pursuant to the Accounting Act (RT I 1994, 48, 790; 1995, 26-28, 355; 92, 1604; 1996, 40, 773; 42, 811; 49, 953; 1998, 59, 941; 1999, 55, 584; 101, 903), this Act, other legislation and the articles of association of the investment firm.

(2) The accounting of an investment firm shall provide truthful information relating to the business activities and the financial situation of the investment firm.

(3) The parent undertaking of a consolidation group of an investment firm is required to organise consolidated accounting.

§ 108. Reports

(1) An investment firm shall prepare annual reports and interim reports (hereinafter reports), submit them to the Supervision Authority and disclose them pursuant to the procedure prescribed by law.

(2) An interim report is an accounting report, and the period which serves as the basis therefor commences at the beginning of the financial year and is shorter than one financial year.

(3) The parent undertaking of a consolidation group of an investment firm shall present consolidated accounts to the Supervision Authority.

(4) The Minister of Finance shall, by a regulation, establish the following for investment firms:

1) the contents, methods of preparation and procedure for submission of reports;

2) the requirements for consolidated accounting.

§ 109. Contents and frequency of submission of reports

(1) An investment firm providing investment services prescribed in § 43 of this Act is required to submit reports to the Supervision Authority as follows:

1) if the investment firm provides services specified in clauses 43 4) or 6) or clause 44 1) of this Act, it shall submit an interim report once a month, but not later than within ten days after the end of the period under review, together with an assessment of the prudential ratios provided for in subsection 94 (1) of this Act;

2) if the investment firm provides services specified in clauses 43 1), 2), 3), 5) or 7) of this Act, it shall submit an interim report once a quarter, but not later than within twenty days after the end of the

period under review, together with an assessment of the prudential ratios provided for in subsection 94 (1) of this Act.

(2) An investment firm shall submit an audited annual report within four months after the end of the period under review.

(3) The parent undertaking of a consolidation group of an investment firm shall submit consolidated semi-annual and annual reports within three months after the end of the period under review.

§ 110. Disclosure of reports

(1) Reports subject to disclosure by an investment firm shall be available at the seat and all branches and representative offices of the investment firm as well as on its website, or if the investment firm does not have its own website, it shall submit the report subject to disclosure to the Supervision Authority for disclosure thereof on the website of the Supervision Authority.

(2) The minimum amount of information to be disclosed, the reporting forms, the methods of preparing reports and term for disclosure thereof shall be established by regulation of the Minister of Finance.

§ 111. Audit

Companies belonging to the same consolidation group as an investment firm shall be audited by at least one common auditor.

§ 112. Appointment of auditor

(1) A trustworthy person with adequate expertise and experience to audit investment firms may be appointed auditor of an investment firm.

(2) The auditor of an investment firm may be appointed to conduct a single audit or for a specific term which shall not exceed five years.

(3) An auditor shall be appointed by a court of the seat of the investment firm on the basis of a petition from the Supervision Authority if:

1) the general meeting has not appointed an auditor;

2) the auditor appointed by the general meeting refuses to conduct an audit and the general meeting of the investment firm fails to appoint another auditor within one month.

(4) The authority of a court-appointed auditor shall continue until appointment of a new auditor by the general meeting.

§ 113. Notification obligation of auditor

(1) An auditor is required to notify the Supervision Authority promptly in writing of any circumstances of which he or she becomes aware in the course of conducting an audit of the investment firm and which result or may result in:

1) material violation of legislation regulating the activities of investment firms;

2) interruption of the activities of the investment firm;

3) interruption of the activities of a subsidiary of the investment firm;

4) a qualified report by the auditor concerning the annual accounts or consolidated accounts of the investment firm;

5) a situation, or the risk of a situation arising, in which the investment firm is unable to perform its obligations;

6) an act by a manager or employee causing significant proprietary damage to the investment firm or to a client or clients thereof.

(2) An obligation not to disclose information, which is imposed on an auditor by legislation or a contract, does not apply to the requirement to forward information to the Supervision Authority.

Chapter 13

Merger of Investment Firms

§ 114. Prohibition of division

Division of an investment firm is prohibited.

§ 115. Special merger rules

(1) The merger of an investment firm shall be performed pursuant to the procedure prescribed in the Commercial Code, unless otherwise prescribed in this Chapter.

(2) An investment firm may only merge with another investment firm.

(3) If investment firms merge by founding a new company, the activity licences of all the merging investment firms expire.

§ 116. Merger agreement and merger report

(1) The merger agreement of an investment firm shall not be entered into with a suspensive or resolutive condition.

(2) The Supervision Authority shall be notified of entry into a merger agreement between investment firms within three working days as of the merger agreement being entered into.

(3) Upon the merger of investment firms, a merger report shall be prepared and the report shall be audited by an auditor. The interim balance sheet provided for in subsection 419 (3) of the Commercial Code shall be prepared if the annual report has been prepared more than three months before the merger agreement is entered into.

(4) The auditor's report shall provide an opinion on the exchange ratio of shares and the determination thereof and on whether the acquiring investment firm or the investment firm being founded meets the prudential ratios provided for in this Act.

§ 117. Authorisation for merger

(1) Authorisation is necessary from the Supervision Authority for the merger of investment firms (hereinafter authorisation for merger).

(2) In order to be granted authorisation for merger, the acquiring investment firm or, in the case prescribed in subsection 115 (3) of this Act, the merging investment firms jointly shall submit an application to the Supervision Authority to which the following information and documents are appended:

1) the merger agreement or a notarised copy thereof;

2) the merger report;

3) the merger resolutions;

4) the auditor's report;

5) the business plan specified in clause 54 (1) 12) of this Act for the three years following the merger;

6) the information and documents specified in clauses 54 (1) 5), 6) and 13) of this Act.

(3) The provisions of § 53 and subsections 55 (1)-(4) of this Act regarding applications for activity licences and the review thereof shall apply with respect to applications for authorisation for merger.

§ 118. Decision regarding authorisation for merger

(1) A decision to grant or to refuse to grant authorisation for merger or to issue an activity licence to an investment firm founded as a result of a merger shall be taken by the Supervision Authority not later than within thirty days as of submission of all the required information and documents. The applicant shall be informed of the decision immediately.

(2) The Supervision Authority may refuse to grant authorisation for merger if:

1) the information or documents submitted upon applying for authorisation for merger do not meet the requirements provided for in this Act or legislation established on the basis thereof or such information is or such documents are inaccurate, misleading or incomplete;

2) the applicant fails, within the prescribed term, or refuses to submit the information or documents subject to submission to the Supervision Authority upon applying for authorisation for merger;

3) the investment firm founded as a result of the merger does not meet the requirements provided for in this Act or legislation established on the basis thereof or if the merger harm the interests of clients of the investment firm for some other reason;

4) a manager or internal auditor of the investment firm resulting from the merger or a person having a qualifying holding therein does not meet the requirements provided for in this Act;

5) the merger would significantly reduce effective competition in the securities market or would harm the regular operation of the securities market for some other reason.

§ 119. Disclosure of merger

(1) Merging investment firms shall immediately make public the fact of being granted authorisation for merger.

(2) An investment firm shall make public the merger of the investment firm or the commencement of activities of the new investment firm within seven days after the relevant entry is made in the commercial register.

(3) The information specified in subsections (1) and (2) of this section shall be published in at least one national daily newspaper and on the website of the acquiring investment firm.

Part IV

Regulated Market

Chapter 14

Right to Operate

§ 120. Activity licence

(1) In order to operate a regulated market (hereinafter in this Part market) as a permanent area of activity, a corresponding activity licence (hereinafter (hereinafter in this Part activity licence) shall be applied for from the Supervision Authority.

(2) A separate activity licence shall be applied for for operating each market.

(3) Each market may have only one operator of the market (hereinafter in this Part operator).

(4) Only public limited companies have the right to operate as operators.

(5) An operator does not have the right to engage in other areas of activity which are not related to operating the market or which endanger the regular and reliable operations of the market or its activities as an operator.

§ 121. Application for and processing of activity licence

(1) The provisions of subsections 48 (2) and (3), subsections 51 (1) and (3), § 52, subsection 53 (3), subsections 55 (1)-(5) and § 57 of this Act shall apply with respect to activity licences of operators.

(2) Upon application for an activity licence, the applicant shall submit a corresponding written application, the information and documents specified in clauses 54 (1) 1)-11) and 15) of this Act, the draft rules and regulations of the regulated market specified in § 127 of this Act and its business plan for the next three years. The format of applications shall be established by a regulation of the Minister of Finance.

(3) The business plan specified in subsection (2) of this section shall contain a precise description of the trading, settlement, information and other systems of the market as well as a description of the applicant's organisational structure, places of business and the information technology and other technical measures to be implemented, and its economic indicators.

(4) The Minister of Finance may, by a regulation, establish more specific requirements for the business plan specified in subsection (2) of this section.

§ 122. Refusal to issue activity licence

(1) The Supervision Authority shall refuse to issue an activity licence if:

1) the information or documents submitted upon application for the activity licence do not meet the requirements provided for in this Act or legislation established on the basis thereof or are inaccurate, misleading or incomplete;

2) the applicant fails, within the prescribed term, or refuses to submit the information or documents subject to submission upon application for an activity licence or requested by the Supervision Authority to the Supervision Authority;

3) the applicant, due to its organisational structure, legal and technical solutions or insufficiency of assets and owners' equity, is not able to meet the requirements established by this Act or legislation established on the basis thereof for operators and the market;

4) other areas of activity of the applicant endanger the regular and lawful operation of the market or its activities as an operator;

5) in the opinion of the Supervision Authority, the members of the supervisory board and management board of the applicant do not have sufficient knowledge for operating a market or they are unable to operate the market in a regular and lawful manner, or that manager of the applicant is lacking the education, knowledge, experience or impeccable reputation necessary to perform his or her duties;

6) a manager has been a bankrupt or if bankruptcy proceedings with respect to this person have been terminated by abatement, or if the activities or omissions of the manager have led to the bankruptcy, compulsory dissolution or revocation of the activity licence of a person or if the activities or omissions of the manager have shown his or her inability to organise the activities of a professional securities market participant or professional investor in a manner that would sufficiently protect the interests of its creditors;

7) the applicant fails to meet the requirements provided for in this Act or legislation established on the basis thereof;

8) the applicant has materially or repeatedly violated requirements provided for in legislation or the activities or omissions of the applicant are in contradiction with good business practices.

(2) During the period of validity of its activity licence, an operator shall prevent circumstances which would serve as a basis for refusal to issue the activity licence as provided for in subsection (1) of this section.

§ 123. Revocation of activity licence

(1) Unless otherwise prescribed by this section, the provisions of subsections 58 (1), (3) and (4) shall apply with respect to revocation of the activity licence of an operator.

(2) The Supervision Authority has the right to revoke an activity licence if:

1) disorder in the market may endanger the economy of the state as a whole or law and order in the state;

2) the operator endangers the regular and lawful operation of the market through its activities or omissions;

3) the operator is unable to ensure, to the extent of its competence, protection of the interests of investors related to the market;

4) grounds for refusal to issue an activity licence provided for in subsection 122 (1) of this Act exist with respect to the operator;

5) the operator materially violates a requirement provided for in this Act or legislation established on the basis thereof;

6) the operator fails to comply in full or within the prescribed term with a precept issued by the Supervision Authority;

7) the activities or omissions of the operator have led to a loss of confidence therein;

8) the operator fails to commence operating the market within six months as of the issue of the activity licence.

§ 124. Operating risk management

(1) The information technology system or other system used by the operator to conduct transactions and record information in order to operate the regulated market shall be reliable and dependable and reduce operating risks in the market and with respect to market participators.

(2) The Minister of Finance may, by a regulation, specify the criteria for a reliable and dependable information technology system or other system specified in subsection (1) of this section.

(3) In order to manage management and operating risks, an operator shall apply sufficient internal control measures.

(4) The provisions of subsection 79 (5) and § 80 of this Act pertaining to managers of an investment firm shall apply with respect to members of the supervisory board and management board of an operator.

§ 125. Financial risk management

(1) The share capital of an operator shall be at least 125 000 euro.

(2) The owners' equity of an operator shall be at least equal to the operating costs needed to operate the relevant market for five months.

(3) If the operator has not commenced operations, the operating costs needed to operate the market shall be determined on the basis of the business plan submitted to the Supervision Authority by the applicant upon application for an activity licence.

Chapter 15

Self-regulation

§ 126. Self-regulation

(1) An operator shall, through its management and organisational structure, ensure the regular and lawful operation of the market and supervision of the participators and issuers on the market and the activities thereof.

(2) In order to ensure the regular and lawful operation of the market, the operator shall establish the rules and regulations of the market (hereinafter rules and regulations).

(3) The rules and regulations shall set out standard conditions on agreements to be entered into with a person for the operator to grant that person the right to participate in the market and on agreements to be entered into with issuers of securities for the admission of such securities for trading to the market.

§ 127. Rules and regulations

(1) The purpose of the rules and regulations is to ensure that the obligations of the participators and issuers in the market are performed, taking into account public and economic interests and the protection of investors.

(2) The rules and regulations shall prescribe at least:

1) the organisational structure of the market and its operator, to the extent that this is not described in the articles of association of the operator;

2) the bases, conditions and procedure for admitting a security for trading and for the suspension and termination of trading;

3) the principal rights and obligations of the issuer of securities admitted for trading with respect to the operator, market participators and issuers of other securities admitted to be traded on the market;

4) the bases, conditions and procedure for forwarding information to the operator;

5) the bases, conditions and procedure for admitting a person to the regulated market and removing a participator therefrom;

6) the principal rights and obligations of a market participator with respect to the operator, other market participators, clients or creditors of the market participator and issuers of securities admitted to be traded on the market;

7) the conducting of a transaction in a market, giving of notification of a transaction, forwarding of information necessary to conduct a transaction, and disclosure of the price quotations of a security and other similar information;

8) the rights and obligations of the person, body or member thereof who decides on the admittance of a security for trading or the suspension or termination of trading therewith, and the bases, conditions and procedure for the election or appointment thereof;

9) the rights and obligations of the person, body or member thereof who exercises supervision upon the exercise of supervision, and the bases, conditions and procedure for the election or appointment thereof;

10) contractual penalties for violation of this Act, legislation established on the basis thereof and the rules and regulations;

11) matters pertaining to the guarantee fund, in the event there is a guarantee fund in the regulated market.

(3) The provisions of law regarding unreasonably harmful standard conditions shall not apply with respect to rules and regulations.

(4) Any agreement entered into by an operator regarding service fees and payment thereof in return for participation in the market, admission of a security to be traded on the market, conducting of transactions on the market and other services is not deemed to be part of the rules and regulations.

§ 128. Amendment of rules and regulations

(1) Operators have the right to amend rules and regulations unilaterally.

(2) In the event of amendment of the rules and regulations, the amendments shall be submitted to the Supervision Authority for approval. Upon application for approval, a corresponding written application shall be submitted to the Supervision Authority accompanied by the draft rules and regulations together with explanations of the amendments and an estimate of their impact on the market participators and the operation of the market.

(3) The Supervision Authority may request the operator to submit additional information and documents in order to specify the amendments to the rules and regulations and estimate the impact thereof.

(4) The Supervision Authority shall make a decision approving the amendments to the rules and regulations or refusing approval thereof within thirty days as of submission of a corresponding application, but not later than within twenty days as of submission of all the information specified in subsection (3) of this section.

(5) The Supervision Authority shall refuse approval if the amendments to the rules and regulations are not in compliance with legislation or are contradictory, misleading or incomplete or if implementation thereof would not guarantee sufficient protection of the interests of investors or of persons serving as parties to the rules and regulations.

§ 129. Entry into force of amendments to rules and regulations

(1) Amendments to the rules and regulations shall enter into force upon their disclosure pursuant to the procedure prescribed in § 130 of this Act, unless a later term is set out in the amendments.

(2) Only amendments to the rules and regulations which are approved by the Supervision Authority may be disclosed.

§ 130. Disclosure of rules and regulations

The operator shall disclose the rules and regulations on its website.

Chapter 16

Operation of Market

Division 1

Market Participator and Issuer

§ 131. General obligation of operator

(1) The operator shall establish and implement the rules and regulations in order to ensure the efficiency and transparency of the market.

(2) For the purposes of this Part, efficiency denotes a situation where the offers and transactions of market participators are organised in a manner which ensures the immediate availability of information concerning such offers and transactions and that the transactions of market participators are conducted and executed pursuant to requirements.

(3) For the purposes of this Part, transparency denotes a situation where all market participators receive accurate information regarding securities trading and the issuers of such securities immediately and at the same time and where the general public has the opportunity to obtain such information.

§ 132. Equal treatment

(1) Everyone meeting the conditions provided for in this Act, legislation established on the basis thereof and the rules and regulations established by the operator have the right to participate in a market or put issued securities on the market for trading.

(2) An operator shall only permit securities to be traded on the market if the issuer thereof undertakes to observe the rules and regulations and pay the operator a service fee established by the latter.

(3) An operator shall only permit persons to participate in the market who undertake to observe the rules and regulations and pay the operator a service fee established by the latter.

(4) The rules and regulations of the market and service fees apply uniformly and they shall be applied and amended uniformly with respect to all market participators as well as applicants to participate, issuers of securities traded on the market and applicants seeking their securities to be admitted for trading on the market.

§ 133. Resolution of disputes

(1) A person has the right to file an action with a court or, subject to agreement between the parties, the arbitral tribunal specified in § 202 of this Act for recognition of the right of a security to be admitted for trading and for obliging the operator to admit the security for trading.

(2) A person has the right to file an action with a court or, subject to agreement between the parties, the arbitral tribunal specified in § 202 of this Act for recognition of the right to participate in the regulated market and for obliging the operator to grant the person the right to participate in the market.

§ 134. Obligations of market participator

A market participator is required to:

1) observe the rules and regulations;

2) supply the operator with accurate, precise and complete information to the extent demanded on the basis of legislation or the rules and regulations for the purpose of performing its obligations provided for in the legislation and rules and regulations;

3) supply information, to the extent requested by the operator or prescribed by the rules and regulations, regarding transactions conducted outside the regulated market for own account or for the account of a third party with securities traded on the regulated market;

4) refrain from manipulating the market and to follow the principles of fair and equitable trading and generally accepted market principles.

§ 135. Obligations of issuer of security traded on market

(1) The issuer of a security traded on the market is required to perform the obligations prescribed in clauses 134 1) and 2) of this Act.

(2) Full partners, members of the management board and supervisory board and employees of an issuer of a security traded on the market, as well as persons to whom the issuer is a controlled company, shall follow the principles of fair and equitable trading when conducting transactions on the market with the securities of this issuer.

Division 2

Transactions on Market

§ 136. Suspension of trading

(1) In order to protect the interests of investors, to avoid danger to the regular and lawful operation of the market or to protect any other significant interest or avoid any other threat, the Supervision Authority has the right to issue a precept to an operator:

1) for suspension of trading with securities on the market;

2) for amendment of the suspension order provided for in subsection (2) of this section.

(2) In order to protect the interests of investors or to avoid danger to the regular and lawful operation of the market or on some other grounds provided for in the rules and regulations, the operator has the right to suspend trading with a security on the market if the issuer of the security has violated an obligation with respect to the operator and arising from legislation or the rules and regulations.

§ 137. Cessation of trading

(1) In order to protect the interests of investors, to avoid danger to the regular and lawful operation of the market or to protect any other significant interest or avoid any other threat, the Supervision Authority has the right to issue a precept to an operator for the cessation of trading with securities on the market.

(2) An operator has the right to cease trading with a security on the market on the basis of an application from the issuer of the security if the issuer has duly performed its obligations with respect to the operator and arising from legislation and the rules and regulations.

(3) An operator has the right to cease trading with a security on the market if the issuer of the security has significantly violated an obligation arising from legislation or the rules and regulations with respect to the operator of the market, if regular and lawful transactions are not conducted with this security on the market, or on some other grounds prescribed in the rules and regulations.

(4) The Supervision Authority has the right to issue a precept on the grounds prescribed in subsection (1) of this section for amendment of the acts prescribed in subsections (2) and (3) of this section.

§ 138. Recording of transactions

(1) An operator shall keep a daily chronological record of all transactions conducted on the market and reported to the operator.

(2) An operator shall at least record the time at which the transaction is conducted, information regarding the market participator which conducted the transaction, the securities which served as the object of the transaction, and their number, nominal value and price.

(3) An operator shall preserve information entered in the register for at least seven years as of their entry in the register.

(4) An operator has the right to request information on the significant conditions of a transaction for the purpose of registration, as well as the personal data of the client or creditor of the market participator which conducts the transaction, the time that an obligation or other similar relationship between the client or creditor and the market participator arises and the time of amendment or execution thereof, and other information in accordance with the rules and regulations of the market.

§ 139. Market guarantee fund

(1) If an operator undertakes to guarantee the execution of transactions conducted on the market, the operator shall establish a guarantee fund or enter into a relevant guarantee or insurance contract.

(2) The guarantee fund is an amount of money held in a bank account in credit institutions or the Bank of Estonia or invested in securities which is mainly used or can be used for guaranteeing the execution of transactions with securities conducted on the market.

(3) The guarantee fund shall be managed by the operator.

(4) The Minister of Finance shall, by a regulation, establish the requirements for the formation of the guarantee fund and the size and use thereof.

§ 140. Special rules for bankruptcy

(1) The bankruptcy trustee of a market participator and the bankruptcy trustee of an issuer of a security traded on the market shall continue to execute the rules and regulations until the dissolution of the participator or issuer.

(2) Contributions made by market participators to the guarantee fund specified in § 139 of this Act shall not be included in the bankruptcy estate of the contributor or the possessor of the guarantee fund.

Division 3

Communication of Information

§ 141. Maintenance of confidentiality of information not subject to disclosure

(1) Operators and members of bodies and employees thereof shall maintain indefinitely the confidentiality of any information which is obtained when performing their official duties with respect to the operator or in connection with their position or duties in the market or from the Supervision Authority within the framework of co-operation referred to in subsection 149 (2) of this Act and which is not subject to disclosure in accordance with legislation, a court judgement or the rules and regulations of the market.

(2) A member of a body and an employee of an operator may forward the information provided for in subsection (1) of this section to the body of the same operator or a member or employee thereof pursuant to the provisions of the articles of association and the rules and regulations of the operator, and to persons who are required by law to maintain the confidentiality of information obtained, and in cases where the obligation to disclose such information arises from law.

§ 142. Obligation to communicate information

(1) Information communicated to the operator shall be accurate, clear, precise and complete. Information shall be communicated to the operator immediately unless a different term is prescribed by this Act, legislation established on the basis thereof or the rules and regulations.

(2) During the term that the rules and regulations apply to an issuer of a security traded on the market, the issuer is required to inform the operator immediately of all significant circumstances pertaining to the activities, management and economic and financial situation of the issuer and of other significant circumstances pertaining to the securities which may affect the price of the security on the market or the obligation of the issuer of the security to perform the obligation of the issuer arising from the security.

(3) An operator has the right to prescribe additional or more specific information in the rules and regulations which the issuer of securities traded on the market shall communicate to the operator.

(4) Market participators shall immediately communicate the information necessary to perform the obligations prescribed in subsections 144 (2) and (3) of this Act to the operator.

§ 143. Disclosure of information by operator

In order to guarantee the transparency of the securities market, an operator shall disclose information obtained from market participators, issuers and other persons to the extent and pursuant to the procedure prescribed in this Act, legislation established on the basis thereof and the rules and regulations.

§ 144. Disclosure of trading information

(1) An operator is required to ensure constant access to information on the securities traded on the market, including the acquisition and transfer price of the securities, recent prices, price changes, the highest and lowest prices and the volume and number of transactions.

(2) The Minister of Finance shall, by a regulation, establish more specific requirements for the trading information to be disclosed and for the volume and frequency thereof and other requirements.

(3) On the application of an operator, the Supervision Authority may, pursuant to the procedure established by the Minister of Finance, make exceptions regarding the conditions for the disclosure of trading information.

(4) If market participators have permanent prior access to price information regarding a security and to offers describing the number of securities put up for acquisition or transfer:

1) the operator shall ensure permanent access to such information for the whole trading period;

2) an offer made at a disclosed price for the acquisition or transfer of a certain amount of securities shall be unconditionally acceptable and the offer may not be amended or withdrawn.

§ 145. Manner of disclosure of information

(1) An operator is required to disclose the information specified in § 143 of this Act on its website, through the broadcast media or in a national newspaper.

(2) An operator is required to disclose the trading information specified in § 144 of this Act on its website.

(3) Information specified in subsections (1) and (2) of this section shall be disclosed in Estonian. In addition to Estonian, the information may also be disclosed in another language.

§ 146. Release from obligation to communicate and disclose information

(1) With the consent of the operator and on the bases and pursuant to the procedure prescribed in the rules and regulations of the market, the obligation referred to in this Act to communicate information to the operator and to disclose information may be lifted. The operator is required to notify the Supervision Authority immediately of any such consent granted.

(2) The Supervision Authority may issue a precept obliging the operator to withdraw its consent granted on the basis of subsection (1) of this section if, given the standing of the market or the issuer and the rights of investors, the Supervision Authority is of the opinion that the consent of the operator is not justified.

(3) The Supervision Authority is deemed to have agreed to the consent of the operator specified in subsection (1) of this section if, after one working day has passed since learning of the grant of consent, the Supervision Authority has not issued a precept specified in subsection (2) of this section to the operator.

§ 147. Conditions for non-disclosure of trading information

(1) On the basis of a justified written application and with the consent of the Supervision Authority, the operator need not perform the obligation prescribed in § 144 of this Act if this is caused by an extraordinary situation with respect to the security traded on the market, the issuer thereof, the market or the securities market in general.

(2) The Supervision Authority is deemed to have refused to grant the consent provided for in subsection (1) of this section if, after one working day has passed since receiving the corresponding application from the operator, the Supervision Authority has not granted consent. The Supervision Authority need not justify its refusal to grant consent.

(3) The Minister of Finance shall, by a regulation, establish more detailed criteria for the extraordinary situations specified in subsection (1) of this section.

Chapter 17

Market Supervision

§ 148. Right of operator to exercise supervision

(1) An operator shall exercise supervision over the market with respect to the price formation of securities traded on the market and the conducting and execution of transactions for the purpose of detecting and reducing transactions conducted on the basis of inside information, market manipulation and other violations of law.

(2) An operator shall exercise supervision over market participators and issuers of securities traded on the market to the extent prescribed by legislation and on the bases and to the extent prescribed in the rules and regulations.

(3) An operator has the right to establish its rights in exercising supervision in the rules and regulations in addition to those prescribed in legislation.

(4) An operator has the right to verify the documents of market participators pertaining to their right to participate in the market, and to obtain information therefrom which is necessary for exercising supervision. An operator has the same rights with respect to issuers of securities traded on the market.

§ 149. Co-operation with Supervision Authority

(1) An operator shall inform the Supervision Authority immediately of any violation of law.

(2) The operator and the Supervision Authority shall co-operate in exercising market supervision.

(3) Upon exercising market supervision, the Supervision Authority has the right to disclose information to the operator which is necessary for exercising market supervision, including information not subject to disclosure which the Supervision Authority has obtained in the course of exercising its duties prescribed in this Act.

(4) If so requested by the Supervision Authority, an operator shall grant the Supervision Authority free access to the information technology system used to operate the market and to other systems used for the intermediation of transactions and recording of information for the purpose of exercising market supervision.

Chapter 18

Stock Exchange

Division 1

Special Rules for Operations

§ 150. Definition of stock exchange

(1) A stock exchange is a market where listed securities are traded.

(2) Unless otherwise prescribed in this Chapter, the provisions of this Act regarding a market and its operator shall apply to a stock exchange (hereinafter exchange) and the operator of a stock exchange (hereinafter operator of an exchange) respectively.

§ 151. Member of exchange

(1) An operator of an exchange has the right to set out in its articles of association and the rules and regulations that only members of the exchange may participate in the exchange.

(2) A member of an exchange is a person to whom the operator of the exchange has granted the right or sole right to make offers and conduct transactions with all or certain listed securities and who undertakes to observe the rules and regulations of the exchange.

(3) Only professional securities market participants may become members of an exchange.

(4) Members of an exchange are required to pay service fees to the operator of the exchange, unless otherwise prescribed in the rules and regulations.

(5) The provisions regarding regulated market participators shall also apply with respect to members of an exchange, unless otherwise prescribed in this Chapter.

§ 152. Financial risk management

(1) The share capital of an operator of an exchange shall be at least 375 000 euro.

(2) The owners' equity of an operator of an exchange shall meet the requirements prescribed in § 125 of this Act.

Division 2

Self-regulation

§ 153. Rules and regulations of exchange

The rules and regulations of an exchange shall set out the following in addition to the provisions of the rules and regulations of the market:

1) the bases, conditions and procedure for the listing of securities and the termination thereof;

2) the principal obligations of the issuer of a listed security with respect to the operator of the exchange;

3) the bases, conditions and procedure for the admission of persons as members of the exchange and the termination of member status;

4) the principal rights and obligations of members of the exchange with respect to the operator of the exchange, other members of the exchange, and clients or creditors thereof;

5) the procedure for the forwarding and receipt of quotations and transaction orders via the exchange;

6) the rights and obligations of the person, body and member thereof deciding on the listing of a security, and the bases, conditions and procedure for the election or appointment thereof.

Division 3

Organisation of Exchange

§ 154. Listing

(1) For the purposes of this Act, listing is the admission of a security for trading on an exchange. Trading on the exchange shall also be in securities included in the exchange list.

(2) The operator of an exchange shall only permit trading on the exchange with securities which have been listed in the exchange list on the basis of this Act, legislation established on the basis thereof and the relevant rules and regulations.

(3) Unless otherwise provided in this Chapter, the provisions regarding admission of securities for trading on the market and regarding suspension and termination of the trading thereof shall apply to the listing of securities and to suspension and termination of the listing thereof.

§ 155. Conditions of listing

(1) Only freely transferable securities the characteristics of which and the issuers of which and their acts meet the conditions prescribed in legislation and the rules and regulations of the relevant exchange may be listed.

(2) Upon listing, the security and its issuer shall meet at least the requirements established by a regulation of the Minister of Finance. These requirements shall set out at least the following:

1) requirements for the issuer of the security for which listing is applied for, including requirements regarding the legal status, capital and financial situation of the issuer and its directing bodies, their operations and the terms therefor;

2) requirements for the security for which listing is applied for, including requirements regarding its legal status, special rules for free transferability, public offering, distribution, listing of securities of the same type, and the form of the security;

3) requirements for securities issued by foreign issuers;

4) other requirements, including requirements regarding the minimum value of listed debt securities and the conditions of listing convertible bonds.

§ 156. Decision regarding listing

(1) Decisions about listing shall be taken by the relevant body of the operator of the exchange.

(2) In order to listing to take place, the applicant shall submit a corresponding written application, the listing particulars and other information and documents prescribed in the rules and regulations of the relevant exchange. The operator of the exchange shall immediately notify the Supervision Authority of the receipt of an application and forward the listing particulars to the Supervision Authority.

(3) A decision on listing shall be taken within six months as of submission of the application, information and documents specified in subsection (2) of this section, unless a shorter term is prescribed in the rules and regulations of the relevant exchange.

§ 157. Listing particulars

(1) Listing particulars shall meet the requirements provided for in this Act, legislation established on the basis thereof and the rules and regulations of the relevant exchange.

(2) Unless otherwise prescribed in this Division, the provisions of Part II of this Act regulating prospectuses shall apply with respect to listing particulars. The provisions of § 16 of this Act shall not apply to listing particulars.

(3) Based on the provisions of § 17 and subsection 22 (5) of this Act as well as the special nature of the issuer and the securities listed, the Minister of Finance may, by a regulation, establish:

1) exceptions regarding the obligation to disclose and register the listing particulars;

2) requirements for the listing particulars and the information presented therein, and special rules applicable to the composition of information to be disclosed in the listing particulars.

(4) Within the scope established by a regulation of the Minister of Finance, the Supervision Authority may decide on the implementation of the exceptions and special rules specified in subsection (3) of this section.

§ 158. Application of compensation requirement

The provisions prescribed in §§ 25-28 of this Act shall apply with respect to the listing particulars, taking into account the fact that the person who causes the damage has the right to compensate the damage by acquiring a security listed on the exchange from the person that sustained the damage for the price that the latter paid for the security or for the sales price of the security immediately after its listing on the exchange.

§ 159. Obligation to communicate and disclose information

(1) The Minister of Finance shall, by a regulation, establish:

1) a minimum list of information which the issuer of a listed security shall forward to the operator of the exchange for disclosure;

2) a minimum list of obligations which the issuer of a listed security shall perform in connection with the listing;

3) the manner of disclosing the information and the terms of performing the obligations specified in clauses 1) and 2) of this subsection.

(2) The list specified in clause (1) 2) of this section shall contain at least obligations pertaining to:

1) the issue of new securities;

2) the equal treatment of investors in equal circumstances;

3) the intended amendment of the articles of association;

4) the annual report and semi-annual interim reports;

5) significant circumstances arising in the operations of the issuer;

6) changes of rights arising from the securities.

(3) The operator of an exchange has the right to establish in the rules and regulations a shorter term than that established by the Minister of Finance for the forwarding and disclosure of information with regard to issuers whose securities are listed on the exchange.

Division 4

Exchange Supervision

§ 160. Application of contractual legal remedies with regard to participator in exchange, member of exchange and issuer

If, in addition to other requirements, the rules and regulations of an exchange set out the possibility of applying contractual legal remedies provided for in § 161 of this Act (hereinafter legal remedies), the operator of the exchange has the right to apply the legal remedies provided for in § 161 of this Act

with respect to a participator in the exchange, member of the exchange and issuer of a listed security for failure to perform or inadequate performance of this Act, other legislation established on the basis thereof or the rules and regulations of the exchange.

§ 161. Types of legal remedy

(1) The legal remedies are as follows:

1) a contractual penalty as prescribed in the rules and regulations of the exchange;

2) full or partial suspension of the rights accompanying the status of participator or member of the exchange for a term ranging from three to thirty days;

3) termination of the status of participator or member of the exchange;

4) suspension of the listing of or trading with a security for a term ranging from three to thirty days;

5) termination of the listing of or trading with a security.

(2) The procedure for processing, applying, and appealing against legal remedies shall be prescribed in the rules and regulations of the exchange.

§ 162. Application of legal remedies and right of appeal

(1) The filing of a complaint against the application of legal remedies provided for in subsection 161 (1) of this Act shall not hinder or suspend the execution of the legal remedies.

(2) A person in respect of whom a legal remedy is applied has the right of recourse to a court or, on the agreement of the parties, the arbitral tribunal specified in § 202 of this Act in the matter within ten days as of the day of application of the legal remedy.

§ 163. Disclosure of application of legal remedies

The operator of an exchange has the right to make public the fact and time of legal remedies being applied, their type and the name of the person in respect of whom the remedies are applied. Such disclosure of the fact and time of legal remedies being applied and of the type thereof and of the name of the person in respect of whom the legal remedies are applied is not deemed as dishonouring a person.

Chapter 19

Takeover Bids

§ 164. Scope of application

(1) The provisions of this Chapter shall apply to takeover bids made to acquire voting rights in public limited companies which are registered in Estonia and of which all or a certain type of their shares are listed on an Estonian exchange or traded on an Estonian market.

(2) For the purposes of this Chapter, a share is a security specified in clauses 2 (1) 1) and 7) of this Act as well as any other transferable right for voting at a general meeting of shareholders.

§ 165. Takeover bid

(1) For the purposes of this Act, a takeover bid is a public offer made to the shareholders (hereinafter target persons) of the issuer (hereinafter target issuer) of a share listed on an Estonian exchange or

traded on an Estonian market to acquire their shares in exchange for money or securities listed on the exchange or traded on the market.

(2) A public offer made by the target issuer to its own shareholders to acquire the shares of the target issuer is not deemed to be a takeover bid.

§ 166. Obligation to make takeover bid

A person who has gained dominant influence over the target issuer either directly or together with other persons acting in concert is required to make a takeover bid for all shares of the target issuer with a duration of at least for twenty-eight days within twenty days as of gaining dominant influence.

§ 167. Dominant influence

(1) Dominant influence is a situation where the target issuer is a controlled company within the meaning of subsection 10 (2) of this Act, whereupon voting rights are determined on the basis of the provisions of subsection 10 (1) this Act.

(2) The Supervision Authority has the right to determine the gaining, holding, transfer, absence and scope of dominant influence in each individual case by carefully considering all the relevant circumstances.

§ 168. Persons acting in concert

For the purposes of this Act, persons acting in concert are a controlled company, a person controlling this company and other companies controlled by this person (hereinafter connected persons), and persons who act together with the person making the takeover bid (hereinafter offerer) or the target issuer on the basis of an oral or written agreement in order to gain, maintain or increase dominant influence over the target issuer or in order to frustrate the takeover bid.

§ 169. Functions of Supervision Authority

(1) The Supervision Authority shall monitor the compliance of the takeover bid with legislation.

(2) The Supervision Authority shall execute supervision over the takeover bid together with the relevant operator of an exchange or the relevant operator.

(3) The Supervision Authority has the right to request information from the offerer and target issuer about the takeover bid.

§ 170. Obligations of offerer and connected persons

(1) In the case of a takeover bid, the offerer shall treat all owners of shares of the same type equally.

(2) The offerer and the target issuer must provide the target persons with significant, correct, accurate, complete and identical information for informed consideration of the takeover bid.

(3) The offerer shall make a takeover bid, except a mandatory takeover bid, if it has sufficient financial resources and the means to carry out the takeover.

(4) The offerer and a person acting in concert therewith do not have the right to make a new takeover bid with respect to the same target issuer within six months as of the expiry of the term of the takeover bid as determined by the offerer (hereinafter term of takeover bid), unless the Supervision Authority permits a new takeover bid to be made earlier in order to protect investors or for other justified reasons.

§ 171. Obligations of target issuer and connected persons

(1) In the case of a takeover bid, members of the management, management board and supervisory board of the target issuer shall be guided by the interests of the target issuer and shall not hinder the consideration of the takeover bid by target persons.

(2) The supervisory board of the target issuer shall formulate and disclose its opinion regarding the takeover bid.

(3) During the period between the takeover bid and the results of the takeover bid being made public, the target issuer shall not conduct any transactions which would significantly change the assets or liabilities of the target issuer, unless the general meeting of the shareholders of the target issuer grants authorisation for such transactions to be conducted.

§ 172. Obligations of offerer, target issuer and persons acting in concert therewith

The offerer, target issuer and persons acting in concert therewith are required to refrain from activities which would cause unusual fluctuations in the price of the shares of the target issuer during the term of a takeover bid.

§ 173. Exceptions to mandatory takeover bid

On the basis of a relevant written application from the person who gains dominant influence over the target issuer, the Supervision Authority has the right to grant an exception to the requirement for a mandatory takeover bid if one of the following circumstances exists:

1) the company acquired dominant influence over the target issuer from another company belonging to the same group as the company and the company continues to belong to the same group thereafter;

2) dominant influence was gained reducing the share capital of the target issuer;

3) dominant influence was gained for the purpose of carrying out a merger or division prior to approval of the merger or division agreement by the merging companies or by the general meeting of the shareholders of the target issuer being divided, on the condition that, as a result of the merger or division of the target issuer, the dominant influence of the person or persons acting in concert shall be terminated;

4) the shares were acquired for a short term for the purpose of further transfer but the acquisition resulted in a dominant influence, including the acquisition of securities for a trading portfolio, underwriting of a share issue and acquisition of the shares by the issuer;

5) dominant influence was gained without any prior intention to gain dominant influence over the target issuer, and the acquirer of dominant influence surrenders it to a third party who is not a person acting in concert therewith within ten working days as of gaining dominant influence, on the condition that a general meeting of the shareholders of the target issuer is not held during this term;

6) a shareholder gained dominant influence by exercising a pre-emptive right to subscribe to shares which arises from law and was not acquired from other persons.

§ 174. Purchase price in takeover bid

(1) The ratio of the purchase prices of shares of different type which serve as the object of a takeover bid shall be in proportion to the rights and obligations deriving from the shares.

(2) The purchase price of a share which serves as the object of a mandatory takeover bid and is stated in the mandatory takeover bid shall be fair.

§ 175. Approval of takeover bid

(1) The offerer shall obtain approval for the takeover bid from the Supervision Authority.

(2) The Supervision Authority shall not approve a takeover bid which violates legislation.

(3) The Supervision Authority shall make a decision on the approval of a takeover bid or the grant of the exception specified in § 173 of this Act within fifteen days as of receiving a corresponding written application from the offerer.

§ 176. Right to contest takeover bid

(1) A target person or other person connected with the takeover bid may not demand cancellation of the takeover bid or modification of the conditions thereof after the Supervision Authority has approved the takeover bid.

(2) A target person or other person connected with the takeover bid may demand compensation of damage caused by the takeover bid.

(3) The limitation period of a claim specified in subsection (2) of this section shall be one year as of approval of the takeover bid by the Supervision Authority.

§ 177. Disclosure of takeover bid

The offerer shall publish the prospectus for the takeover bid on the website of the operator of the relevant market and the prospectus shall contain accurate, precise and complete information regarding the takeover bid.

§ 178. Results of takeover bid

The offerer shall make public the results of the takeover bid after expiry of the term of the takeover bid pursuant to the procedure prescribed in § 34 of this Act.

§ 179. Extension of term of takeover bid

If circumstances emerge which postpone the takeover bid, the offerer shall extend the term of the takeover bid with respect to these target persons who have not, within the framework of the takeover bid, made a proposal or an offer to the offerer to transfer the shares.

§ 180. Withdrawal from contract

(1) In the cases and pursuant to the procedure prescribed in this Act and legislation established on the basis thereof, a person who makes a proposal or an offer for the transfer of a share within the framework of a takeover bid and the target person who accepts the proposal or the offer have the right to withdraw from the offer or proposal and to withdraw from the agreement.

(2) In the cases and pursuant to the procedure prescribed in this Act and legislation established on the basis thereof, a target person who enters into a contract for the transfer of a share within the framework of a takeover bid has the right to cancel or withdraw from a transfer contract which has been entered into but not yet executed or to demand the return of that which has been delivered or received on the basis of a transfer contract which has already been executed or, in the event this is impossible, to demand compensation for damage in money. In this case, the offerer does not have the right to file a claim against the target person for compensation of damage.

§ 181. Competitive takeover bid

In the event another offerer makes a takeover bid with respect to the shares which are the object of the takeover bid (a competitive takeover bid), the target person has the right to choose between the offers and, in order to do so, to do the following during the term of the original takeover bid:

1) withdraw the proposal made to the offerer, within the framework of the original takeover bid, to transfer the share;

2) withdraw from the agreement to transfer the shares entered into within the framework of the original takeover bid.

§ 182. Consequences of illegal takeover bid

(1) If a person violates the obligation prescribed in § 166 of this Act but the person is not granted the right to withdraw from making a mandatory takeover bid in accordance with § 173 of this Act or if a person violates the obligation prescribed in subsection 175 (1) of this Act, the person may not exercise voting rights in the target issuer and these votes shall not be included in the quorum of the general meeting of the target issuer until such time as the violation is eliminated.

(2) The Supervision Authority has the right to issue a mandatory precept to the registrar of the Estonian Central Register of Securities for immediate execution to prohibit, for a term of up to twenty days, the use and disposal of securities in a securities account held by an offerer or a person acting in concert therewith in the event that an illegal takeover bid is made or that another bid, similar to a takeover bid, is made available to the shareholders of the target issuer or that the offerer and a person acting in concert therewith performs other acts which are in violation of this Act or legislation established on the basis thereof.

§ 183. Rules of takeover bids

(1) Based on the principles set out in this Act, the Minister of Finance shall, by a regulation, establish more specific requirements for a takeover bid and the circumstances related thereto (hereinafter the rules of a takeover bid).

(2) The rules of a takeover bid shall prescribe the following:

1) the criteria and procedure for determining a fair purchase price for the share which serves as the object of the takeover bid and the payment thereof;

2) the maximum term of the takeover bid and the conditionality criteria of the takeover bid;

3) the conditions and procedure for amending the takeover bid;

4) the procedure for co-ordination of the takeover bid with the Supervision Authority;

5) the criteria and procedure for disclosing and communicating information regarding the takeover bid;

6) the requirements as to the contents and form of the prospectus containing all the terms and conditions of the takeover bid;

7) the criteria and procedure for publication of the results of the takeover bid;

8) the criteria and procedure for distribution of the shares serving as the object of the takeover bid to the offerer;

9) the obligations of the offerer when acquiring the shares serving as the object of the takeover bid on more favourable conditions with respect to the target persons than those set out in the takeover bid;

10) the requirements as to the contents and form of the opinion of the supervisory board of the target issuer regarding the takeover bid and related circumstances;

11) the nature of inappropriate protection measures taken by the target issuer or target person with the aim of not making the takeover bid or of defeating the takeover bid;

12) the principles and valid provisions applicable to a competitive takeover bid and the impact of a competitive takeover bid on the original bid;

13) the scope of the rights and obligations of the Supervision Authority in exercising supervision prior to the takeover bid being made public and supervision related to the takeover bid.

(3) If necessary, the rules of a takeover bid may also prescribe:

1) more specific features of a mandatory takeover bid and more specific features of the extraordinary circumstances in the case of which a person has the right, with the approval of the Supervision Authority, to withdraw from making a mandatory takeover bid;

2) the procedure to withdraw a proposal made within the framework of the takeover bid and to withdraw from an agreement entered into.

Chapter 20

Acquisition of Qualifying Holding on Market

§ 184. Application of Chapter

(1) The provisions of this Chapter shall apply to the acquisition and transfer of holdings in public limited companies registered in Estonia (hereinafter in this Chapter public limited companies) which have issued shares that have been admitted for trading on an Estonian market or listed on an Estonian exchange.

(2) For the purposes of subsection 185 (1) of this Act, the acquisition of votes represented by shares also includes the exchange of a convertible bond for a share granting voting rights, the right to acquire voting rights arising from shares stated in the certificate of subscription upon the acquisition of such shares, the acquisition of voting rights by an owner of preferred shares and the acquisition of the right to acquire a share granting voting rights, issued on the basis of the share, if the exercise of such right depends solely on the acquirer.

§ 185. Notification obligation

(1) Everyone who either directly or indirectly, whether individually or together with persons acting in concert, acquires a qualifying holding in a public limited company or increases such holding to more than 1/5, 1/3, 1/2 or 2/3 of all the votes represented by shares of the public limited company shall immediately notify the public limited company and the person maintaining the share register thereof, stating the number of votes owned and controlled thereby.

(2) Everyone whose direct or indirect holding, whether held individually or together with persons acting in concert, falls below one of the rates specified in subsection (1) of this section shall, on each such occasion, immediately notify the public limited company and the person maintaining the share register thereof, stating the size of the holding in the public limited company owned and controlled thereby.

§ 186. Disclosure obligation

(1) The person maintaining the share register of the public limited company shall immediately communicate information received pursuant to § 185 of this Act to the relevant operator or operator of an exchange.

(2) The operator or operator of an exchange shall immediately make public information received from the person maintaining the share register on their website.

§ 187. Special rule

The provisions of §§ 185 and 186 of this Act shall also apply to a public limited company whose shares are listed on the exchange upon the acquisition or reduction of a holding in the size of 1/20.

§ 188. Exception

(1) On the basis of a justified written application from a person, the Supervision Authority has the right to grant an exception from the provisions of §§ 185 and 187 of this Act with respect to an applicant if the application of §§ 185 and 187 would entail a danger to Estonian national security, law and order or the regular operation of the market, considerable damage to the interests of investors or other extraordinary circumstances.

(2) If the Supervision Authority fails to decide on the grant of an exception within seven days as of receipt of an application specified in subsection (1) of this section, the Supervision Authority is deemed to have refused to grant the exception. The Supervision Authority need not justify its refusal to grant exception.

(3) The Minister of Finance may, by a regulation, establish a list of information necessary to make a decision on the grant of exception and the procedure for reviewing applications.

Chapter 21

Prohibition on Conduct of Transactions and Manipulation of Market on Basis of Inside Information

§ 189. Application of this Chapter

(1) The provisions of this Chapter shall not apply to transactions conducted by the Republic of Estonia, the Bank of Estonia or a person or agency acting in their name in connection with monetary policy, exchange rate policy or state debt management policy.

(2) The provisions of this Chapter regarding securities shall apply to securities specified in clauses 2 (1) 1)-3) of this Act and their depositary receipts, as well as derivative instruments the underlying assets of which are the securities mentioned above.

(3) The provisions of this Chapter shall apply to transactions which are conducted in Estonia or in which one party to the transaction or a representative thereof is the Republic of Estonia and which are conducted with a security traded on an Estonian market or with a derivative instrument which is not traded on an Estonian market, but whose underlying asset is a security traded on an Estonian market.

(4) For the purposes of this Chapter, a situation where an application filed by a person with an operator of an Estonian market for the commencement of trading with a security on the market has been disclosed is also deemed to be trading with securities on an Estonian market.

§ 190. Inside information

(1) For the purposes of this Act, inside information is undisclosed information pertaining directly to a security traded on the market or to the issuer of such a security and which, if disclosed, would probably have a significant effect on the price or value of the security.

(2) Analyses, summaries and other materials produced exclusively on the basis of disclosed information are not deemed to be inside information.

§ 191. Prohibition on conduct of transaction on basis of inside information

(1) For the purposes of this Act, an insider is a person who, by reason of being a full partner or a member of the management or supervisory body of the issuer of a security due to his or her holding in the issuer of a security or his or her work, profession or duties, has access to inside information and is in possession thereof.

(2) If a person specified in subsection (1) of this section is a company or other legal person or agency, the natural person who participates in making the decision to conduct the transaction for the account of the above-mentioned legal person and who is in possession of such inside information is deemed to be an insider.

(3) A third party which is in possession of inside information which has been disclosed directly or indirectly to the person by a person specified in subsection (1) of this section is also deemed to be an insider.

(4) An insider may not directly or indirectly acquire or transfer, either for his or her own account or for the account or in the name of a third party, any security to which inside information known to him or her pertains.

§ 192. Prohibition on disclosure of inside information

It is prohibited to disclose inside information to any third parties, unless disclosure is necessary to perform ordinary duties of employment or official duties or an obligation to disclose the information is prescribed by legislation or the information is disclosed on the basis of §§ 142 or 159 of this Act.

§ 193. Prohibition on giving of recommendations

It is prohibited for an insider to give recommendations to third parties to acquire or transfer securities specified in subsection 189 (3) of this Act concerning which he or she has inside information or to influence third parties to acquire or transfer such securities.

§ 194. Liability of representative of legal person

In the event of a violation of the provisions of §§ 191, 192 or 193 of this Act, the relevant prohibition is also deemed to have been violated by the legal person's representative who is a natural person, who is in possession of inside information and who granted his or her consent to the acts prescribed in §§ 191, 192 or 193 of this Act being performed or who represented the legal person in performing acts violating the provisions of §§ 191, 192 or 193 of this Act on the basis of an employment contract, authorisation agreement or on any other grounds.

§ 195. Obligation to establish internal rules

(1) An issuer whose securities are traded on a market shall establish internal rules to regulate the maintenance of the confidentiality of and disclosure of inside information.

(2) An issuer whose securities are traded on a market, and the parent company or subsidiary thereof, are required to establish internal rules to regulate transactions conducted with securities of the issuer by their full partners, members of their supervisory and management boards and their employees for their own account or for the account or in the name of third parties.

(3) Other persons or agencies, including the Supervision Authority, professional securities market participants and auditors companies, which have regular access to inside information due to their

duties of employment or their official duties or obligations are also required to establish internal rules specified in subsections (1) and (2) of this section.

(4) On the request of the Supervision Authority, the internal rules specified in subsections (1)-(3) of this section shall be submitted thereto immediately.

§ 196. Provision of information by insider

(1) On the request of the Supervision Authority, an insider shall submit information thereto concerning the acquisition and transfer of securities specified in subsection 189 (3) of this Act for his or her own account, for the account of his or her spouse or cohabitee and minor children or on account or in the name of a third party, and concerning circumstances connected with such acquisition or transfer.

(2) The obligation provided for in subsection (1) of this section to submit information to the Supervision Authority concerning the acquisition and transfer of securities of an issuer for own account also applies with respect to a legal person's representative who is a natural person and who has access to inside information.

§ 197. Provision of information by issuer

On the request of the Supervision Authority, an issuer whose securities are traded on the market, and the parent undertaking and subsidiary thereof, shall submit information concerning insiders with respect to such securities and any circumstances related thereto to the Supervision Authority.

§ 198. Procedure for submission of information

(1) The information specified in §§ 196 and 197 of this Act shall be submitted to the Supervision Authority within three working days as of the date of receipt of the relevant request unless the Supervision Authority, on the basis of a justified application by the person, permits the information to be submitted later.

(2) The Supervision Authority may demand the submission of more specific information and documents regarding the information specified in subsection (1) of this section.

§ 199. Use of information

(1) The Supervision Authority may collect, preserve and use information and documents forwarded in accordance with §§ 196-198 of this Act only to verify the violation of prohibitions and the performance of obligations prescribed in this Chapter or for the purposes of co-operation with securities supervisory agencies of other states.

(2) Information forwarded to the Supervision Authority on the basis of § 196 of this Act which ceases to be necessary to verify the violation of prohibitions and the performance of obligations prescribed in this Chapter or for the purposes of international co-operation shall be immediately destroyed.

§ 200. Manipulation of market

(1) Manipulation of the market is an act or omission of a person with the aim of forming an inaccurate or misleading impression of the value, price or turnover of securities traded on the market or of trading activity with such securities by interfering in the process of forming supply and demand on the market.

(2) The disclosure or distribution of inaccurate or misleading information with regard to the issuer of securities traded on the market or a company belonging to the same group thereas is also deemed to be manipulation of the market.

(3) Amongst others, the following acts which occur on or influence the market are also deemed to be manipulation of the market:

1) transactions or series of transactions or any other act the aim of which is to reduce, increase or maintain the price of a security on the market;

2) transactions or series of transactions or any other act the aim of which is to increase the turnover of securities on the market or trading activity with such securities;

3) transactions or series of transactions or any other act the aim of which is to induce another person directly or indirectly to conduct or to refrain from conducting a transaction to purchase or to transfer a security on the market;

4) transactions or series of transactions or any other act the aim of which is to influence the closing price of a security on the market;

5) transactions or series of transactions with respect to which the price or the covering of possible losses accompanying the transactions has been agreed in advance outside the market;

6) the purchase or sale of securities simultaneously or over a short period with the aim of seemingly increasing market activity or turnover;

7) the entry of a transaction order with respect to a security with regard to which it is known in advance that a transaction order of a similar size and price is being entered at the same time by another party;

8) ostensible or sham transactions conducted on the market;

9) failure on the part of the issuer to disclose information subject to disclosure in accordance with §§ 146 and 159 of this Act, or unjustified delay in the disclosure of such information or disclosure of incomplete information;

10) other activities aimed at achieving the objective set out in subsection (1) of this section.

(4) In addition to the acts specified in subsection (3) of this section, an operator has the right to establish an additional list of acts that are deemed to be manipulation of the market in its rules and regulations.

§ 201. Prohibition on manipulation of market

(1) Manipulation of the market is prohibited.

(2) An investment firm which knows of or has suspicions regarding manipulation of the market or an attempt to manipulate the market is prohibited from being an intermediary for the relevant transaction and shall inform the Supervision Authority thereof immediately.

Chapter 22

Arbitral Tribunal

§ 202. Arbitral tribunal of market

(1) An arbitral tribunal of a market (hereinafter arbitral tribunal) is a permanent arbitral tribunal formed by an operator of an Estonian market which resolves disputes arising from contractual and other civil law relations with respect to the market and the operator thereof.

(2) An operator shall inform the Supervision Authority of whether it has a permanently operating arbitral tribunal. If an arbitral tribunal is operating, the operator shall submit written information

confirming the members of the arbitral tribunal and the compliance of its operations with law to the Supervision Authority.

(3) The Supervision Authority shall inform courts and other state agencies engaged in arranging the execution of court judgments of the lawful and permanent operation of an arbitral tribunal.

§ 203. Competence of arbitral tribunal

An arbitral tribunal shall resolve disputes on the basis of an action filed if:

1) the parties have entered into a written agreement to have the arbitral tribunal resolve a dispute which has already arisen or any dispute which may arise in the future;

2) consent to the arbitral tribunal resolving the dispute has been expressed by the plaintiff by filing the action and by the defendant by activities which reflect its readiness to subject itself voluntarily to the jurisdiction of the arbitral tribunal.

§ 204. Council of arbitral tribunal and arbitrators

(1) The council of an arbitral tribunal shall consist of up to six members. The council of an arbitral tribunal shall be appointed for up to two years in accordance with the rules and regulations of the arbitral tribunal.

(2) The principal duty of the council of an arbitral tribunal is to appoint and remove persons from the arbitral tribunal list and to maintain the list of arbitrators. The other rights and obligations of the council of an arbitral tribunal shall be prescribed in the rules and regulations of the arbitral tribunal.

(3) Members of the council of an arbitral tribunal shall have an academic degree in law. Arbitrators shall have an academic degree or education equivalent thereto.

(4) Arbitrators shall be independent in the performance of their duties.

§ 205. Rules and regulations of arbitral tribunal

The rules of procedure of the council of an arbitral tribunal and the procedure for forming an arbitral tribunal and for resolving disputes shall be regulated in the rules and regulations of the arbitral tribunal, which shall be approved by the relevant operator.

§ 206. Dispute in arbitral tribunal

(1) Disputes shall be reviewed in an arbitral tribunal in accordance with its rules and regulations by one or several arbitrators chosen by the parties or appointed by the council of the arbitral tribunal.

(2) The review of disputes in an arbitral tribunal is free or subject to payment in accordance with the rules and regulations of the arbitral tribunal. The rate for payment and the procedure for payment shall be prescribed in the rules and regulations of the arbitral tribunal.

(3) In resolving a dispute, an arbitral tribunal shall proceed from the provisions of legislation and the rules and regulations of the market, as well as generally accepted business practices applicable to fair and equitable trading on the market and other generally accepted business practices.

§ 207. Securing action

(1) On the basis of an application from a party, an arbitral tribunal may apply the following measures to secure the action:

1) entry of a prohibition on the transfer of real property belonging to the defendant or entry of the establishment of a judicial mortgage in the land register, and seizure of movable property or money of the defendant which is at the location of the defendant or third parties by taking into account the value of the action;

2) a prohibition on the defendant from entering into certain transactions or performing certain acts.

(2) A judgment of an arbitral tribunal establishing the measure with which the action is to be secured shall be executed in the same manner as the final judgment of the arbitral tribunal on the resolution of the dispute.

(3) An arbitral tribunal may demand that an applicant make an advance deposit with the arbitral tribunal in order to compensate potential damage caused by securing the action.

(4) If an arbitral tribunal does not satisfy an action and if the defendant has sustained damage on the basis of the application by the plaintiff to secure the action, the defendant has the right to demand compensation from the plaintiff.

§ 208. Co-operation with county and city courts

An arbitral tribunal may request the assistance of a county or city court in attestation procedures or in other court activities which do not fall within the competence of the arbitral tribunal. The court shall process the application pursuant to the procedural provisions regulating attestation procedures or other court activities.

§ 209. Right of appeal

Proceedings in an arbitral tribunal shall be subject to the provisions prescribed in §§ 7 and 7^1 of the Republic of Estonia Act on the Arbitral Tribunal of the Estonian Chamber of Commerce and Industry (RT 1991, 25, 308; RT I 1999, 18, 302).

§ 210. Execution of judgment of arbitral tribunal

(1) A judgment of an arbitral tribunal regarding a person located in Estonia shall be executed pursuant to the procedure prescribed in the Code of Enforcement Procedure (RT I 1993, 49, 693; 2001, 29, 156; 43, 238).

(2) A judgment of an arbitral tribunal regarding a person located abroad shall be executed pursuant to the procedure prescribed in the Code of Enforcement Procedure or an international agreement. Such judgment is deemed to be a judgment of a foreign arbitral tribunal in the meaning of § 74 of the Code of Enforcement Procedure.

§ 211. Termination of arbitral tribunal

The Supervision Authority has the right to issue a precept to an operator to terminate the activities of an arbitral tribunal if the activities of the arbitral tribunal endanger the regular operation of the market or the smooth operations of state agencies engaged in arranging the execution of court judgments.

Part V

Settlement

Chapter 23

Settlement of Obligations Arising from Securities Transactions

§ 212. Application of this Part

(1) This Part shall apply to the performance of obligations arising from securities transactions through the securities settlement system and to transactions used to guarantee the performance of obligations related to participation in the securities settlement system.

(2) The provisions of this Part shall not apply to register acts carried out on the basis of the Estonian Central Register of Securities Act (RT I 2000, 57, 373; 2001, 48, 268; 79, 480) by the registrar of the Estonian Central Register of Securities.

§ 213. Securities settlement system

(1) A securities settlement system (hereinafter in this Part system) is a pool of administrative, technical and legal solutions formed for the purpose of performing obligations arising from securities transactions and guaranteeing performance of obligations related to participation in the system on the basis of an agreement entered into between three or more members of the system and the system operator.

(2) For the purposes of this Act, payment orders for the performance of obligations arising from securities transactions or instructions given for the transfer of securities are treated as transfer orders.

§ 214. System operator

(1) A system operator is a person who, in accordance with the provisions of the system rules and contracts entered into on the basis thereof, arranges for the execution of transfer orders and, depending on the arrangement of the system, also organises the settlement of claims between members of the system.

(2) The following may act as a system operator:

1) The Bank of Estonia;

2) a person to whom the Supervision Authority has issued a relevant activity licence.

(3) Each system shall have only one system operator.

§ 215. Requirements for system operator

(1) The share capital of a system operator shall be at least 125 000 euro. The Minister of Finance has the right to establish additional prudential requirements to ensure the reliability of the system operator. Upon establishment of such requirements, the collateral prescribed in § 226 of this Act and other significant circumstances shall be taken into account.

(2) The system operator shall arrange the operation of the system such that the data processing and other proceedings aimed at executing transfer orders ensure the performance of transfer orders in accordance with the conditions of the transfer orders and the system rules.

(3) In order to manage operating and management risks, a system operator shall apply sufficient internal control measures.

(4) The provisions of subsection 79 (5) and § 80 of this Act pertaining to managers of an investment firm apply with respect to the members of the supervisory board and management board of a system operator.

§ 216. Activities of system operator

(1) An activity licence issued to a system operator grants only the following rights:

1) to keep account of claims to be settled and obligations to be performed through the system on the basis of transfer orders (clearing);

2) to arrange and ensure on a regular basis the settlement of claims and the performance of obligations arising on the basis of transfer orders, including the settlement thereof (settlement);

3) to enter into contracts to arrange for payment of monetary obligations related to the execution of transfer orders with the administrator of the payment system prescribed in the Credit Institutions Act or, if the system operator holds a relevant activity licence, to maintain the settlement accounts of the members of the system to arrange for payment of monetary obligations;

4) to make enquiries necessary to conduct securities transactions, and to give orders to the registrar of the Estonian Central Register of Securities (hereinafter in this Part registrar) to make entries in accordance with legislation, the system rules and the contracts entered into by the system operator;

5) to make enquiries necessary to conduct securities transactions, and to give orders to the payment system to perform acts in accordance with legislation, the system rules and the contracts entered into by the system operator;

6) to establish and manage guarantee funds necessary for the operation of the system, for ensuring performance of the obligations of the members of the system and for managing the risks arising from the operation of the system;

7) to take over claims and obligations arising from securities transactions in the cases and pursuant to the procedure prescribed in the system rules.

(2) In addition to the provisions of subsection (1) of this section, a system operator has the right to:

1) provide the services of a paying agent in making payments related to securities. For the purposes of this Act, a paying agent is a representative of an issuer who acts as an intermediary for payments made with respect to securities;

2) engage in lending and guarantee transactions of both securities and money;

3) provide services related to foreign currency exchange;

4) provide other services and conduct other transactions or acts which are necessary to arrange for performance of or to guarantee transfer orders.

§ 217. Activity licence of system operator

(1) The provisions of subsections 48 (2) and (3), subsections 51 (1) and (3), § 52, subsection 53 (3), subsections 55 (1)-(5) and § 57 of this Act apply with respect to the activity licence of a system operator (hereinafter in this Part activity licence).

(2) An individual activity licence shall be applied for to operate each individual system.

§ 218. Application for activity licence

(1) Upon application for an activity licence, the applicant shall submit relevant written application to the Supervision Authority, as well as the information and documents specified in clauses 54 (1) 1)-11) and 15) of this Act, the draft system rules specified in § 222 of this Act and the applicant's business plan for the next three years. The format of applications shall be established by a regulation of the Minister of Finance.

(2) The business plan specified in subsection (1) of this section shall contain a precise description of the operation of the settlement, information and other systems as well as a description of the applicant's organisational structure, places of business and the information technology and other technical measures to be implemented, and its economic indicators. The Minister of Finance may, by a regulation, establish more specific requirements for the business plan.

§ 219. Refusal to grant activity licence

(1) The Supervision Authority shall refuse to issue an activity licence if:

1) the information or documents submitted upon application for the activity licence do not meet the requirements provided for in this Act or legislation established on the basis thereof or are inaccurate, misleading or incomplete;

2) the applicant fails, within the prescribed term, or refuses to submit the information or documents subject to submission upon application or requested by the Supervision Authority to the Supervision Authority;

3) the applicant, due to its organisational structure, legal and technical solutions or insufficiency of assets and owners' equity, is not able to meet the requirements established by this Act and legislation established on the basis thereof for system operators and the system;

4) other areas of activity of the applicant endanger the regular and lawful operation of the system or its activities as a system operator;

5) in the opinion of the Supervision Authority, the members of the supervisory board and management board of the applicant do not have sufficient knowledge for operating a system or they are unable to operate the system in a regular and lawful manner, or that a manager of the applicant is lacking the education, knowledge, experience or impeccable reputation necessary to perform his or her duties;

6) a manager has been a bankrupt or if bankruptcy proceedings with respect to this person have been terminated by abatement, or if the activities or omissions of the manager have led to the bankruptcy, compulsory dissolution or revocation of the activity licence of a person or if the activities or omissions of the manager have shown his or her inability to organise the activities of a professional securities market participant or professional investor in a manner that would sufficiently protect the interests of its creditors;

7) the applicant fails to meet the requirements provided for in this Act or legislation established on the basis thereof;

8) the applicant has materially or repeatedly violated requirements provided for in legislation or the activities or omissions of the applicant are in contradiction with good business practices.

(2) During the period of validity of its activity licence, a system operator shall prevent any circumstances which would serve as a basis for refusal to issue the activity licence provided for in subsection (1) of this section.

§ 220. Revocation of activity licence

(1) Revocation of an activity licence is the total or partial deprivation of a right acquired by a decision to issue an activity licence.

(2) The Supervision Authority has the right to revoke an activity licence if:

1) the system operator may endanger the economy of the state as a whole or law and order in the state or the regular and lawful operation of the securities market through its activities or omissions;

2) grounds for refusal to issue an activity licence provided for in subsection 219 (1) of this Act exist with respect to the system operator;

3) the system operator materially violates a requirement provided for in this Act or legislation established on the basis thereof;

4) the system operator fails to comply in full or within the prescribed term with a precept issued by the Supervision Authority;

5) the activities or omissions of the system operator have led to a loss of confidence therein;

6) the system operator fails to commence operations as a system operator within six months as of the issue of the activity licence.

(3) Prior to making a decision to revoke an activity licence on the basis of subsection (2) of this section, the Supervision Authority may issue a precept to the system operator establishing a deadline for elimination of the deficiencies which are the basis for revocation.

§ 221. Member of system

(1) A member of the system is a person who has entered into a contract with the system operator and all other members of the system to use the system pursuant to the system rules for the purpose of executing transfer orders.

(2) The following persons may be members of a system specified in subsection (1) of this section:

1) a credit institution or a branch of a foreign credit institution within the meaning of the Credit Institutions Act;

2) an investment firm or a branch or representative office of a foreign investment firm, and a person providing cross-border investment services within the meaning of in this Act;

3) a government agency, a legal person in public law or a foundation established by the state;

4) a foreign system operator, registrar of a securities register and central bank.

(3) In the cases and pursuant to the procedure prescribed in the system rules, a member of the system may act as an intermediary with respect to services of the system for third parties.

(4) In the cases and pursuant to the procedure prescribed in the system rules, a member of the system is required to inform entitled persons of its membership of the system and of the system rules.

§ 222. System rules

The issue and execution of transfer orders and the operation of the system shall be regulated by rules established by the system operator on the basis of this Act (hereinafter in this Part system rules), which shall include:

1) the name of the system operator;

2) the requirements for the system;

3) the requirements for members of the system;

4) the procedure for granting, suspending and revoking the status of a member of the system;

5) a description of the settlement facilities used to execute transfer orders;

6) the procedure for settling claims and obligations which arise from transfer orders, meaning the schedule for processing transfer orders and the execution and arrangement of transfer orders in the event that the operation of the system is upset due to a technical failure or by reason of inadequate performance of the obligations of a member of the system;

7) methods of ensuring the execution of transfer orders, and the procedure for establishing and using guarantee facilities;

8) the conditions of and procedure for ensuring performance of obligations arising from participation in the system;

9) conditions determining the finality of settlements, including the moment of receipt of a transfer order and the moment the transfer order becomes irrevocable;

10) the obligations and liability of the system operator and members of the system;

11) the procedure for amending system rules and for appealing against them.

§ 223. Approval of system rules

(1) After adoption or amendment, the system rules shall be submitted for approval to the Supervision Authority. Upon application for approval, a relevant written application shall be submitted to the Supervision Authority together with the system rules or the amendments thereto, accompanied by explanations and an evaluation of their impact on the members of the system and on the operation of the system.

(2) In order to specify the system rules or the amendments thereto or to evaluate the impact thereof, the Supervision Authority may demand the submission of additional information and documents from the system operator.

(3) The Supervision Authority shall make a decision regarding approval of or refusal to approve the system rules or amendments thereto within fifteen days as of submission of the relevant application but not later than within ten days after submission of all the information specified in subsection (3) of this section.

(4) The Supervision Authority shall refuse to approve the system rules or amendments thereto if they do not meet the requirements of legislation or are insufficient for the effective operation of the system.

(5) The system rules and amendments thereto shall enter into force after they are made public on the website of the system operator, unless the system rules or their amendments prescribe a later term. Only system rules and amendments thereto which have been approved by the Supervision Authority may be made public.

(6) The requirement for approval of the system rules or amendments thereto does not apply in the case where the Bank of Estonia operates as the system operator.

§ 224. Finality of transfer order

(1) A transfer order forwarded to the system operator in accordance with the system rules may not be withdrawn or amended as of the moment prescribed by the system rules. Acts performed after this moment with the aim of amending or cancelling a transfer order already made are void.

(2) The withdrawal of a transfer order in bankruptcy proceedings shall not result in the invalidity of settlements performed by the system operator.

§ 225. Settlement

Within the system, claims and obligations between the members of the system and between the members of the system and the system operator may be settled and performed by means of the settlement of accounts. In this event, settlement is carried out by executing the aggregate claims or total claims (net claim) and the aggregate obligations or total obligations (net obligation) resulting from setting off claims of the same type against obligations of the same type. Upon settlement of claims, the aggregate claim calculated on the basis of the system rules is deemed to be one claim valid with respect to the relevant person, its creditors and third parties.

§ 226. Collateral instruments of system

(1) In order to ensure performance of the obligations of the members of the system and of the system operator, the system operator is required to establish a fund of collateral instruments (hereinafter if this Part guarantee fund), and the bases for the formation of the fund shall be prescribed in the system rules.

(2) Pursuant to the procedure prescribed in the system rules, assets belonging to the guarantee fund shall be used for executing transfer orders if it is not possible to execute the order in time on account of the funds of the person who gave the order and if the value of other collateral provided in accordance with the system rules is insufficient for the execution of the orders.

§ 227. Collateral security

(1) In order to ensure performance of obligations arising from participation in the system, the persons participating in the system may, pursuant to the procedure prescribed in the system rules, agree to encumber securities registered in the Estonian Central Register of Securities and belonging to the above-mentioned persons with a pledge established for the benefit of the system operator or another member of the system. A security so pledged is referred to as a collateral security in this Act.

(2) Securities the transfer of which is restricted with a pre-emptive right valid with respect to a third party or the use or disposal of which is restricted by other restrictions arising from the articles of association may not be pledged pursuant to the procedure prescribed in subsection (1) of this section.

(3) Securities specified in subsection (1) of this section are deemed to have been pledged for the benefit of third parties after a relevant entry has been made in the securities account in the Estonian Central Register of Securities.

(4) In the event of inadequate performance of an obligation guaranteed by a collateral security, the system operator or member of the system for whose benefit the pledge is established may transfer the securities immediately, unless the system rules regulating the use of the pledge or the agreement serving as the basis for establishing the pledge prescribe a different regime for transferring collateral securities. The person for whose benefit the pledge is established also has this right in the course of bankruptcy proceedings.

(5) The owner of securities may not transfer or encumber collateral securities.

(6) Collateral securities shall not be included in the bankruptcy estate of the owner of the securities, nor shall the measures applicable to the owner of such securities to secure action or other restrictions on disposal apply to securities so encumbered.

§ 228. Special rules upon bankruptcy of member of system

(1) If a member of the system is declared bankrupt or a moratorium is established with respect to a member of the system which is a credit institution, the system operator shall immediately stop accepting transfer orders given by the member of the system. In the event bankruptcy proceedings are initiated with respect to a member of the system, the system operator has the right to suspend the

acceptance of transfer orders given by such member of the system pursuant to the procedure prescribed in system rules.

(2) The initiation of bankruptcy proceedings against a member of the system or the declaration of a member as bankrupt, and the establishment of a moratorium with respect to a member of the system which is a credit institution does not suspend the execution of transfer orders forwarded by the relevant member of the system in accordance with the system rules prior to the initiation of bankruptcy proceedings, declaration of bankruptcy or establishment of a moratorium. Obligations undertaken by participating in the system prior to the initiation of bankruptcy proceedings, declaration of bankruptcy or establishment of a moratorium shall be performed on account of the collateral established by the member of the system and the system guarantee fund.

(3) Transfer orders forwarded to the system operator and executed in accordance with the system rules on the day of the initiation of bankruptcy proceedings against a member of the system, declaration of a member of the system as bankrupt or establishment of a moratorium with respect to a member of the system which is a credit institution shall be valid only in the event the system operator was not and did not have to be aware of the initiation of the bankruptcy proceedings, the declaration of bankruptcy or the establishment of the moratorium.

(4) In the event of the bankruptcy of a member of the system, assets excluded from the ownership of the member as a result of executing a transfer order prescribed in subsection (2) of this section shall not be included in the bankruptcy estate thereof.

(5) In the event of the bankruptcy of a member of the system, payments made into the guarantee fund in accordance with the system rules shall not be included in the bankruptcy estate thereof.

(6) A member of the system shall immediately notify the system operator and the Supervision Authority of the initiation and termination of bankruptcy proceedings against it or if it is declared bankrupt or a moratorium is established with respect to it. The same obligation also rests with the relevant temporary trustee in bankruptcy, the trustee in bankruptcy or the moratorium administrator with respect to the relevant member of the system.

§ 229. Special rules upon bankruptcy of system operator

(1) Upon the initiation of bankruptcy proceedings against a system operator or the declaration of a system operator as bankrupt, the system operator shall immediately stop accepting transfer orders from the members of the system.

(2) Upon the initiation of bankruptcy proceedings or a declaration of bankruptcy with respect to a system operator, all prior transfer orders given to the system operator shall be executed.

(3) Upon the bankruptcy of a system operator, the assets given by the members of the system to the system operator to execute transfer orders or to ensure the execution thereof, with the exception of the assets of the system guarantee fund, shall not be included in the bankruptcy estate of the system operator.

(4) A system operator shall immediately notify the Supervision Authority of the initiation and termination of bankruptcy proceedings against it or if it is declared bankrupt. The same obligation also rests with the relevant temporary trustee in bankruptcy or the trustee in bankruptcy with respect to the relevant system operator.

Part VI

Supervision and Liability

Chapter 24

Supervision

§ 230. Rights of Supervision Authority in exercising supervision

(1) The Supervision Authority has all the rights established in this Act and in the Financial Supervision Authority Act in exercising supervision over compliance with this Act and legislation established on the basis thereof.

(2) The Supervision Authority has the right to exercise supervision over companies belonging to the same group as a professional securities market participant to the extent necessary for inspection of the professional securities market participant.

§ 231. Obtaining information and suspension of use of accounts

(1) In order to exercise supervision, the Supervision Authority has the right to obtain information, documents and explanations from any natural or legal person and from government agencies, supervisory bodies and state and local government databases free of charge.

(2) In order to exercise supervision, the Supervision Authority has the right to obtain information from credit institutions regarding the turnover and balances of the bank accounts and securities accounts of professional securities market participants, issuers, investors and insiders and, upon the existence of justified doubt, to file a motivated petition with a court for suspension of the use of such accounts.

(3) The court shall review the petition within one working day after its receipt and rule on the seizure of the accounts.

§ 232. On-site inspection of professional securities market participants and issuers

(1) In order to exercise supervision, the Supervision Authority has the right to carry out on-site inspection of a professional securities market participant and an issuer whose securities are traded on a regulated market or whose securities are subject to a public offer or have been subject to a public offer during the past five years.

(2) An on-site inspection shall be carried out if:

1) it has become necessary to check whether the information submitted corresponds to reality;

2) the Supervision Authority has reason to believe that the provisions of this Act or provisions established on the basis thereof have been violated;

3) the inspection is necessary to execute supervisory duties.

(3) On-site inspection shall be carried out by an authorised employee of the Supervision Authority. The person to be inspected shall be given at least three working days' notice, unless such notice is in contradiction with the goals of the inspection.

(4) During on-site inspection, the person carrying out the inspection has the right to:

1) enter all premises, in compliance with all security requirements in force with regard to the person undergoing checks;

2) use a separate room necessary for his or her work;

3) study documents and media necessary for exercising supervision, make excerpts and copies thereof and monitor the work processes without restrictions.

(5) The management of a person being inspected is required to appoint a competent representative in whose presence the inspection is carried out and who shall provide the person carrying out the inspection with documents and other information necessary for the performance of his or her duties, including the auditor's report concerning the reports of the person being inspected together with findings to be submitted to the management, and provide necessary explanations with regard to such documents and information.

(6) A person carrying out an inspection is required to prepare a report or statement concerning the results of the inspection and submit the report or statement to a member of the management board of the person being inspected or to a person authorised thereby, who shall sign for the receipt thereof. The person has the right to file a motivated appeal against the report or statement.

§ 233. Ordering of special audits or assessments

(1) The Supervision Authority has the right to demand special audits or assessments be conducted with regard to a professional securities market participant if the reports submitted by the professional securities market participant are misleading or inaccurate or if a suspicion exists that transactions have been conducted as a result of which significant damage may be caused or may have been caused to a professional securities market participant, investor or any other person or if other matters relevant for the purpose of exercising supervision over a professional securities market participant require additional clarification.

(2) In order for a special audit or assessment to be conducted, the Supervision Authority has the right to appoint an auditor who has the right to demand all information and documents necessary to conduct the audit or expert review from the professional securities market participant. Professional securities market participants are required to submit such information and documents without restrictions and to provide all possible assistance to auditors pursuant to the procedure provided for in § 232 of this Act.

(3) Costs related to the conduct of a special audit or assessment shall be borne by the Supervision Authority.

§ 234. Precepts

(1) The Supervision Authority has the right to issue a precept:

1) if, as a result of supervision, violations of Acts and legislation issued on the basis thereof or of the requirements of the rules and regulations of a regulated market or of the articles of association of a securities market participant have been discovered;

2) to prevent violations of law or if the risks assumed by a professional securities market participant have increased significantly or if other circumstances emerge which endanger or may endanger the interests or reliability of investors or the securities market as a whole;

3) if this is necessary to protect the interests of investors or to ensure the transparency of the market.

(2) A precept shall set out:

1) the name and position of the person preparing the precept;

2) the date of preparation of the precept;

3) the name and address of the recipient of the precept;

4) the bases for issuing the precept together with a reference to the relevant provisions of legislation;

5) the term for compliance with the precept;

6) the sanctions to be imposed upon failure to comply with the precept;

7) the procedure for appealing against the precept.

(3) A precept shall be issued promptly to the recipient against a signature.

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

(5) An appeal against a precept may be filed with an administrative court within ten days as of the receipt of the precept.

(6) The filing of an appeal against a precept and proceedings regarding the appeal do not suspend the requirement to comply with the precept, unless otherwise provided by the Supervision Authority.

§ 235. Rights upon issue of precept

The Supervision Authority has the right to issue a precept to:

1) prohibit certain transactions or activities from being conducted or to establish restrictions on their volume;

2) prohibit, partially or wholly, any distributions from profits;

3) demand that the issuer whose securities are offered publicly promptly disclose information, if the obligation to disclose such information arises from this Act;

4) demand a restriction of the operating expenses of a professional securities market participant;

5) demand amendment of internal rules and rules of procedure of a professional securities market participant;

6) make a proposal to the supervisory board of a professional securities market participant to remove a member of the management board;

7) make a proposal to the general meeting of the shareholders of a professional securities market participant to remove a member of the supervisory board;

8) set other demands to ensure compliance with this Act.

§ 236. Calling of and participation in meeting of directing bodies of professional securities market participant

(1) The Supervision Authority has the right to issue a precept in order to:

1) call a meeting of the management board or supervisory board of a professional securities market participant or to call the general meeting of a professional securities market participant;

2) include an issue on the agenda of a meeting of the management board or supervisory board or the general meeting if this is necessary in the opinion of the Supervision Authority.

(2) The Supervision Authority may send a representative to a meeting who has the right to present positions and make proposals and demand the recording thereof in the minutes of the meeting.

§ 237. List

(1) The Supervision Authority shall maintain a list of:

1) prospectuses of public offers registered by the Supervision Authority;

2) takeover bids approved by the Supervision Authority;

3) investment firms registered in Estonia which hold a valid activity licence;

4) persons having a qualifying holding in investment firms registered in Estonia;

5) operators of regulated markets who are registered in Estonia and who hold a valid activity licence;

6) operators of securities settlement systems who are registered in Estonia and who hold a valid activity licence;

7) information on members of the management board and supervisory board of legal persons specified in clauses 3)-6) of this subsection;

8) branches established abroad by investment firms registered in Estonia;

9) representative offices established abroad by investment firms registered in Estonia;

10) branches established in Estonia by foreign investment firms;

11) members of a stock exchange operating in a foreign state who have permission to provide cross-border services;

12) representative offices established in Estonia by foreign investment firms.

(2) The information included in the list provided for in subsection (1) of this section shall be published on the website of the Supervision Authority.

(3) The Minister of Finance shall, by a regulation, establish a more precise list of information to be disclosed.

Chapter 25

Administrative Liability of Legal Persons

§ 238. Violation of requirements for offers of securities

(1) A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an offerer for failure to register a prospectus of an offer of securities with the Supervision Authority prior to the offer, or for offering securities without a prospectus.

(2) A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an offerer for failure to perform the obligation to disclose the prospectus, for violation of the term for disclosing the prospectus, for failure to make the prospectus available to the general public when declaring a public offer, or for charging a fee for the prospectus.

(3) A fine in the amount of 20 000 to 200 000 kroons shall be imposed on an offerer for violation of the procedure for the declaration and suspension of an offer of securities.

(4) A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an offerer for violating the requirement to inform all potential investors on equal terms during an offer of securities on an equal basis.

(5) A fine in the amount of 5000 to 50 000 kroons shall be imposed on an offerer for advertising an offer of securities before declaring the offer, for disclosing misleading advertisements about an offer, for presenting information in an advertisement which has not been presented in the prospectus, or for failure to forward advertising material concerning an offer to the Supervision Authority prior to disclosure.

(6) A fine in the amount of 100 000 to 1 000 000 kroons shall be imposed on an offerer for violating the obligation to repurchase the securities if the conditions of the offer are significantly changed during the period of the offer.

§ 239. Violation of requirements for prospectuses

A fine in the amount of 50 000 to 400 000 kroons shall be imposed on an offerer for failure to register significant changes to the information presented in a prospectus with the Supervision Authority during the period of the offer, for failure to disclose such information, and for failure to present information about circumstances which may affect the price of securities and which become evident after registration of the prospectus or during the period between the printing of the prospectus and the termination of the offer to the Supervision Authority as an annex to the prospectus or for failure to make the annex available to the general public.

§ 240. Violation of requirements to inform public

A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an offerer for failure to make information public regarding suspension of an offer, resumption thereof or cancellation of a subscription.

§ 241. Violation of requirements to hold activity licence

(1) A fine in the amount of 50 000 to 1 000 000 kroons shall be imposed for providing investment services without the relevant activity licence.

(2) A fine in the amount of 20 000 to 500 000 kroons shall be imposed on an investment firm for engaging in activities other than investment services and non-core services, unless these are permitted by law or are directly necessary for providing investment services or non-core services.

(3) A fine in the amount of 75 000 to 1 500 000 kroons shall be imposed for operating a regulated market without the relevant activity licence.

(4) A fine in the amount of 75 000 to 1 500 000 kroons shall be imposed for operating a securities settlement system without the relevant activity licence.

§ 242. Violation of requirements to have permission

(1) A fine in the amount of 50 000 to 250 000 kroons shall be imposed on an investment firm for founding a subsidiary or branch abroad without the permission of the Supervision Authority or for acquiring a holding in a foreign investment firm such that the latter becomes a subsidiary of the investment firm.

(2) A fine in the amount of 50 000 to 250 000 kroons shall be imposed on an investment firm for founding a branch in a Contracting State without the permission of the Supervision Authority.

(3) A fine in the amount of 50 000 to 250 000 kroons shall be imposed on a foreign investment firm for founding a branch in Estonia without the permission of the Supervision Authority.

(4) A fine in the amount of 50 000 to 250 000 kroons shall be imposed on a member of a stock exchange operating abroad for providing cross-border services to persons residing or located in

Estonia with the intermediation of a stock exchange in Estonia without the permission of the Supervision Authority.

§ 243. Violation of requirements regarding notification obligation

(1) A fine in the amount of 5 000 to 20 000 kroons shall be imposed on an investment firm for failure to notify the Supervision Authority of the opening of a representative office abroad.

(2) A fine in the amount of 5 000 to 20 000 kroons shall be imposed on an investment firm for failure to notify the Supervision Authority of the provision of cross-border services or of amendments made to the business plan for providing cross-border services.

(3) A fine in the amount of 20 000 to 250 000 kroons shall be imposed on a foreign investment firm for failure to notify the Supervision Authority of the opening of a representative office in Estonia.

(4) A fine in the amount of 20 000 to 250 000 kroons shall be imposed on investment firms for failure to notify the public immediately of the grant of merger permission or failure to disclose information about their merger and the commencement of activities by the new investment firm.

§ 244. Violation of requirements to maintain and protect assets of clients and prohibition on business

(1) A fine in the amount of 50 000 to 1 000 000 kroons shall be imposed on an investment firm for failure to perform the obligations related to the maintenance and protection of the assets of clients.

(2) A fine in the amount of 50 000 to 1 000 000 kroons shall be imposed on an investment firm for engaging in prohibited activities prescribed by this Act.

§ 245. Violation of requirements to register and maintain information and to register transactions

(1) A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an investment firm for failure to register and preserve information.

(2) A fine in the amount of 50 000 to 1 750 000 kroons shall be imposed on an investment firm for failure to register transactions with securities admitted to be traded on a regulated market in connection with the provision of investment services.

(3) A fine in the amount of 50 000 to 1 750 000 kroons shall be imposed on an operator of a regulated market for to failure register transactions conducted on the regulated market and of which the operator of the regulated market is notified.

§ 246. Violation of prudential requirements

(1) A fine in the amount of 20 000 to 750 000 kroons shall be imposed on an investment firm for violating the requirements for its share capital or own capital or other prudential requirements prescribed by and on the basis of this Act.

(2) A fine in the amount of 50 000 to 1 000 000 kroons shall be imposed on an operator of a regulated market for failure to perform the obligation to manage financial risk.

(3) A fine in the amount of 50 000 to 1 000 000 kroons shall be imposed on an operator of an exchange for failure to perform the obligation to manage financial risk.

§ 247. Violation of requirements regarding qualifying holdings

(1) A fine in the amount of 10 000 to 500 000 kroons shall be imposed for failure to co-ordinate a transaction to acquire a qualifying holding in an investment firm or to increase a qualifying holding therein in advance with the Supervision Authority.

(2) A fine in the amount of 10 000 to 500 000 kroons shall be imposed for failure to notify the Supervision Authority of a transaction to transfer a qualifying holding in an investment firm.

(3) A fine in the amount of 10 000 to 500 000 kroons shall be imposed for failure to notify the Supervision Authority of an intention to transfer a qualifying holding in an investment firm or to transfer a qualifying holding within the rate prescribed by this Act, or of the occurrence of the above-mentioned transactions or of a transaction to acquire a holding.

(4) A fine in the amount of 10 000 to 500 000 kroons shall be imposed for failure to submit a list of shareholders having a qualifying holding to the Supervision Authority together with the annual report.

(5) A fine in the amount of 10 000 to 500 000 kroons shall be imposed on a person for failure to notify a public limited company registered in Estonia whose shares are admitted for trading on the Estonian market or are listed on an Estonian exchange and for failure to notify the person maintaining the share register thereof of the acquisition or transfer of a qualifying holding in the public limited company or of an increase or reduction in the holding within the rate prescribed by this Act.

(6) A fine in the amount of 10 000 to 500 000 kroons shall be imposed on a person maintaining the share register of a public limited company for failure to notify an operator of a regulated market or operator of an exchange of the acquisition or transfer of a qualifying holding in a public limited company registered in Estonia whose shares are admitted for trading on the Estonian market or are listed on an Estonian exchange or of an increase or reduction in the holding in the company within the rate prescribed by this Act.

§ 248. Violation of requirements to give notification regarding managers and auditors of investment firm

A fine in the amount of 10 000 to 500 000 kroons shall be imposed on an investment firm, operator of a regulated market or operator of a securities settlement system for failure to notify the Supervision Authority of its managers and auditor.

§ 249. Violation of requirements for internal rules

(1) A fine in the amount of 10 000 to 500 000 kroons shall be imposed on an investment firm for failure to perform the obligation to establish internal rules.

(2) A fine in the amount of 10 000 to 500 000 kroons shall be imposed on an investment firm for failure to provide the internal auditor with sufficient rights and working conditions.

§ 250. Violation of requirements for reports and information

(1) A fine in the amount of 10 000 to 500 000 kroons shall be imposed on an investment firm for violating reporting requirements and for failure to perform the notification obligation connected with prudential requirements.

(2) A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an operator of a regulated market for failure to submit information or reports to the Supervision Authority if the provision of information is mandatory on the basis of this Act, or for submission of inaccurate or incomplete information, and for failure to disclose information subject to disclosure or for disclosing inaccurate or incomplete information.

(3) A fine in the amount of 50 000 to 250 000 kroons shall be imposed for failure to submit information to the operator of a regulated market if the provision of information is mandatory on the basis of this Act, or for submission of inaccurate or incomplete information.

§ 251. Violation of requirements for rules and regulations

(1) A fine in the amount of 50 000 to 1 000 000 kroons shall be imposed on an operator of a regulated market for failure to co-ordinate amendments to the rules and regulations with the Supervision Authority, for unjustified refusal to provide services or for violating the requirements of the rules and regulations.

(2) A fine in the amount of 50 000 to 1 000 000 kroons shall be imposed on an operator of a regulated market for failure to perform the obligation to disclose the rules and regulations.

§ 252. Violation of requirements for market participator and issuer of securities traded on market

A fine in the amount of 50 000 to 1 750 000 kroons shall be imposed on a market participator and an issuer of securities traded on the market for failure to perform the obligations prescribed in this Act.

§ 253. Violation of requirements to maintain confidentiality of information not subject to disclosure

A fine in the amount of 20 000 to 500 000 kroons shall be imposed on an operator of a regulated market for violating the requirements to maintain the confidentiality of information not subject to disclosure.

§ 254. Violation of obligations of insider and issuer

(1) A fine in the amount of 20 000 to 500 000 kroons shall be imposed on an insider for failure to notify the Supervision Authority, if so required by the latter, of the acquisition or transfer by the insider of the securities of the issuer and of the circumstances related thereto.

(2) A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an issuer whose securities are traded on a regulated market for failure to notify the Supervision Authority of insiders and persons connected with the latter, or for failure to establish internal rules for maintaining the confidentiality of or disclosing inside information.

§ 255. Violation of prohibition on manipulation of market

A fine in the amount of 50 000 to 1 750 000 kroons shall be imposed for violating the prohibition on manipulation of the market.

§ 256. Violation of obligation to make takeover bid

A fine in the amount of 100 000 to 3 000 000 kroons shall be imposed for violating the obligation to make a takeover bid, unless the person is granted permission not to make a mandatory takeover bid.

§ 257. Violation of takeover bid requirements

A fine in the amount of 50 000 to 200 000 kroons shall be imposed on the offerer for unequal treatment of holders of shares of the same type within the framework of a takeover bid, on the offerer or target issuer for failure to provide the target persons with significant, correct, accurate, complete and identical information for informed consideration of the takeover bid or for the provision of misleading, incorrect or inaccurate information or for the provision of different information to different target persons or for hindering the target persons upon consideration of the takeover bid.

§ 258. Violation of takeover bid rules

A fine in the amount of 250 000 to 1 000 000 kroons shall be imposed on an offerer, on a member of the management board, supervisory board or body substituting therefor of an offerer which is a legal person, on a target issuer, on a member of the management board or supervisory board of the target issuer, on a person acting in concert with the above-mentioned persons or on a shareholder of the target issuer for violating the takeover bid rules or the provisions of the rules and regulations of the exchange where the shares of the target issuer are listed which regulate the takeover bid.

§ 259. Making a prohibited takeover bid

A fine in the amount of 50 000 to 500 000 kroons shall be imposed on an offerer or a person acting in concert with the offerer for making a new takeover bid with regard to the same target issuer within six months as of the expiry of the term of a previous takeover bid.

§ 260. Notification regarding penalties

Courts have the right to disclose information concerning fines imposed pursuant to §§ 238-259 of this Act in a national daily newspaper. The notice shall set out the name of the person on whom the fine is imposed and the reason for and date of imposition of the fine.

§ 261. Preparation of administrative offence reports

(1) Authorised employees of the Supervision Authority have the right to prepare reports on violations of this Act by legal persons.

(2) A report specified in subsection (1) of this section shall set out the following information:

1) the time and place of preparation thereof;

2) the address of the Supervision Authority and a notation indicating that the report is prepared in the name of the Supervision Authority;

3) the official title, given name and surname of the person who prepares the report;

4) the name, registration number and seat of the administrative offender;

5) the given name, surname and position of the representative of the administrative offender;

6) the place, time and description of the administrative offence;

7) a reference to the provisions of legislation which are the basis for imposition of administrative liability;

8) an explanation provided by the representative of the administrative offender or a notation concerning refusal to provide an explanation;

9) a notation indicating that the administrative offender has been informed of his or her right to obtain legal assistance.

(3) The worker who prepares the report and the authorised representative of the administrative offender shall sign the report. If the representative of the administrative offender refuses to sign the report, this shall be noted in the report. The written comments of the representative of the administrative offender concerning the report or refusal to sign the report shall be annexed to the report.

(4) An administrative offence report shall be prepared in two original copies, one of which shall be retained by the person who prepared the report and the other by the representative of the administrative offender.

§ 262. Proceedings in matters concerning administrative offences of legal persons

(1) County and city court judges and the chairman of the management board of the Supervision Authority have the right to hear matters regarding violations of this Act and to impose penalties. The chairman of the management board of the Supervision Authority has the right to impose fines of up to 50 000 kroons.

(2) Proceedings in matters regarding offences provided for in this Act and committed by legal persons shall be conducted pursuant to the procedure provided for in the Code of Administrative Offences (RT I 1992, 29, 396; RT I 2001, 74, 453).

(3) A fine imposed on a legal person on the basis of this Act shall be collected pursuant to the procedure prescribed in the Code of Administrative Offences and the Code of Enforcement Procedure.

Part VII

Implementation of Act

Chapter 26

Implementing Provisions

§ 263. Repeal of Act

The Securities Market Act (RT I 1993, 35, 543; 1995, 22, 328; 1996, 26, 528; 1997, 34, 535; 1998, 61, 979; 2000, 10, 55) currently in force is repealed as of the date on which this Act enters into force.

§ 264. Validity of activity licences

(1) Activity licences of professional securities market participants which are valid at the time this Act enters into force shall remain valid until the expiry of their term of validity or until they are revoked pursuant to the procedure prescribed in this Act.

(2) The provisions of this Act regarding investment firms shall apply to securities brokers prescribed in the Securities Market Act which is valid until the entry into force of this Act.

§ 265. Bringing activities into compliance

(1) Professional securities market participants which hold a valid activity licence at the time this Act enters into force shall bring their activities and documents into compliance with the provisions of this Act within six months as of the entry into force of this Act, unless otherwise prescribed in subsection (2) of this section.

(2) The share capital of professional securities market participants which hold a valid activity licence at the time this Act enters into force shall be at least 125 000 euro by 1 June 2002 at the latest and shall meet the requirements prescribed in clause 93 (1) 2) and subsection 152 (1) of this Act by 1 June 2003 at the latest.

§ 266. Application for permission for qualifying holding

(1) A person who has acquired a qualifying holding provided for in § 73 of this Act and who does not have permission for the qualifying holding as provided for in the same section shall apply for permission in accordance with this Act within six months as of the entry into force of this Act.

(2) If a person does not perform the obligation prescribed in subsection (1) of this section, the person shall transfer the holding in excess of the threshold specified in § 73 of this Act by 31 May 2002. As of 1 June 2002, the person may not use the voting rights arising from such holding.

§ 267. Calculation of euro

The amounts stated in this Act in euro shall be calculated in kroons on the basis of the official Bank of Estonia exchange rate.

§ 268. Takeover bid committee

(1) Until 1 September 2002, the approval of takeover bid and grant of exceptions shall be within the exclusive competence of the committee approving takeover bids which operates at an exchange operator appointed by the Supervision Authority (hereinafter: takeover bid committee).

(2) The takeover bid committee has the right to demand information from the offerer and target issuer regarding the takeover bid.

(3) Damage caused by the takeover bid committee in the course of its activities shall be compensated by the state on the bases and pursuant to the procedure prescribed by legislation. The state has the right of recourse in the case of compensating damage.

(4) The organisational structure, rights and obligations of the takeover bid committee shall be set out in the rules and regulations of the operator of the exchange.

§ 269. Composition of takeover bid committee

(1) The takeover bid committee shall consist of five members, of which three are appointed by the operator of the exchange and two by the chairman of the management board of the Supervision Authority. The members of the takeover bid committee shall elect the chairman of the committee from among themselves who shall co-ordinate the activities of the committee.

(2) A member of the takeover bid committee shall not participate in deciding on the approval of a takeover bid or the grant of an exception if he or she is directly or indirectly interested in the outcome or if there are justified doubts as to his or her impartiality.

(3) If a member of the takeover bid committee cannot participate in person in the work of the takeover bid committee because of the existence of circumstances set out in subsection (2) of this section or due to any other extraordinary circumstances, the operator of the exchange or the chairman of the management board of the Supervision Authority who appointed the member shall appoint a replacement for him or her.

(4) Members of the takeover bid committee are required to maintain indefinitely the confidentiality of any confidential information obtained by reason of their activities in the takeover bid committee, unless the disclosure of confidential information is prescribed by law.

§ 270. Resolution of takeover bid committee

(1) Each member of the takeover bid committee has one vote. Members do not have the right to refuse to vote or abstain, except in cases where they may not participate in the voting because of a conflict of interests.

(2) A resolution of the takeover bid committee is adopted if at least three members of the takeover bid committee vote in favour.

§ 271. Supervision of takeover bids

(1) Until 1 September 2002, an operator of an exchange appointed by the Supervision Authority shall monitor the compliance of takeover bids with legislation in co-operation with the Supervision Authority and shall advise and provide services to the takeover bid committee.

(2) Subject to approval by the Supervision Authority, an operator of an exchange specified in subsection (1) of this section has the right to establish a service fee on an offerer for carrying out the procedure of approving a takeover bid and to cover the operating costs of its takeover bid committee.

§ 272. Special rules applicable to securities settlement system operators

(1) Until such time as a person has been issued an activity licence to operate as an operator of a securities settlement system on the basis of §§ 217 and 218 of this Act, the registrar of the Estonian Central Register of Securities may operate as an operator of a securities settlement system.

(2) The registrar of the Estonian Central Register of Securities, while it is operating as an operator of a securities settlement system, does not have the right to guarantee the performance of claims and obligations arising on the basis of transfer orders or to assume other additional financial risks.

Chapter 27

Amendments of Other Acts

§ 273. Amendment of Privatisation Act

Subsection 29 (5) of the Privatisation Act (RT I 1993, 45, 639; 1997, 9, 78; 1998, 12, 153; 30, 411; 2000, 51, 324; 2001, 26, 149; 48, 265) is amended and worded as follows:

“(5) The requirements for investment firms provided for in the Securities Market Act shall apply to the provision of investment services with privatisation vouchers."

§ 274. Amendment of Estonian Central Register of Securities Act

The Estonian Central Register of Securities Act (RT I 2000, 57, 373; 2001, 48, 268; 79, 480) is amended as follows:

1) clause 2 (1) 2) is amended and worded as follows:

“2) debt obligations issued by legal persons in private law registered in Estonia, the public offer prospectus of which shall be registered in the Financial Supervision Authority pursuant to the Securities Market Act;";

2) clause 4 3) is amended and worded as follows:

“3) the names, addresses and personal identification codes or registry codes of the owners of the securities and, in the absence of a personal identification code, their date of birth, and the number of respective securities registered in the securities account opened in the name of each person included in the list of owners of the securities;";

3) subsection 5 (3) is amended by adding a sentence worded as follows:

"A joint securities account shall be opened in the name of one joint owner appointed by the joint owners.";

4) clause 5 (4) 8) is amended and worded as follows:

“8) if a security is owned by several persons, in addition to information regarding the owner of the securities account also the names, addresses, and personal identification codes or registry codes, or, in the absence of a personal identification code, the date of birth of the joint owners, and information regarding which the joint owners is entitled to dispose of the securities in joint ownership;";

5) subsection 6 (4) is amended by adding a sentence worded as follows:

"Pursuant to the procedure established by the Minister of Finance, the owner of the nominee account may grant the authorisation in the form of a joint list to the clients to represent the owner of the nominee account at the general meeting of the shareholders.";

6) section 7 is amended by adding subsection (2^1) worded as follows:

“(2^1) The issuer specified in subsection (2) of this section has the right to know the address of the owner of securities.";

7) in clause 7 (3) 9), the words "stock exchange" are substituted by the words "regulated market";

8) subsection 8 (1) is amended and worded as follows:

“(1) Unless otherwise provided by law, entries are made in the register, the register is maintained and register information is preserved pursuant to the procedure for maintenance of the register which is established by the Minister of Finance (hereinafter the procedure for maintenance of the register).";

9) section 8 is amended by adding subsection (3) worded as follows:

“(3) Register information shall be processed by means of automatic data processing according to the rules for data processing established by the registrar (hereinafter data processing rules). The procedure for establishing and amending the data processing rules shall be established in the procedure for maintenance of the register.";

10) clauses 10 (2) 2) and 3) are amended and worded as follows:

“2) in the case of registration of shares of an existing company, a certified transcript of the commercial registry card of the company or a certified extract from the register or a notarised transcript of the registration certificate, and in the case of registration of shares of a company under formation, a notarised transcript of the foundation resolution or memorandum of association. The applicant shall append documents certifying the authority thereof to the above-mentioned documents;

3) upon registration of a prospectus of a public offer of securities (hereinafter prospectus), a document proving the existence of a registration number granted by the Financial Supervision Authority, and the prospectus;";

11) subsection 11 (2) is amended and worded as follows:

“(2) If, upon registration of the shares of a public limited company founded prior to the entry into force of this Act, the shareholder of the company does not have a securities account opened in the register, the registrar may open a temporary securities account in the register for the shareholder on the basis of an application from the issuer and at the expense of the issuer.";

12) subsection 21 (3) is amended and worded as follows:

“(3) In a decision on the basis of which rights arising from securities are created, changed or terminated, the issuer shall designate the date (the fixed day) on the basis of which the persons whose rights the above-mentioned resolution concerns are determined, unless otherwise provided in the procedure for maintenance of the register.";

13) section 21 is amended by adding subsection (4) worded as follows:

“(4) If the issuer designates the fixed day pursuant to subsection (3) of this section, the application for entries to be made and the information which is necessary for entries to be made and on the basis of which the registrar performs the registry proceedings needed to carry out the decision of the issuer shall be submitted to the registrar at least five working days before the fixed day designated by the issuer.";

14) in subsection 22 (1), the words "prospectuses" are substituted by the words "public issue prospectuses";

15) subsection 23 (1) is amended by adding sentences worded as follows:

"The Minister of Finance shall refuse to approve the price list or amendments thereto if the price list or the amendments do not meet the requirements prescribed by legislation or are not in compliance with the regular and lawful operation of the securities market. The procedure for approving the price list and amendments thereto shall be established in the procedure for maintenance of the register.";

16) subsection 42 (5) is amended and worded as follows:

“(5) The owner of a nominee account is required to notify the account administrator and the person exercising supervision if the holding in the share capital of the issuer of securities arising from the securities held in the nominee account for the client and for the account of the client exceeds or falls below a limit provided by legislation, resulting in the obligation arising from legislation to give notice of such circumstances, the obligation to apply for corresponding permission therefor or the obligation to perform certain acts.";

17) subsection 42 (6) is repealed.

§ 275. Amendment of Investment Funds Act

The Investment Funds Act (RT I 1997, 34, 535; 1998, 61, 979; 2000, 10, 55; 57, 373; 2001, 48, 268; 79, 480) is amended as follows:

1) section 3 is amended by adding subsections (4) and (5) worded as follows:

“(4) In addition to the management of funds, a management company may also provide investment service provided for in subsection 43 (5) of the Securities Market Act.

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

2) section 10 is amended by adding subsection (4) worded as follows:

“(4) If a management company provides investment services specified in subsection 3 (4) of this Act, it shall meet the prudential requirements prescribed in the Securities Market Act for investment firms providing such services.";

3) subsection 19 (1) is amended by adding a sentence worded as follows:

"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.";

4) section 148 is amended and worded as follows:

"As of 1 September 2002, management companies providing investment services specified in subsection 3 (4) of this Act shall meet the requirements provided for in subsection 10 (4) of this Act."

§ 276. Amendment of Commercial Code

The Commercial Code (RT I 1995, 26-28, 355; 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) is amended as follows:

1) subsection 233 (2) is amended by adding a second sentence worded as follows:

"The information contained in the share register shall be determined by legislation regulating the maintenance of the Estonian Central Register of Securities.";

2) the first sentence of subsection 297 (4) is amended and worded as follows:

"A shareholder in person or a representative of a shareholder who has been granted an authorisation document in writing may participate in a general meeting, unless otherwise provided by legislation.";

3) the Code is amended by adding Chapter 29^1 worded as follows:

"Chapter 29^1

Takeover of Shares for Monetary Compensation

§ 363^1. Application for takeover of shares

(1) On the application of a shareholder whose shares represent at least 9/10 of the share capital of a public limited company (majority shareholder), the general meeting of shareholders may decide in favour of the shares belonging to the remaining shareholders of the public limited company (minority shareholders) being taken over by the majority shareholder in return for fair monetary compensation.

(2) Upon determination of the size of the share capital represented by the shares of the majority shareholder, own shares of the public limited company shall not be taken into account. The shares of the majority shareholder within the meaning of subsection (1) of this section are also deemed to include the shares of its parent undertaking or subsidiary, provided the parent undertaking or subsidiary has granted its consent to this effect.

(3) The application specified in subsection (1) of this section shall be submitted to the management board of the public limited company. The documents specified in § 363^4 of this Code shall be appended to the application. The management board is required to call a general meeting to decide on the takeover of shares.

(4) The application specified in subsection (1) of this section may not be withdrawn and its conditions may not be amended to the disadvantage of minority shareholders.

§ 363^2. Determination of amount of compensation

(1) The majority shareholder shall determine the amount of compensation payable to minority shareholders. The amount of compensation shall be determined on the basis of the value of the shares to be taken over that these shares had ten days prior to the date on which the notice calling

the general meeting was sent out. The management board shall provide the majority shareholder with all the necessary data and documents therefor and with information.

(2) If the person seeking to take over the shares belonging to minority shareholders has become a majority shareholder during the six months before the general meeting as a result of a takeover bid conducted pursuant to the Securities Market Act, compensation may not be smaller than the takeover bid purchase price on the assumption that the takeover bid was accepted by shareholders owning at least 9/10 of the votes represented by shares.

§ 363^3. Notice calling general meeting

The notice calling the general meeting at which a decision is to be made regarding the takeover of shares belonging to minority shareholders shall, in addition to the information specified in subsection 294 (4) of this Code, also set out:

1) the name, residence or seat and address thereof, and the personal identification code or registry code of the majority shareholder;

2) the amount of compensation to be paid to minority shareholders per share;

3) the place where the documents specified in subsection 363^5 (1) of this Code can be reviewed.

§ 363^4. Takeover report, audit

(1) The majority shareholder shall submit a written report (takeover report) to the general meeting explaining and justifying the conditions of taking over shares belonging to minority shareholders and the bases for determining the amount of compensation payable for the shares.

(2) The takeover report shall be audited by an auditor. The auditor shall prepare a written report of the audit, stating in particular whether the amount of compensation determined by the majority shareholder meets the provisions of § 363^2 of this Code. The auditor need not audit the report if the amount of compensation is determined in accordance with subsection 363^2 (2) of this Code.

(3) The majority shareholder shall appoint the auditor and cover the costs of the audit.

(4) The auditor shall be liable for any damage wrongfully caused by an inaccurate audit of the takeover report.

§ 363^5. Preparation of general meeting

(1) At least one month before a general meeting to decide on the takeover of shares belonging to minority shareholders, the management board shall present the following to the shareholders for examination at the location of the public limited company:

1) the draft resolution of the general meeting to decide on the takeover of shares belonging to minority shareholders;

2) the three preceding annual reports and activity reports of the public limited company;

3) the takeover report;

4) the auditor's report.

(2) Copies of the documents specified in subsection (1) of this section shall be promptly given to a shareholder on the demand of the shareholder.

§ 363[6]. Organisation of general meeting

The majority shareholder is required to explain to the minority shareholders at the general meeting the conditions of taking over the shares belonging to the minority shareholders and the bases for determining the amount of compensation payable for the shares.

§ 363[7]. Resolution of general meeting

(1) A resolution on the takeover of shares belonging to minority shareholders shall be adopted if at least 95/100 of the votes represented by shares are in favour.

(2) The minutes of a general meeting at which a decision is taken on the takeover of shares belonging to minority shareholders shall be attested by a notary.

§ 363[8]. Contestation of takeover resolution

(1) At the request of a shareholder, a court may declare a takeover resolution which is in conflict with law to be invalid if the request is submitted within one month as of the resolution being made.

(2) A takeover resolution shall not be declared invalid on the basis that the compensation payable to minority shareholders is set too low.

(3) If the compensation payable to minority shareholders is set too low, the court may, on the request of a minority shareholder, determine a fair rate of compensation.

(4) The provisions of subsection (3) of this section shall not apply if the compensation is determined pursuant to subsection 363[2] (2) of this Code.

(5) Interest shall be paid by the majority shareholder on unpaid compensation in the amount established by a regulation of the Minister of Finance as of the adoption of the takeover resolution.

§ 363[9]. Transfer of shares

(1) Within one month as of the adoption of the resolution of the general meeting specified in § 363[7] of this Code, the management board of the public limited company shall submit an application to the registrar of the Estonian Central Register of Securities for the shares of minority shareholders to be transferred to the majority shareholder. A notarised copy of the resolution of the general meeting specified in § 363[7] of this Code shall be appended to the application.

(2) The registrar of the Estonian Central Register of Securities shall arrange for the transfer of the shares to the account of the majority shareholder on the basis of an application specified in subsection (1) of this section against payment the size of which corresponds to the compensation payable for the shares.

§ 363[10]. Forwarding of takeover resolution to commercial register

The management board of the public limited company shall submit the notice specified in § 289[1] of this Code to the registrar of the commercial register immediately after transfer of the shares to the account of the majority shareholder. The following shall be appended to the notice:

1) a notarised copy of the resolution of the general meeting specified in § 363[7] of this Code;

2) the takeover report;

3) the auditor's report provided for in subsection 363[4] (2) of this Code;

4) a statement issued by the registrar of the Estonian Central Register of Securities regarding the transfer of the shares.";

4) section 506 is amended by adding subsection (2^2) worded as follows:

"(2^2) The provisions of §§ 363^1-363^{10} of this Code shall apply only to public limited companies whose shares are registered in the Estonian Central Register of Securities."

Chapter 28

Entry into Force of Act

§ 277. Entry into force of Act

(1) This Act enters into force on 1 January 2002.

(2) Sections 38, 64, 65 and 69 and subsections 70 (2)-(4) enter into force upon Estonia's accession to the European Union.

[1] RT = *Riigi Teataja* = *State Gazette*