

THE CROATIAN PARLIAMENT

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

DECISION

PROMULGATING THE ALTERNATIVE INVESTMENT FUNDS ACT

I hereby promulgate the Alternative Investment Funds Act, adopted by the Croatian Parliament at its session on 25 January 2013.

Class: 011-01/13-01/03

Reg.No.: 71-05-03/1-13-2

Zagreb, 31 January 2013

The President of the
Republic of Croatia
Ivo Josipović, m.p.

ALTERNATIVE INVESTMENT FUNDS ACT

Part One

General provisions

Article 1

This Act lays down the conditions for the establishment and operation of alternative investment funds (AIFs) and alternative investment fund managers (AIFMs), and regulates the method of issue and redemption of units of AIFs, marketing of units of AIFs, delegation of duties to third parties and supervision of the operation and management of AIFMs, AIFs, depositaries and persons marketing units in AIFs.

Transposition of EU legislation

Article 2

This Act transposes Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives

2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 into the legal system of the Republic of Croatia.

Definitions

Article 3

(1) For the purpose of this Act, individual terms shall have the following meanings:

1. “Investment fund” means an undertaking for collective investment whose sole purpose is raising capital through a public or private offering and investment of this capital in different types of assets in accordance with a predefined investment strategy of the investment fund, but to the exclusive benefit of unit-holders of that investment fund. An investment fund may either be an alternative investment fund or a UCITS.
2. “Alternative investment fund” (AIF) means an investment fund established for the purpose of raising capital through a public or private offering and investing this capital in different types of assets in accordance with a predefined investment strategy and objective, but to the exclusive benefit of unit-holders in the AIF concerned. An AIF may be an open-ended and a closed-ended investment fund. AIFs are not UCITS and do not require authorisation for establishment and operation pursuant to the act regulating the establishment and operation of open-ended investment funds with a public offering.
3. “UCITS” means an investment fund as specified in the act regulating the establishment and operation of open-ended investment funds with a public offering.
4. “Open-ended AIF” means a separate pool of assets, without legal personality, constituted by an AIFM and managed by the AIFM in its own name and for the joint account of holders of units in such assets in accordance with the provisions of this Act, the prospectus and/or the fund rules. Open-ended AIFs may be managed by an external AIFM only. Units in an open-ended AIF are, at the request of unit-holders, redeemed, directly or indirectly, out of the assets of the open-ended AIF in the manner and under the conditions laid down in the prospectus and/or the fund rules. An open-ended AIF may have legal personality if that is allowed by national law of a Member State or a third country.
5. “Closed-ended AIF” means a legal person established in the form of a joint-stock company or a limited-liability company, which is established by an AIFM and managed by an AIFM on behalf and for the account of the AIF in accordance with the provisions of this Act, the prospectus and, where applicable, the rules and statute or instruments of incorporation of that AIF, the units of which are not redeemable on unit-holders’ request out of the assets of the closed-ended AIF. A closed-ended AIF may be managed by an external or internal AIFM.

6. “Internal manager” means an AIFM managing a closed-ended AIF, which is at the same time that closed-ended AIF and which is not permitted to carry on any other activity other than managing that AIF.
7. “External manager” means an AIFM managing one or more open-ended or closed-ended AIFs, and carrying on other activities provided by this Act.
8. “Unit” means a unit in an open-ended AIF and shall also include a share or business stake in a closed-ended AIF.
9. “Investor” means a unit-holder in an open-ended AIF, and a shareholder or a member possessing a business stake in a closed-ended AIF.
10. “Depositary” means a credit institution or a branch of a credit institution entrusted with the duties set out in Article 230 of this Act.
11. Alternative investment fund manager (AIFM)” means a legal person with a registered office in the Republic of Croatia which pursues, on the basis of authorisation granted by the Agency, the business of management of one or more AIFs. An AIFM may operate as an external or internal AIFM.
12. “EU AIFM” means a legal person which has its registered office in another Member State which pursues, on the basis of authorisation granted by the competent authorities of that Member State, the business of management of one or more AIFs.
13. “Non-EU AIFM” means a legal person which has its registered office in a third country which pursues, on the basis of authorisation granted by the competent authorities of the third country, the business of management of one or more AIFs.
14. “Home Member State of the AIFM” means the Member State in which the AIFM has its registered office.
15. “Host Member State of the AIFM” means a Member State, other than the home Member State of the AIFM, in which an AIFM manages AIFs or markets units of an AIF.
16. “Member State of reference of the AIFM” means a Member State determined in accordance with Articles 157 and 158 of this Act.
17. “Home Member State of the AIF” means the Member State in which the AIF has obtained, from the competent authorities, the authorisation equivalent to that referred to in Article 251 of this Act or in which the AIF has its registered office.
18. “Host Member State of the AIF” means the Member State, other than the home Member State, in which units of an AIF are marketed.

19. “Branch” means a place of business which is a part of an AIFM, which has no legal personality and which provides the services for which the AIFM is authorised. All the places of business established by an AIFM in another Member State or a third country shall be regarded as a single branch.

20. “Close links” means a link between two or more natural or legal persons or entities by either:

- a) participation or
- b) control.

21. “Participation” means participation of a person in another legal person if:

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

22. “Control” means the relationship between the parent undertaking and a subsidiary or a similar relationship between any natural or legal person and an undertaking.

For the purposes of this item:

- 1. a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking of those subsidiaries;
- 2. a situation in which two or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a close link between such persons.

23. “Qualifying holding” means any direct or indirect holding in an AIFM which represents 10% or more of the capital or of the voting rights or a smaller percentage of the capital or of the voting rights which makes it possible to exercise a significant influence over the management of the AIFM. When calculating the proportion of voting rights, the provisions on information on changes to the proportion of voting rights set out in the act regulating the capital market shall apply accordingly.

24. “Managing AIFs” means performing at least one of the activities referred to in Article 13, paragraph 2, items 2 or 3 of this Act for one or more AIFs.

25. “Marketing” means any direct or indirect distribution, at the initiative of the AIFM or on behalf of the AIFM, of units of an AIF to investors domiciled or with a registered office in the Republic of Croatia, a Member State and/or third country.

26. “Financial instrument” means an instrument as specified in the act regulating the capital market.

27. “Issuer”, within the meaning of Part Two, Section 12 of this Act, means a legal entity, including the government, whose securities are admitted to trading on a regulated market; in the case of certificates issued in respect of deposited shares, an issuer shall be

considered to be issuer of the shares on the basis of which the certificates of deposited shares have been issued.

28. “Legal representative” means a natural person domiciled in the Republic of Croatia or a legal person with its registered office in the Republic of Croatia, which has been designated by an EU AIFM or a non-EU AIFM to act on behalf of it vis-à-vis the Agency, competent authorities, investors, other bodies and counterparts with regard to the obligations and powers of the EU AIFM or non-EU AIFM under this Act.

29. “Leverage” means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or financial instruments or leverage embedded in derivative positions or by any other means.

30. “Yield-related fee” means a share in an AIF’s profits credited to an AIFM as a fee for managing the AIF, excluding any share in the AIF’s profits credited to the AIFM as a return on any investment of the AIFM in the AIF.

31. “Feeder AIF” means an AIF which:

- a) invests at least 85% of its assets in units of another AIF (master AIF);
- b) invests at least 85% of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or
- c) has otherwise an exposure of at least 85% of its assets to such a master AIF.

32. “Master AIF” means an AIF in which another AIF invests or has an exposure in accordance with item 31 of this Article.

33. “Parent undertaking” means a parent undertaking as defined in the legislation governing accounting of entrepreneurs and application of financial reporting standards.

34. “Subsidiary” means a subsidiary undertaking as defined in the legislation governing accounting of entrepreneurs and application of financial reporting standards.

35. “Prime broker” means a credit institution, an investment firm or another entity subject to prudential supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement, custodial services, securities lending, customised technology and operational support facilities.

36. “Non-listed company” means a joint-stock company or a limited-liability company which has its registered office in the Republic of Croatia or another Member State and the shares or business stakes of which are not admitted to trading on a regulated market within the meaning of the act regulating the capital market.

37. “Member State” means a Member State of the European Union and a signatory to the Agreement on the European Economic Area.

38. “Third country” means a country which is not a Member State in terms of point 37 of this Article.

39. “Agency” means the Croatian Financial Services Supervisory Agency, the competences and scope of activity of which are prescribed by the Act on the Croatian Financial Services Supervisory Agency and this Act.

40. “Competent authorities” means:

- a) the authorities of a Member State which are empowered, under the Member State’s laws and regulations by virtue of which Directive 2011/61/EC is transposed into national law of that Member State, to issue authorisation for the establishment and operation or supervision of AIFMs and AIFs;
- b) the authorities of a third country which are empowered to issue authorisation for the establishment and operation or supervision of AIFMs and AIFs.

41. “Approval or authorisation” means the Agency’s decision to grant the application that has been submitted, which is always sought and issued prior to taking certain actions or concluding a deal.

42. “European passport” implies the right of an AIFM to pursue, on the basis of authorisation granted by the Agency or the competent authorities of a Member State, its business on the territory of another Member State or States.

43. “Public offering” means any information given in any form and by use of any means addressed to unlimited number of persons, which contains sufficient information on the terms and conditions of the offering and on the offered units in an AIF to enable an investor to make a decision to subscribe such units.

44. “Private offering” means any information given in any form and by use of any means, which contains sufficient information on the terms and conditions of the offering and on the offered units in an AIF to enable an investor to make a decision to subscribe such units, and which is, according to a certain characteristic, made conditional upon, for example, a minimum amount of investment, targeted group of investors or specified number of investors.

45. “Professional investor” means an investor which is pursuant to the act regulating the capital market considered to be a professional client or may, on request, be treated as a professional investor.

46. “Retail investor” means an investor who is not a professional investor.

47. “Auditor” means an independent external licensed auditor defined by the legal provisions governing audit.

48. “ESMA” is a European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EC) 1095/2010 of the European Parliament and of the Council.

49. “ESRB” is the European Systemic Risk Board, established by Regulation (EC) 1092/2010 of the European Parliament and of the Council.

50. “FATF” is the Financial Action Task Force - an intergovernmental body established with a view to developing policies aimed at eliminating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

51. “Relevant person” in relation to an AIFM means:

- a) a person in a managing position in the AIFM, a person who is a member of the AIFM, a member of the supervisory board or a procurator of the AIFM;
- b) a person in a managing position in a closed-ended AIF, a member of the supervisory board or a procurator of the closed-ended AIF;
- c) a person in a managing position in a legal person to which the AIFM has delegated its functions;
- d) a person in a managing position or a person who is a member of the company in each legal person authorised for marketing of units of AIFs;
- e) an employee of the AIFM, an employee of the legal person to which the AIFM has delegated its functions or an employee of the legal person authorised for marketing of units of AIFs, which is involved in the activities carried on by the AIFM;
- f) any other natural person whose services are placed at the disposal and under the control of the AIFM and who is involved in the activities carried on by the AIFM.

52. “Person with whom a relevant person has a family relationship” means:

- a) the spouse of the relevant person or any other person considered by national law as equivalent to a spouse;
- b) supported child or stepchild of the relevant person;
- c) any other relative of the relevant person who has shared the same household with the relevant person for at least one year.

Exemptions

Article 4

(1) This Act shall not apply to:

- a) holding companies;
- b) pension companies for management of compulsory pension funds, pension companies for management of voluntary pension funds and pension insurance undertakings;
- c) insurance and reinsurance undertakings;
- d) supranational institutions such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral development banks, the World Bank, the International Monetary Fund, other

supranational institutions and similar international organisations, in the event that such institutions manage AIFs and in so far as those AIFs act in the public interest;

e) national central banks;

f) national, regional and local governments and bodies or other institutions which manage funds supporting pension and social security systems;

g) employee participation schemes or employee savings schemes;

h) securitisation special purpose entities.

(2) This Act shall not apply to AIFMs which manage one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

Article 5

The provisions of this Act shall apply in its entirety to all AIFMs which have their registered office in the Republic of Croatia, irrespective of the total net asset value of AIFs they manage and irrespective of whether they use leverage or not.

Prohibition against offering, management and marketing of units without authorisation of the competent authorities

Article 6

(1) No person, whether legal or natural, may establish or manage an AIF, unless it has been authorised by the Agency or competent authorities.

(2) Only the persons referred to in Article 188 of this Act may carry on marketing activities for units of AIFs.

Concept of and distinction between AIFs

Article 7

(1) An AIF shall be established with the aim of raising capital based on an offer to acquire units in an AIF, and the AIF's monetary assets shall be invested in accordance with the provisions of this Act, the AIF rules and, where applicable, the prospectus of that AIF.

(2) An open-ended AIF, established in the Republic of Croatia, is a separate pool of assets without legal personality.

(3) A closed-ended AIF, established in the Republic of Croatia, may be established in the form of a joint-stock company or a limited-liability company.

(4) Units of open-ended AIFs and those of closed-ended AIFs established in the form of a joint-stock company may be marketed through a public or private offering.

(5) Units of closed-ended AIFs established in the form of a limited-liability company may be offered through private offering only.

(6) With regard to the type of investors for which they are designed, there is a distinction between AIFs that may be marketed to professional investors only and AIFs that may be marketed to both professional and retail investors.

(7) All types of AIFs may be marketed to professional investors.

(8) The Agency shall specify, by virtue of an ordinance, the types of AIFs which may be established under this Act, the classes of assets in which these AIFs may invest, investment limits and the conditions under which certain types of AIFs may be offered to retail investors. The Agency may adopt an ordinance stipulating conditions for business operations of certain types of AIFs.

Tax regime for AIFs

Article 8

The tax regime for AIFs shall be determined in accordance with special legal provisions and international agreements applicable in the Republic of Croatia.

Subsidiary regulations

Article 9

The provisions of the act regulating the establishment and operation of companies shall apply accordingly to the operations of AIFMs, unless this Act or other provisions provide otherwise.

Register of AIFMs and AIFs

Article 10

(1) AIFMs and AIFs to which authorisation for the establishment and operation has been issued by the Agency shall be registered in the register of AIFMs and AIFs of the Republic of Croatia, which is kept by the Agency.

(2) AIFMs and AIFs shall be registered and all the particulars shall be entered in the register of AIFMs and AIFs as provided for by this Act and the ordinance referred to in paragraph 4 of this Article, as well as the changes to these particulars.

(3) The Agency shall provide access to the Register of AIFMs and AIFs on its website.

(4) The Agency shall adopt an ordinance prescribing the content and manner of keeping the Register of AIFMs and AIFs.

Article 11

The Agency shall also make available on its website the list of all EU AIFMs and non-EU AIFMs and their branches which carry on their activities within the territory of the Republic of Croatia, as well as the list EU AIFs and non-EU AIFs, the units of which are marketed in the Republic of Croatia.

Part Two

AIFM

Section 1

Form of the AIFM

Article 12

(1) An AIFM shall be established and operate as a limited-liability company or a joint-stock company which has its registered office in the Republic of Croatia, in accordance with the provisions of the act regulating the establishment and operation of companies, unless this Act provides otherwise.

(2) An AIFM may also be established as the European Society – Societas Europea (SE) which has its registered office in the Republic of Croatia.

(3) The term “alternative investment fund management company”, for the purpose of the company name, part of the company name or advertising, may be used only by the AIFMs which have obtained authorisation, granted by the Agency or the competent authorities, for establishment and operation of AIFs.

(4) The term “investment fund management company”, for the purpose of the company name, part of the company name or advertising, may be used only by the AIFMs which have obtained authorisation, granted by the Agency or the competent authorities, for establishment and operation of AIFs and UCITS.

(5) Any provision of this Act relating to the board of directors or the supervisory board of the AIFM shall apply accordingly to the management board and executive directors of the AIFM.

(6) Each AIF shall have a single AIFM, which shall be responsible for ensuring compliance with the provisions of this Act.

(7) The AIFM shall operate either:

- a. as an external manager, which manages one or more AIFs (external AIFM); or
- b. as an internal manager, in the case of a closed-ended AIF where the AIF's board of directors, subject to approval of the supervisory board, where applicable, or management board of a closed-ended AIF decides not to appoint an external AIFM (internal AIFM). The closed-ended AIF shall then act as an AIFM and all the provisions of this Act that apply to AIFMs shall apply to AIFs. The closed-ended AIF which at the same time acts as AIFM shall not be permitted to carry on any other activity except managing that AIF.

(8) In all cases where an external AIFM is unable to ensure compliance with requirements of this Act, for which the AIF itself is responsible where applicable, it shall, without delay, notify the Agency and, where appropriate, the competent authority of the AIF in another Member State.

(9) Upon receiving the notification referred to in paragraph 8 of this Article, the Agency shall order AIF to take appropriate action to ensure the compliance of AIF with the provisions of this Act; if, despite the action taken, the non-compliance with the provisions of this Act persists, the Agency shall prohibit marketing of the AIF, and it shall, where the units of that AIF are marketed in another Member State, notify the competent body of that Member State of the prohibition.

Activities of AIFMs

Article 13

(1) The activities of an AIFM shall be as follows:

- a) establishment and management of an alternative investment funds (AIF management);
- b) establishment and management of UCITS subject to obtaining authorisation in accordance with the provisions regulating establishment and management of UCITS (UCITS management);

(2) The establishment and management of an AIF shall comprise:

1. establishment of the AIF;
2. management of assets of AIFs;
3. risk management;
4. administrative tasks;
5. marketing of units of the AIF;
6. activities related to the AIF's assets, specifically, the services which are necessary in order to meet fiduciary obligations of the AIFM, facility management, real estate management activities, advising entities with regard to the structure of capital, business strategies and related issues, provision of advice and services related to mergers and

acquisitions or acquisition of holdings in companies and other services related to the management of an AIF and companies and of other assets in which it has invested.

(3) The administrative tasks referred to in paragraph 2, item 4 of this Article shall comprise:

1. legal and accounting services in relation to management of AIFs;
2. reception and processing of investors' inquiries;
3. valuation of assets and calculation of the price of units (including calculation of tax liability);
4. regulatory compliance monitoring;
5. distribution of income or profits;
6. unit issues and redemptions;
7. settlement of contractual obligations;
8. keeping of business records;
9. maintenance of unit register, where applicable;
10. disclosures and notifying investors.

(4) An external AIFM may carry on all the activities specified in paragraph 1 of this Article.

(5) An internal AIFM may carry on only the activity referred to in paragraph 1, item 1 a) of this Article exclusively for a single AIF.

Article 14

In the Republic of Croatia, the following entities may pursue the activities of an AIFM:

1. an AIFM which has been authorised by the Agency;
2. a UCITS management company which has been authorised by the Agency;
3. an AIFM from another Member State which, pursuant to the provisions of this Act, establishes a branch in the Republic of Croatia or is authorised to carry on the activities as AIFM in the Republic of Croatia on the basis of authorisation granted by the competent authorities of the home Member State of the AIFM;
4. a non-EU AIFM which, pursuant to the provisions of this Act, establishes a branch in the Republic of Croatia or is authorised to carry on activities as AIFM in the Republic of Croatia on the basis of authorisation granted by the competent authorities of the relevant state.

Article 15

(1) AIFMs may carry on the activities as AIFM as referred to in Article 13 of this Act for which they have obtained authorisation from the Agency and which have been entered in the court register as their business activities.

(2) AIFMs may not engage in activities other than those referred to in paragraph 1 of this Article.

(3) AIFMs may pursue the business of AIF and UCITS management for those investment funds which are subject-matter of supervision by the Agency or competent authorities of a Member State or a third country.

(4) An AIFM which pursues the activity of establishing and managing UCITS shall, in addition to the provisions of this Act, comply with the provisions of the act regulating the establishment and operation of open-ended investment funds with a public offering.

(5) AIFMs may carry on their activities within the territory of:

1. the Republic of Croatia;
2. another Member State (host Member State of the AIFM), through a branch or directly, provided that the requirements laid down in Part Seven of this Act are met;
3. a third country, through a branch or directly, provided that the requirements laid down in Part Seven of this Act are met;

Section 2

Initial capital of AIFMs

Article 16

The minimum amount of initial capital of an AIFM shall amount to:

1. HRK 2,400,000.00 for an internal AIFM;
2. HRK 1,000,000.00 when an AIFM is appointed as external manager of an AIF.

Own funds of AIFMs

Article 17

(1) The own funds of an AIFM shall consist of the sum of initial capital and an additional amount of own funds in accordance with the capital limits, less any deductible items.

(2) The Agency shall adopt an ordinance specifying the method of calculation of own funds, the characteristics of initial capital and additional amount of own funds and the characteristics of the items of which these consist, deductible items and the capital limits referred to in paragraph 1 of this Article.

Additional amount of own funds of AIFMs

Article 18

(1) When the net asset value of AIFs managed by an AIFM exceeds HRK 2 billion, the AIFM shall provide an additional amount of own funds which is equal to 0.02% of the amount by which the net asset value of AIFs managed by the AIFM exceeds HRK 2

billion, but the required total of the initial capital and the additional amount shall not exceed HRK 80,000,000.00.

(2) For the purpose of paragraph 1 of this Article, net asset value of AIFs managed by an AIFM shall include net asset value of AIFs for which the AIFM has delegated AIF asset management tasks in accordance with Article 65 of this Act, but excluding net asset value of AIFs that the AIFM is managing under delegation of AIF asset management tasks.

(3) The Agency may authorise AIFMs not to provide up to 50% of the additional amount of own funds referred to in paragraph 1 of this Article if AIFMs benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in the Republic of Croatia or another Member State, or given by a credit institution or an insurance undertaking which has its registered office in a third country, if they are subject to prudential rules considered by the Agency as equivalent to those laid down in Croatian regulations.

(4) To cover potential professional liability risks resulting from the registered activities of AIFMs, external and internal AIFMs shall either:

- a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
- b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(5) The Agency may adopt an ordinance specifying:

- a) the risks which the additional own funds or the professional indemnity insurance must cover;
- b) the characteristics of the assets which may be included in calculation of additional amount of own funds or may be regarded as coverage of the professional indemnity insurance;
- c) the method of calculation of additional own funds or of the premium under the professional indemnity insurance; and
- d) the manner of and time limits for reporting to the Agency on compliance with the provisions of paragraph 4 of this Article.

(6) The Agency may lay down, by virtue of an ordinance, additional capital requirements for AIFMs which, in addition to managing AIFs, pursue the activity of establishing and managing UCITS.

Article 19

Own funds of AIFMs, including any additional own funds as referred to in Article 18, paragraph 4 point a) of this Act, shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

Minimum amount of own funds of the AIFM

Article 20

(1) The own funds of the AIFM shall at any time be higher than or equal to the higher of the two amounts:

1. the amount of initial capital referred to in Article 16 of this Act or the total amount of initial capital and additional amount of own funds referred to in Article 18, paragraphs 1 and 4 of this Act;
2. one quarter of the preceding financial year's fixed overheads of AIFM.

(2) In case that the own funds of the AIFM fall below the level of minimum amount of the own funds referred to in paragraph 1 of this Act, the Agency may allow that AIFM a certain period in which to rectify the situation or may impose any supervisory measure prescribed by the provisions of this Act.

(3) When less than a year has passed from the start of business of the AIFM, the own funds of the AIFM must be equal to or higher than one of the following two amounts:

- a) the amount referred to in paragraph 1 point 1 of this Article
- b) one quarter of fixed overheads envisaged by the programme of operations of the AIFM, unless an adjustment to that programme is required by the Agency.

(4) The Agency shall adopt an ordinance specifying the items of the fixed overheads referred to in paragraph 1, item 2 of this Article.

Reporting on compliance with capital requirements

Article 21

(1) The AIFM shall report to the Agency on its compliance with the capital requirements referred to in Article 20 of this Act at least as frequently as the AIFM submits its financial reports.

(2) The Agency shall specify, by virtue of an ordinance, the types and contents of the reports on calculation of own funds, as well as the method of and deadlines for their submission.

Section 3

Conditions and procedures for granting authorisation to AIFMs having registered office in the Republic of Croatia

Article 22

(1) The Agency shall grant authorisation to AIFMs.

(2) The authorisation shall be granted for indefinite period, may not be transferred to another person and shall not apply to the legal successor.

(3) The application for authorisation shall be submitted by the founders of the AIFM or by the board of directors of the AIFM if the AIFM already has a board of directors. The application for authorisation shall exclusively relate to the management of an AIF or AIFs. Where an AIFM plans to manage UCITS which are regulated by the act regulating the establishment and operation of open-end investment funds with a public offering, the AIFM shall submit to the Agency a new application for authorisation in accordance with the provisions of the act regulating the establishment and operation of open-end investment funds with a public offering.

(4) Prior to entry of the establishment of the AIFM in the court register, and prior to every later entry of additional activities subsequently applied for, the AIFM shall obtain authorisation to take up the business or an extension to the authorisation to take up the business.

Article 23

(1) A joint-stock company or a limited-liability company which has already been established may also apply for authorisation, in which case application for issuance of authorisation to take up the business shall be submitted by the board of directors of the company.

(2) The company referred to in paragraph 1 of this Article shall obtain authorisation to take up the business prior to entry of the change to the company's business in the court register.

Application for authorisation

Article 24

(1) An applicant applying for an authorisation shall provide the following information to the Agency:

- a) information on the members of the board of directors of the AIFM;
- b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, that have qualifying holdings, and on the amounts of these holdings and close links;
- c) detailed presentation of organisational structure of the AIFM, including the statement on the manner in which the conditions of this Act will be met;
- d) information on the remuneration policies referred to in Article 57 of this Act;
- e) information on the functions that the AIFM will delegate to third parties in accordance with Article 66 of this Act.

(2) The Agency shall adopt an ordinance specifying in more detail the contents of the application for authorisation to be granted to the AIFM, the documentation that must accompany the application, as well as the contents of that documentation.

Deciding on application for authorisation to take up the business

Article 25

(1) The Agency shall grant authorisation to take up the business to the AIFM if the Agency is satisfied that the AIFM will be able to meet the conditions in relation to:

1. the form, shares or business stakes and initial capital of the company;
2. acquisition of qualifying holdings in respect of all members possessing qualifying holdings, and close links;
3. the members of the AIFM;
4. the members of the supervisory board of the AIFM, if the AIFM has a supervisory board;
5. granting of approval to the members of the board of directors for the exercise of their functions;
6. organisational and other requirements.

(2) The authorisation shall be valid for all Member States.

(3) The Agency shall decide on the application for authorisation to take up the business within 3 months of the date of receipt of a complete application. An application shall be deemed complete if, in accordance with the provisions of Article 24, paragraph 1 and the ordinance referred to in Article 24 paragraph 2 of this Act, it contains all the prescribed information and is accompanied by the complete documentation.

(4) The Agency may prolong the period referred to in paragraph 3 of this Article for three additional months, where they consider it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.

(5) If the applicant for authorisation to take up the business does not rectify, within the time specified by the Agency, the deficiencies of the application in accordance with the notice received from the Agency, the applicant shall be deemed to have given up the application.

(6) All the provisions of this Act that relate to shares, shareholders and acquisition of a qualifying holding in the AIFM which has been established as a joint-stock company shall apply accordingly to the AIFM which has been established as a limited-liability company.

Joining decision-making procedures concerning authorisation to take up the business

Article 26

At the time authorisation is granted to an AIFM, the Agency may decide on the following applications:

1. the AIFM's application for authorisation to take up the business;

2. application by members possessing qualifying holdings for authorisation to acquire a qualifying holding in the AIFM and for close links;
3. application for approval for performance of the duties of a member of the board of directors of the AIFM;
4. application for the establishment and for authorisation to take up the business of an AIF;
5. application for approval of the prospectus and
6. application for approval of the AIF rules.

Requirements for members of AIFMs and members that have qualifying holdings

Article 27

To be eligible for a member of an AIFM and a member possessing a qualifying holding, the candidate must satisfy the requirements stipulated by technical standards as specified by the European Commission and, subordinately, by the Agency's ordinance.

Close links

Article 28

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

(2) The Agency shall refuse authorisation if the laws, regulations and administrative provisions of a third country that relate to one or more natural or legal persons with which the AIFM has close links, or their application and enforcement, prevent the exercise of supervision of the AIFM.

Article 29

(1) The AIFM shall comply, on a permanent basis, with the conditions under which the Agency has granted authorisation to it.

(2) The AIFM shall notify the Agency within 3 working days of any material change to the information given in the application for authorisation to take up the business.

Article 30

(1) The AIFM shall not control or have a qualifying holding in an investment firm, a credit institution which provide investment services and performing investment activities pursuant to the provisions of the act regulating the capital market or which provides relevant services pursuant to the provisions of the act regulating the establishment and operation of credit institutions, an insurance undertaking, a reinsurance undertaking, a

mandatory or voluntary pension company, pension insurance company, factoring company or a leasing company, unless such control results from an investment made by an AIF managed by that AIFM.

(2) The AIFM shall not have shares or holdings in the depositary. The respective businesses of the depositary and the AIFM may not be interlinked in organisational terms and the same employees may not be involved in these business activities.

(3) The AIFM shall not have shares or holdings in the entity to which the depositary has delegated the functions referred to in Article 232 of this Act.

Article 31

Prior to issuing authorisation to the AIFM, the Agency shall consult the competent authorities of another Member State involved if the AIFM is one of the following:

- a) a subsidiary of another AIFM, of a UCITS management company, of a pension company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State;
- b) a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of a pension company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State;
- c) a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, a pension company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

Withdrawal of the authorisation

Article 32

(1) The authorisation issued to an AIFM shall be withdrawn:

1. where that AIFM does not start the business of management of AIF within one year of the date of issuance of the authorisation, on expiry of the said period;
2. where that AIFM has ceased the activities covered by Article 13 of this Act for the preceding 6 months, on expiry of the said period;
3. at the AIFM's own request, upon submission of the Agency's decision;
4. upon submission of the Agency's decision on withdrawal of the authorisation.
5. as of the date when bankruptcy proceedings are instituted against the AIFM;
6. upon completion of the liquidation of the AIFM.

(2) If any of the reasons referred to in paragraph 1, items 1 and 2 of this Article exist, the Agency shall take a decision establishing that the issued authorisation has lapsed.

(3) The Agency shall notify the depositary of the withdrawal of the authorisation referred to in paragraph 1 of this Article.

Status changes of AIFMs

Article 33

(1) If an AIFM is involved in a merger, consolidation or division of the AIFM, it shall obtain approval of the Agency for such merger, consolidation or division.

(2) The provisions of this Act regulating issuance of authorisation to an AIFM shall apply accordingly to the decision-making concerning the issuance of approval for the status changes of an AIFM as referred to in paragraph 1 of this Article.

(3) Where due to a status change of an AIFM, a new AIFM is formed, that AIFM shall obtain authorisation from the Agency prior to registration of the status change in the court register.

(4) Paragraphs 1 to 3 of this Article shall apply accordingly to other status changes in which an AIFM is involved.

Section 4

Bodies of AIFMs

Article 34

(1) The bodies of an AIFM shall be:

- a) in the case of a joint-stock company – annual general meeting of shareholders, board of directors and supervisory board, or management board;
- b) in the case of a limited-liability company – general meeting of shareholders, board of directors and supervisory board;

(2) As an exception to paragraph 1, item b) of this Article, an AIFM which is established as a limited-liability company and manages AIFs marketed exclusively to professional investors, shall not be required to have a supervisory board.

(3) Minutes shall be kept of the meetings and sessions of the AIFM's bodies.

Subsection 1

The board of directors of an AIFM

Article 35

(1) The board of directors of an AIFM shall have at least two members who manage business activities of the AIFM and who represent it. One member of the board of directors shall be appointed Chairman of the board of directors.

(2) Unless the instrument of incorporation of the AIFM provides otherwise, the members of the board of directors shall manage business activities and jointly represent the AIFM.

(3) The members of the board of directors of the AIFM shall manage business activities of the AIFM from the territory of the Republic of Croatia.

(4) In the case that an AIFM is managed by the management board, that management board must appoint at least two executive directors. The provisions of this Act and of the legislation enacted on the basis of this Act, which relate to the members of the board of directors of an AIFM shall apply accordingly to executive directors.

Requirements for performance of the function of a member of the board of directors

Article 36

(1) The following persons shall be eligible for a member of the board of directors of an AIFM:

1. a person who has sufficient professional qualifications, the ability and experience necessary to effectively conduct the business of an AIFM;
2. a person who was not a member of the supervisory board, a member of the board of directors or a person who held another managing position in an AIFM or a company at the time when bankruptcy proceedings were instituted against these entities or when a decision on compulsory liquidation of these entities was taken or in an AIFM or a company whose authorisation was withdrawn, unless the Agency finds that that person has affected the initiation of the bankruptcy proceedings, compulsory liquidation or the withdrawal of authorisation through their unconscientious or incompetent performance of duties;
3. a person against whose property no bankruptcy proceedings have been instituted;
4. a person of good reputation;
5. a person who has not been convicted of a misdemeanour offence which represents a gross and permanent violation of regulations related to the business activities of the Agency, the Croatian National Bank or another competent authority;
6. a person whose former conduct points to the reasonable conclusion that he or she will perform the duties of the member of the board of directors of the AIFM honestly and with due care and diligence;
7. a person who meets the requirements for the position of a member of the board of directors referred to in the act regulating the establishment and operation of companies;
8. a person who is not member of the board of directors or procurator of another company, unless the Agency stipulates otherwise.
9. A person to whom the Agency has refused approval for the performance of the function of a member of the board of directors shall not be eligible for the position of member of the board of directors of an AIFM for at least one year from the date of the decision to refuse application for approval for the performance of the function of a member of the board of directors.

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

(3) It shall be deemed that a natural person who is not a national of the Republic of Croatia meets the requirements for a non-conviction record referred to in paragraph 1, item 5 of this Article if he or she has not been convicted, on the basis of judgement with final force and effect, for acts which, according to their description, are equivalent to these acts.

(4) The members of the board of directors of an AIFM shall manage business of the AIFM on a full-time basis and shall be employed with the AIFM.

(5) At least one member of the board of directors must have a good command of the Croatian language and is required to pass the exam for an investment adviser.

(6) The Agency shall adopt an ordinance specifying in more detail the requirements referred to in paragraphs 1 and 2 of this Article for membership in the board of directors

of an AIFM, including specific requirements related to the type of AIF managed or intended to be managed by the AIFM, the procedure for issuance of approval and the documentation that must be enclosed with the application for approval for the performance of the duties of a member of the board of directors.

(7) The provisions of this Subsection shall apply accordingly to a procurator of an AIFM, who must obtain approval from the Agency for the performance of this function. The procurator of the AIFM must have a good command of the Croatian language, but is not required to pass the exam for an investment adviser.

Article 37

(1) A member of the board of directors and the procurator of the AIFM shall not be a member of the supervisory board or the procurator of the following undertakings, unless that is related to investment of an AIF managed by the AIFM:

1. any other AIFM;
2. a company managing UCITS;
3. the depositary;
4. a credit institution;
5. any person related to the undertakings referred to in items 1 and 2 of this paragraph;
6. investment firm;
7. a pension company for management of compulsory pension funds;
8. a pension company for management of voluntary pension funds;
9. insurance undertakings;
10. reinsurance undertakings;
11. a pension insurance undertaking;
12. other legal persons which operate on the basis of approval or authorisation granted by the Agency.

Liability of members of the board of directors

Article 38

Members of the board of directors of the AIFM shall be jointly liable to the AIFM for any damage occurred as a result of any action, failure to act or failure to fulfil their obligations and duties, unless they can prove that in the discharge of their obligations and duties they acted with due professional care.

Approval for performance of the function of a member of the board of directors

Article 39

(1) Only a person who has obtained approval from the Agency for the performance of the function of a member of the board of directors of an AIFM may be appointed as member of the board of directors of the AIFM.

(2) Application for approval for the performance of the function of a member of the board of directors shall be submitted by the members or by the supervisory board of the AIFM for a term of office not exceeding 5 years.

(3) Exceptionally, if a member of the board of directors of an AIFM is appointed by the competent court in accordance with the provisions of the act regulating the capital market, his or her term of office may not exceed 6 months, but in that case the person appointed must also meet the requirements set out in Article 36 of this Act.

(4) The supervisory board or the members of the AIFM shall submit the application for approval for the performance of the function of a member of the board of directors and shall submit a programme of operations of the AIFM at least 3 months prior to expiration of the term of office of each member of the board of directors. The supervisory board or the members of the AIFM shall submit a new application for approval and the programme of operations of the AIFM for the duration of their term of office within 30 days of the date of receipt of notification of withdrawal, lapse or refusal of approval for the performance of the function of a member of the board of directors.

(5) Applicants for the approval referred to in paragraph 1 of this Article shall provide evidence of fulfilment of the requirements laid down in Article 36 of this Act and of those laid down in the ordinance referred to in Article 36, paragraph 6 of this Act.

(6) In the decision-making procedure concerning the approval referred to in paragraph 1 of this Article, the Agency may require the candidate for the position of a member of the board of directors of an AIFM to produce his or her programme of operations of the AIFM for the duration of his or her term of office.

(7) The person to whom the Agency has granted approval for the performance of the function of a member of the board of directors of an AIFM shall be required to re-apply for and obtain approval of the Agency before his or her appointment to the same position in another AIFM.

(8) The agency may issue an ordinance stipulating the content of the programme of operations of the AIFM referred to in paragraph 6 of this Article, as well as the procedure and criteria for assessing the programme and candidates presenting it.

(9) The provisions of Articles 35 to 42 of this Act relating to members of the board of directors of the AIFM shall apply accordingly to the procurator of the AIFM, who needs to obtain approval of the Agency in order to perform that function.

(10) The procurator does not need to have passed the investment adviser examination, unless he is authorised to manage assets and/or manage risks,

Article 40

The Agency shall refuse approval for performance of the function of a member of the board of directors if:

1. the person proposed does not meet the requirements laid down in Article 36 of this Act and in the ordinance referred to in Article 36, paragraph 6 of this Act;
2. the Agency has objective and provable reasons to assume that the business or duties in which the person is or was engaged would represent threat to the management of the AIFM in accordance with the organisational requirements referred to in Articles 47 to 62 of this Act;
3. the information given in the application for the approval is false or misleading.

Lapse of approval for the performance of the function of a member of the board of directors of an AIFM

Article 41

The approval for the performance of the function of a member of the board of directors of an AIFM shall lapse:

1. in the case that, within 6 months of the date of issuance of the approval the person concerned is not appointed to or does not assume the duties to which the approval relates during the said period;
2. in the case of termination of the person's term of office to which the approval relates, as of the date of termination of the term of office;
3. in the case of expiration of the person's contract of employment with the AIFM, as of the date of expiration of the contract.

Withdrawal of approval for the performance of the function of a member of the board of directors of an AIFM

Article 42

(1) The Agency shall withdraw approval for the performance of the function of a member of the board of directors of an AIFM in the following cases:

1. if the member of the board of directors no longer fulfils the conditions under which the approval was granted;
2. if the approval has been obtained by making false or misleading statements or by any other irregular means;
3. if the member of the board of directors has violated the provisions on prohibition of trading or effecting transactions, i.e. giving trading orders on the basis of insider information or in the manner that would constitute a market manipulation in accordance with the provisions of the act regulating the capital market;
4. if the member of the board of directors has seriously or systematically violated this Act, the regulations adopted on the basis of this Act or other legislative provisions, in particular if this has jeopardized the liquidity or capital maintenance of the AIFM or if he or she has committed recurring violations of the same regulations twice in 3 years;

5. if the member of the board of directors has not ensured implementation or has failed to implement supervisory measures ordered by the Agency;
6. if the member of the board of directors has not ensured adequate organisational structure referred to in Articles 47 to 62 of this Act;
7. if it establishes that the member of the board of directors is in a conflict of interests because of which he or she can no longer fulfil his or her obligations and duties with due professional care;
7. if the member of the board of directors regularly fails to fulfil the obligation to establish and review effectiveness of the policies, measures or internal procedures put in place for the purpose of compliance of the AIFM and the AIF under its management with this Act and regulations adopted pursuant to this Act or fails to fulfil the obligation to take appropriate measures with the aim of rectifying the situation, i.e. irregularities in the operations of the AIFM.

(2) In the cases referred to in paragraph 1, items 5 to 8 of this Article, the Agency may also withdraw approval for performance of the function of a member of the board of directors of the AIFM on a temporary basis.

(3) Lawsuits filed against acts of the Agency referred to in paragraphs 1 and 2 of this Article shall be decided upon by the competent administrative court urgently, and no later than within 6 months as of the day of filing the lawsuit.

(4) If the Agency withdraws approval for performance of the function of a member of the board of directors, the AIFM shall without delay take a decision to revoke the appointment of that member of the board of directors.

(5) In the case referred to in the preceding paragraph of this Article, and in another case where the AIFM does not meet the requirement relating to the minimum number of management board members referred to in article 35 paragraph 1 of this Act, if the AIFM is established as a joint-stock company, the supervisory board of the AIFM shall appoint, pursuant to the act regulating the establishment and operation of companies, a deputy member of the board of directors without the Agency's approval or authorisation for the term of office not exceeding 3 months and notify, without delay, the Agency thereof in the event that the AIFM does not have the minimum number of members of the board of directors in accordance with the instrument of incorporation and/or this Act.

(6) In the case referred to in paragraph 3 of this Article, and in another case where the AIFM does not meet the requirement relating to the minimum number of management board members referred to in article 35 paragraph 1 of this Act, if the AIFM is established as a limited-liability company, the members of the supervisory board where the AIFM has a supervisory board, or the members of the AIFM where there is no supervisory board, shall appoint, pursuant to the act regulating the establishment and operation of companies, a member of the board of directors without the Agency's approval or authorisation for the term of office not exceeding 3 months and notify, without delay, the Agency thereof in the event that the AIFM does not have the minimum

number of members of the board of directors in accordance with the instrument of incorporation and/or this Act.

Subsection 2

Requirements for performance of the function of a member of the supervisory board of an AIFM

Article 43

(1) To be appointed or nominated for the position of a member of the supervisory board of an AIFM, a person must have a good reputation, adequate professional qualifications and experience to supervise the conduct of the business of the AIFM.

(2) The requirement set out in paragraph 1 of this Article shall be considered as fulfilled if the person has at least a five-year experience in managing or supervising operations of a company of comparable size and operations as that of the AIFM.

(3) The Agency may require the AIFM to convene an annual general meeting or a general meeting of shareholders of the AIFM and propose to revoke the appointment of a member of the supervisory board of the AIFM of his or her duties if:

1. the member of the supervisory board violates his or her duties defined by this Act and other legislation, as well as the legal provisions adopted on the basis of that legislation;
2. any obstacles to the election or appointment of the member of the supervisory board have arisen or may arise;
3. the member of the supervisory board does not meet the requirements referred to in paragraphs 1 and 4 of this Article.

(4) Members of the supervisory board of the AIFM shall not engage in any activities or provide services which are in competition with the operations of the AIFM or which may give rise to conflicts of interest in relation to the operations of the AIFM.

(5) The Agency shall adopt an ordinance regulating in more detail the requirements which must be met by the members of the supervisory board of the AIFM.

Powers of the supervisory board of the AIFM

Article 44

(1) In addition to the powers conferred on the supervisory board under the act regulating the establishment and operation of companies, the supervisory board of the AIFM shall be responsible for granting the following approvals to the board of directors:

1. for establishment of the business policy of the AIFM;
2. for the financial plan of the AIFM;
3. for organisation of the internal control system of the AIFM and of the risk management system;

4. for the annual plan of the AIFM; and
5. for decision-making concerning other matters stipulated by this Act.

(2) Where an AIFM, in accordance with Article 34, paragraph 2 of this Act does not have a supervisory board, the members of the AIFM shall be responsible for granting approval concerning the matters referred to in paragraph 1 of this Article.

Duties and responsibilities of members of the supervisory board of the AIFM

Article 45

(1) Members of the supervisory board of the AIFM shall:

1. supervise adequacy of the procedures and efficiency of work of the internal audit function;
2. give opinion to the Agency about the Agency's orders in the supervisory procedures involving the AIFM within 30 days of the date of submission of the minutes of the Agency on the supervision that has been carried out, and monitor the actions of the AIFM in accordance with the Agency's orders and decisions;
3. submit a report to the annual general meeting or the general meeting on orders of the Agency and on the actions referred to in point 2 of this paragraph;
4. adopt a decision on granting approval for annual and other financial reports of the AIFM and AIFs and inform in writing the annual general meeting or general meeting of shareholders of the AIFM;
5. explain to the annual general meeting or general meeting of shareholders of the AIFM their opinion on the annual report by the internal audit and on the annual report by the board of directors.

(2) Members of the supervisory board of the AIFM shall be jointly liable to the AIFM for any damage occurred as a result of violation of their obligations and duties, unless they can prove that in the discharge of their obligations and duties they acted with due professional care.

Duties and responsibilities of members of the board of directors, supervisory board, procurators and employees

Article 46

(1) An AIFM, i.e. members of its board of directors and supervisory board, and procurators shall:

1. in conducting its or their business activities, act honestly and fairly and in accordance with the rules of the profession and in the best interests of the AIFs and the investors of the AIFs they manage, as well as protect the integrity of the capital market;
2. in the discharge of their obligations, act with due professional care;
3. have and employ effectively the resources and procedures that are necessary for the proper performance of the business activities of the AIFM;

4. take all reasonable steps to avoid conflicts of interest and, where such conflicts cannot be avoided, identify, manage and monitor, and where applicable, disclose, those conflicts of interests in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the investors and AIFs managed by the AIFM are fairly treated;

5. comply with the provisions of this Act and legal provisions adopted on the basis of this Act so as to promote the best interests of the investors and the integrity of the capital market.

(2) The AIFM, members of the board of directors and supervisory board, procurators and employees of the AIFM shall always give priority to the best interests of the AIFs and the investors of the AIFs and shall never put their interests or the interests of related persons before the interests of the AIFs, the investors of the AIFs they manage and the integrity of the capital market.

(3) The Agency may adopt an ordinance specifying in more detail the assessment criteria, measures and procedures, as well as other ways in which the AIFM will fulfil its obligation set out in paragraphs 1 and 2 of this Article.

Section 5

Organisational requirements for AIFMs

General organisational requirements

Article 47

(1) An AIFM shall establish, implement and regularly update, assess and monitor, taking into account the nature, scale and extent of its business activities and the type of the AIF it manages, effective and adequate:

1. decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
2. procedures to ensure that the relevant person involved in the management of the assets of the AIF has adequate professional qualifications and knowledge with respect to the type of the AIF managed by the AIFM,
3. measures and procedures to ensure that the relevant persons of the company are aware of the procedures which must be followed for the proper discharge of their duties and responsibilities;
4. internal control mechanisms designed to ensure the compliance with this Act and regulations adopted pursuant to this Act, including other relevant regulations, and with internal decisions, arrangements and procedures at all levels of the AIFM, including rules for personal transactions of the relevant persons;
5. internal reporting and communication of information at all relevant levels of the AIFM, as well as effective information flows with any third party involved;
6. records of its business and internal organisation.
7. records of its internal acts and changes thereof,

8. policies and procedures for on-going professional training of its employees, appropriate to the duties they carry out.
9. administrative and accounting procedures and the system of maintaining business books and financial accounts, as well as procedures for keeping and maintaining business documents which reflect a true and fair view of the financial position of the company and which comply with all applicable accounting standards and rules;
10. measures and procedures for the control of and protection of the information system and electronic data processing system;
11. measures and procedures to safeguard, on a continuous basis, the security, integrity and confidentiality of information;
12. policies, measures and procedures to ensure the business continuity.

(2) An AIFM shall set up, within the internal control mechanism, taking into account the nature, scale and complexity of its business (the investment strategy and the type of investors), and the type and scope of the services it provides, the following functions:

1. risk management;
2. monitoring compliance with the relevant regulations and
3. internal audit.

Conflicts of interest

Article 48

(1) An AIFM shall, taking into account the nature, scale and complexity of its business, organise the business in such manner as to reduce the risk of any conflicts of interest to a minimum.

(2) An AIFM shall take all reasonable steps to ensure that, in the course of provision of its services and performance of its business activities, the interests of the AIFs and the investors of the AIFs are not jeopardized.

(3) An AIFM shall take all reasonable steps to identify, manage, monitor and prevent any conflicts of interest, and to establish appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of the AIFs and the investors of the AIFs.

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

(5) An AIFM shall, where applicable, disclose the conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.

(6) No investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF rules and prospectus of the AIF where applicable.

Article 49

(1) AIFM s shall take all reasonable steps to identify conflicts of interest that arise in the course of managing AIFs between:

- a) the AIFM, including its board of directors, managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF;
- b) the AIF or the investors in that AIF, and another AIF or the investors in that AIF;
- c) the AIF and the investors in that AIF;
- d) the AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or
- e) two investors of the AIF.

(2) AIFMs shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.

(3) AIFMs shall segregate tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate conflicts of interest. AIFMs shall assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the investors of the AIFs.

(4) Where organisational arrangements established and implemented by the AIFM are not sufficient to prevent conflicts of interest, the AIFM shall clearly disclose the nature or sources of conflicts of interest to the investors.

(5) AIFMs shall establish mechanisms, measures and procedures to prevent conflicts of interest in order to ensure an independent and effective identification, management and monitoring of the risks to which each AIFM and AIF is or may be exposed.

(6) Where the AIFM on behalf of an AIF uses the services of a prime broker, the AIFM shall conclude a written contract with the prime broker.

(7) The contract concluded with the prime broker shall in particular contain the terms providing for any possibility of transfer and reuse of AIF assets in compliance with the AIF rules and the prospectus of the AIF where applicable.

(8) The contract concluded with the prime broker shall provide that the depositary be informed of the contract.

(9) The AIFM shall exercise due skill, care and diligence in the selection of prime brokers with whom a contract is to be concluded.

Article 50

An AIFM shall establish, implement and regularly update the policies on personal transactions involving financial instruments and other types of assets in which the AIF managed by the AIFM invests, with a view to preventing conflicts of interest.

Monitoring compliance with relevant legal provisions

Article 51

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

(2) AIFMs shall establish, implement and regularly update, assess and monitor the policies and procedures to ensure that they operate in accordance with this Act and the legal provisions adopted on the basis of this Act and other relevant regulations and it shall ensure that members of the board of directors and other relevant persons act in accordance with this Act, the legal provisions adopted on the basis of this Act and AIFM's own policies regulating personal transactions in financial instruments and other types of assets in which the AIF managed by the AIFM invests.

Internal audit

Article 52

The AIFM shall, where applicable and appropriate to the nature, scale and extent of the activity of the AIFM, establish internal audit which makes an independent and objective assessment of the internal control system, provides an independent and objective professional opinion and advice on the improvement of business operations with a view to improving the activity of the AIFM, by introducing a systemic, disciplined approach to assessing and improving the efficiency of risk management, control and corporate governance.

Risk management system

Article 53

(1) AIFMs shall establish a comprehensive and effective risk management system for the AIFM and AIFs it manages, in line with the nature, scale and complexity of their business, which shall include at least:

1. risk management strategies, policies, procedures and measures;
2. risk measurement techniques;
3. allocation of responsibilities pertaining to the risk management.

(2) AIFMs shall functionally and hierarchically separate the functions of risk management from the operating units.

(3) AIFMs shall prescribe, implement, document and regularly update adequate, effective and comprehensive risk management strategies and policies for the purpose of identifying the risks associated with the activities of the AIFMs and operations of the AIFs they manage, the business processes and systems of the AIFMs and of the AIFs they manage.

(4) AIFMs shall, in the risk management process, define the risk profile of AIFs they manage, the contributions of individual risks to the overall risk profile of each AIF and they shall set a tolerable level of risk.

(5) AIFMs shall use the risk management process allowing, at any time, monitoring and measuring of the position risk and of the contribution of the positions to the overall risk profile of the portfolio of AIFs they manage.

(6) AIFMs shall adopt, on the basis of the risk management strategies and policies and the tolerable level of risk that has been set, and for the purpose of the appropriate measurement, management and monitoring of all risks relevant to the investment strategy of each AIF, effective procedures, risk measurement techniques and risk management measures for all risks to which each AIF is or may be exposed.

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

(8) The risk management strategy and policies adopted and any changes thereof shall be communicated by the AIFM to the Agency without delay.

(9) If an AIFM has, in accordance with paragraph 8 of this Article, communicated to the Agency the risk management strategies and policies adopted, it shall without delay notify the Agency of any material changes to the risk management strategies and policies adopted and of any material changes to the risk exposure and the amount of own funds of the AIFM.

(10) The board of directors of an AIFM shall participate in and be responsible for the risk management process all employees of the AIFM must take part in the implementation of risk management system.

(11) AIFMs shall inform the Agency regularly in regard to the types of derivative instruments, the underlying risks, the quantitative limits on the investments and the methods chosen in order to estimate the risks associated with transactions in derivative financial instruments regarding each AIF managed.

(12) AIFMs shall employ a process for accurate and independent assessment of the value of OTC derivatives.

(13) AIFMs shall review the risk management systems at least once a year and adapt them whenever necessary.

(14) The Agency shall adopt an ordinance regulating in more detail the criteria for the evaluation of adequacy of the risk management process employed by the AIFM in accordance with paragraph 5 of this Article, the rules related to accurate and independent assessment of the value of OTC derivatives referred to in paragraph 12 of this Article and the rules related to the contents and procedure applicable to notification of the Agency in accordance with paragraph 11 of this Article.

Article 54

(1) AIFMs shall implement an appropriate, documented and regularly updated due diligence process when investing the assets of the AIF, according to the investment strategy, the objectives and risk profile of the AIF.

(2) AIFMs shall ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures.

(3) AIFMs shall ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategy and objectives of the AIF as laid down in the AIF rules and the prospectus of the AIF where applicable.

(4) AIFMs shall set a maximum level of leverage which they may employ on behalf of each AIF they manage as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia:

- a) the type of the AIF;
- b) the investment strategy of the AIF;
- c) the sources of leverage;
- d) any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risks;
- e) the need to limit the exposure to any single counterparty;
- f) the extent to which the leverage is collateralised;
- g) the asset-liability ratio;
- h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

Liquidity management

Article 55

(1) AIFMs shall, for each AIF that they manage which is not an unleveraged closed-ended AIF, establish a comprehensive and effective liquidity management system and adopt appropriate policies and procedures which enable them to monitor the liquidity risk of the AIF.

(2) AIFMs shall establish, implement and regularly update, assess and monitor, taking into account the nature, scale and complexity of their business, effective and appropriate policies, procedures, measures and arrangements for monitoring, measuring, controlling and managing the liquidity risk.

(3) AIFMs shall ensure that, for each AIF that they manage, the liquidity profile of the AIF's investment is consistent with legislative and subordinate provisions, the risk profile, the risk management strategy of the AIFMS and of the AIFs they manage, the investment strategy, the pay-off policy and AIF rules and the prospectus of the AIF where applicable.

(4) AIFMs shall regularly conduct liquidity risk stress tests, under normal and exceptional liquidity conditions, with a view to assessing and monitoring the liquidity risk.

Business continuity measures

Article 56

(1) An AIFM shall take any appropriate measure necessary to ensure the business continuity and regular course of the business.

(2) In order to achieve the purpose referred to in paragraph 1 of this Article, the AIFM shall use adequate systems, resources and procedures proportionate to the nature, scale and complexity of its business.

Remuneration policies

Article 57

(1) AIFMs shall, for the purpose of preventing taking of undue risks in their operation, prescribe and implement clear remuneration policies for employees, members of the board of directors and the supervisory board whose professional activities may have a material impact on the risk profiles of the AIFMs or of AIFs they manage.

(2) The remuneration policies and procedures of AIFMs shall be consistent with and promote effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles, rules of the AIFs or prospectus of the AIFs where applicable.

(3) The remuneration policy of AIFMs shall be in line with the business strategy, objectives and size of the AIFMs and AIFs, as well as with the interests of the

- AIFMs and AIFs and their investors, and it shall include measures to avoid conflicts of interest.
- (4) The board of directors of the AIFM shall adopt and, at least annually, review the general principles of the remuneration policy and shall be responsible for their implementation.
 - (5) The implementation of the remuneration policies and procedures shall be, at least annually, for the purpose of supervising the operation of the AIFM, subject to internal review for compliance with policies and procedures for remuneration adopted by the board of directors of the AIFM.
 - (6) Where remuneration is performance related, the total amount of remuneration shall be based on the performance of the individual and of the business unit concerned, and on the overall results of the AIFM or AIFs, and when assessing individual performance, financial as well as non-financial criteria shall be taken into account.
 - (7) The AIFM shall pay the remuneration to employees and members of the board of directors and supervisory board by the AIFM only if it is sustainable and justified, taking into account, the financial situation of the AIFM as a whole and the fulfilment of the investment objectives defined in the rules of AIFs it manages, or in the prospectus where applicable. The total remuneration shall not limit the ability of the AIFM to meet the prescribed capital requirements and to strengthen the equity position of the AIFM.
 - (8) In the case of subdued or negative financial performance of the AIFM and/or AIFs, such performance shall be taken into account by the AIFM when adopting a decision on the payment of remuneration to members of the board of directors, supervisory board and employees.
 - (9) Annual financial statements of the AIFM shall disclose:
 1. the total amount of bonuses and remuneration, split into fixed and variable components, paid by the AIFM to employees, members of the board of directors and supervisory board, including the number of beneficiaries
 2. the aggregate amount of bonuses and remuneration, broken down by members of the board of directors, procurator, and employees of the AIFM, whose actions may have a material impact on the risk profile of the AIFM or AIF.

Document handling procedures, keeping of records and business documents of the AIFM

Article 58

- (1) AIFMs shall have clear and transparent procedures for handling of documents and maintain the archives of all documents and other files that relate to the AIFM and the AIFs they manage.
- (2) AIFMs shall keep and retain the records and business documents about all its activities and transactions they have carried out in a manner that enables supervision of

the operations in accordance with Article 51 of this Act, in particular of fulfilment of the obligations to the investors and potential investors.

(3) AIFMs shall organise the business and keep up-to-date business documents and other administrative or business records in a manner that enables at any time access to them in order to trace each key stage of the processing of each transaction they have effected for their own account or for the account of the AIF.

(4) AIFMs shall keep all business documents relating to the transactions involving assets of the AIFs separately from the records of the AIFM and other investment funds it manages.

(5) AIFMs shall safeguard all business documents from unauthorised access and possible record losses and retain them in a durable medium.

(6) AIFMs shall retain, for at least 5 years upon expiry of the year in which a transaction was effected, all documents and information about all the transactions involving financial instruments they have conducted, or for a longer period if this is required by the investment strategy implemented by the AIF concerned.

Handling investor complaints

Article 59

(1) AIFMs shall establish and implement adequate procedures ensuring that complaints received from investors of the AIFs managed by the AIFM are handled in a proper manner and that there are no restrictions for the exercise of the investors' rights, especially in the case when the AIFM has its registered office in a Member State other than the home Member State of the AIF.

(2) AIFMs shall make it possible for investors to lodge their complaints in the official language or one of the official languages of the Member State or country in which units of the AIF are marketed.

(3) AIFMs shall establish and implement adequate procedures ensuring that the information in connection with the handling of complaints received from investors are made available to both the public and the AIF's supervisory function.

(4) AIFMs shall retain the documents on all complaints and measures taken in order to resolve such complaints in the manner and according to the time limits prescribed by this Act and the legal provisions adopted on the basis of this Act.

Settlement of disputes between the AIFM and investors

Article 60

(1) With no influence over the possibility to settle disputes before the court or another competent authority, AIFMs shall ensure the conditions are in place for the out-of-court settlement of disputes, by way of arbitration, between the AIFM and the investors of the AIFs managed by the AIFM.

(2) AIFMs shall acquaint future investors with the method and procedure for the settlement of disputes by way of arbitration.

(3) In the case of a dispute which has arisen or may arise from a contract concluded with an investor, the arbitration agreement must be included in a separate document signed by both parties and such document may not contain any other arrangements except those that relate to the arbitration procedure.

The AIFM's website

Article 61

(1) An AIFM which manages an AIF with a public offering or an AIF the shares of which are listed on a regulated market, shall have, regularly update and maintain a website which shall contain at least the following information:

1. general information about the AIFM (the name, legal form, registered office and head office if it is not the same as the registered office, the reference number of the authorisation issued by the Agency, as well as the date of establishment and registration in the court register, the amount of initial capital, the founders and members);
2. basic information about the members of the board of directors, supervisory board and procurators of the AIFM (the names, short resumes);
3. list of the activities referred to in Article 13 of this Act for which authorisation has been granted to the AIFM;
4. audited annual reports of the AIFM;
5. audited annual reports of the AIFs with a public offering managed by the AIFM;
6. general information about the depositary of the AIF (the company name, legal form, registered office and address of the head office, the information about and reference number of the authorisation issued by the competent institution for the performance of business activities as depositary, the amount of initial capital, the list of all third parties with whom the depositary has entered into an agreement on delegation of the activities referred to in Article 232 of this Act;
7. list of the AIFs with a public offering managed by the AIFM indicating the types of each AIF;
8. the prospectus and rules of the AIFs with a public offering;
9. list of delegated activities indicating the third parties to which these activities have been delegated;
10. summarized tabular presentation of risks associated with the AIFM and the AIF with a public offering including the level of impact of each risk on the AIFM and the AIF;
11. price of the units of the AIF with a public offering;
12. all notices related to the AIFM and the AIF with a public offering, as well as other information provided for in this Act.

(2) The AIFM managing an AIF with a public offering may have a website containing the information about the AIFM and the AIFs managed by the AIFM.

(3) The Agency may adopt an ordinance specifying additional information which should be made available on an AIFM's website, which in the Agency's opinion is important for the clients, the market and the public.

Adoption of ordinance

Article 62

The Agency shall adopt an ordinance laying down in more detail organisational requirements applicable to AIFMs as regards:

1. organisational structure;
2. administrative and accounting procedures;
3. internal control mechanisms including the functions of risk management and compliance with the relevant regulatory requirements and internal audit;
4. conflicts of interest;
5. rules of conduct;
6. risk management;
7. business continuity measures;
8. personal transactions;
9. keeping and storage of business documentation of the AIFM;
10. remuneration policy;
11. systems and procedures for liquidity management;
12. adjustment of investment strategy, liquidity profile and pay-off policy;
13. adequate management of the information system.

Section 6

Reporting by AIFMs

The AIFM's reports

Article 63

(1) The legal provisions regulating accounting and the International Financial Reporting Standards shall apply to financial reporting by AIFMs, unless the Agency provides otherwise.

(2) The Agency shall adopt an ordinance specifying the structure and contents of annual financial reports of AIFMs, and the manner of publication and submission, as well as submission deadlines.

(3) In addition to the annual financial reports referred to in paragraph 2 of this Article, the Agency may adopt an ordinance prescribing the structure, the contents, the manner of and deadlines for submission of other reports of AIFMs which shall be drawn up by AIFMs for the purpose of delivery to the Agency.

(4) The provisions of this Section of the Act shall apply accordingly to AIFMs which are required to prepare consolidated annual reports in accordance with the legal provisions regulating accounting and the International Financial Reporting Standards.

(5) The Agency may:

- a) impose the obligation to prepare consolidated annual reports regardless of the provision of paragraph 4 of this Article;
- b) specify the scope of consolidation and the method and frequency of preparation of consolidated reports.

(6) The provisions of this Article shall apply accordingly to EU AIFMs and non-EU AIFMs which pursue their activities in the Republic of Croatia by a branch.

(7) The Agency may prescribe a chart of accounts for AIFMs.

Auditing of the AIFM's reports

Article 64

(1) Annual financial reports of the AIFM shall be audited by an auditor in the manner and under the conditions laid down by the legal provisions regulating accounting and auditing, and by the rules of the auditing profession unless this Act and the legal provisions adopted on the basis of this Act provide otherwise.

(2) AIFMs shall communicate to the Agency audited financial reports referred to in Article 63, paragraph 2 of this Act within fifteen days of the date of issue of the auditor's report, but no later than four months following the end of the financial year in relation to which the reports are drawn up.

(3) The same auditing firm may audit a maximum of seven consecutive annual financial reports of the AIFM.

(4) The Agency may adopt an ordinance specifying in more detail the scope and contents of the audit or audit procedures and the auditor's report on the completed audit of annual financial reports or other reports of the AIFM.

(5) The Agency may require the auditor to provide additional explanations with regard to the audited annual financial reports or other audited reports of the AIFM.

(6) If the Agency establishes that audit of the AIFM's reports has not been carried out or that the auditor's report has not been drawn up in accordance with this Act, the legal

provisions adopted on the basis of this Act, the legal provisions regulating accounting and auditing and the rules of the auditing profession, or if it establishes, on the basis of a supervision of the operations of the AIFM or otherwise that the auditor's report on the AIFM's reports is not based on true and objective facts, the Agency may reject the auditor's report and request from the AIFM to make sure the reports are audited by the licensed auditors from another auditing firm at the expense of the AIFM.

Section 7

Delegation of functions to third parties

Article 65

(1) An AIFM may delegate the functions for which it is responsible to third parties subject to prior notification of the Agency.

(2) As an exception to paragraph 1 of this Article, where the AIFM manages an AIF the units of which are marketed by a public offering, the AIFM shall obtain approval from the Agency for delegation of the functions referred to in paragraph 1 of this Article.

(3) Only administrative tasks referred to in Article 13, paragraph 3 of this Act, except for the activities referred to in Article 13, paragraph 3, item 3 of this Act, may be delegated to a depository, persons with whom a depository has entered into a delegation agreement and any sub-depository.

(4) The AIFM and a third party shall enter into a written agreement on delegation of the functions referred to in paragraph 1 of this Article. The agreement must stipulate that the third party must enable supervision of the delegated functions by the employees of the Agency.

(5) The agreement referred to in paragraph 3 of this Article may not enter into force if:
a) the AIFM has not notified the Agency thereof pursuant to paragraph 1 of this Article;
b) the AIFM has not obtained approval from the Agency pursuant to paragraph 2 of this Article.

(6) Immediately after notifying the Agency in accordance with paragraph 1 of this Article or upon receipt of the Agency's approval in accordance with paragraph 2 of this Article, the AIFM, which is under Article 61, paragraph 1 of this Act responsible for maintaining a website, shall publish on the website the information about the functions delegated to a third party, and the identity of the third party. If the third party sub-delegates the performance of the delegated functions in accordance with the provisions of Article 66, paragraph 2 of this Act, the AIFM shall also make available that information on its website along with the identity of that party immediately upon entry into force of the sub-delegation agreement.

Article 66

(1) Delegation of functions to third parties shall be subject to compliance with the following conditions:

- a) delegation is conducted for objective reasons and exclusively for the purpose of a more efficient performance of these functions;
- b) the third party must dispose of sufficient resources necessary for a proper, high-quality and efficient performance of the delegated functions;
- c) persons authorised by the third party must have good reputation, professional qualifications and sufficient experience for the performance of the delegated tasks;
- d) the AIFM must be able to demonstrate that the third party is qualified and capable of undertaking the delegated functions, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the performance of the delegated activities;
- e) the AIFM shall supervise the third party in the performance of the delegated tasks on an ongoing basis;
- f) the AIFM shall not delegate its functions to third parties to the extent that it can no longer be considered to be AIFM (“letterbox entity”);
- g) the tasks shall not be delegated to a person whose interests may conflict with those of the investors and the AIF;
- h) the delegation does not decrease efficiency of supervision of the AIFM and the AIFs;
- i) the delegation shall not jeopardize the interests of the investors and the AIFs;
- j) the AIFM shall remain fully responsible for the performance of the delegated functions;
- k) where applicable, the prospectus of the AIF shall include the list of the functions that have been delegated to the third party and the persons to whom these have been delegated;
- l) AIF asset management or risk management functions may be delegated only to undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the Agency;
- m) where the delegation concerns asset management or risk management and is conferred on a third-country undertaking, in addition to the requirements in item l) of this paragraph, cooperation between the Agency and the supervisory authority of the undertaking shall exist in order to ensure the efficient exchange of information based on which the Agency can perform its duties in accordance with the provisions of this Act.

(2) The third party may sub-delegate any of the functions delegated provided that the following conditions are met:

- a) the AIFM consented prior to the sub-delegation;
- b) the AIFM notified the Agency of the sub-delegation before the sub-delegation arrangements become effective;
- c) all the conditions set out in paragraph 1 of this Article have been met also with regard to the sub-delegation of the functions.

(3) The third party to which AIFM functions have been delegated shall review the services provided by each sub-delegate on an ongoing basis.

(4) No delegation or sub-delegation of AIF asset management or risk management shall be conferred on:

a) the depositary or a delegate of the depositary; or

b) any other entity whose interests may conflict with those of the AIFM or its investors, unless such entity has functionally or hierarchically separated the performance of AIF asset management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interests are properly identified, managed, monitored and disclosed to the investors of the AIF.

(5) The Agency may specify in more detail, by virtue of an ordinance, the procedure for delegation of functions to third parties by AIFMs.

Article 67

(1) When delegating its functions to third parties, outsourcing and performing other activities of importance to the AIFM and AIFs it manages, the AIFM shall act with due care and in the best interest of investors and AIFs it manages. .

(2) AIFMs shall formulate and implement internal policies and procedures to ensure that it conducts its business activities in accordance with paragraph 1 of this Article, and which are consistent with the provisions of this Act and regulations adopted pursuant to this Act, rules of the AIF and, where applicable, the prospectus of the AIF, the AIF objectives, the investment strategy and the risk management strategy and policy, including the risk limits.

Section 8

Change in members possessing qualifying holdings in the AIFM

Article 68

(1) Any natural or legal person or several persons acting jointly (proposed acquirer) who intend to acquire or increase, directly or indirectly, a qualifying holding in an AIFM, if in consequence the proportion of the capital or of the voting rights that they hold would reach or exceed 20%, 30% or 50% or that the AIFM would become a subsidiary of the proposed acquirer (proposed acquisition), shall submit prior application to the Agency for issuance of approval in writing.

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

1. the size of the holding proposed for acquisition;
2. the complete documentation referred to in Article 74 of this Act.

Article 69

(1) Any natural or legal person who intends to dispose of, directly or indirectly, a qualifying holding in an AIFM shall notify the Agency thereof in writing indicating the size of the holding they intend to dispose of.

(2) The persons referred to in paragraph 1 of this Article shall also notify the Agency about their intention to reduce their qualifying holding if in consequence the proportion of the capital or of the voting rights would fall below the threshold of 20%, 30% or 50% or the AIFM would cease to be their subsidiary.

Article 70

When assessing the size of a qualifying holding in an AIFM, the Agency shall not take into consideration voting rights or shares held by an investment firm or a credit institution as a result of provision of the investment service of placing of financial instruments without a firm commitment basis pursuant to the act regulating the capital market, provided that such rights are not exercised for the purpose of exercising influence over the management of the AIFM, and that the concerned voting shares are disposed of within one year of the date of their acquisition.

Article 71

(1) When carrying out the assessments referred to in Article 74 of this Act, the Agency shall cooperate with other competent authorities if the proposed acquirer is one of the following persons or undertakings:

1. a credit institution, a life assurance undertaking, a non-life insurance undertaking, a reinsurance undertaking, a pension company, an investment firm, an AIFM or a UCITS management company authorised by another Member State or in a sector other than that in which the acquisition intention has been declared;
2. the parent undertaking of the undertakings referred to in item 1 of this paragraph;
3. a legal or natural person who controls the undertakings referred to in item 1 of this paragraph;

(2) In the case of paragraph 1 of this Article, the Agency shall require the following from another competent authority:

1. the information necessary for the assessment referred to in Article 74 of this Act;
2. other information known to another competent authority, which might be important for the assessment referred to in Article 74 of this Act;
3. where appropriate, the opinion of another competent authority on the proposed acquirer.

(3) If the authority which has competence in respect of the proposed acquirer, expresses its opinion along with the information referred to in paragraph 2, points 1 and 2 of this Article, the Agency shall take it into account when taking the decision on the proposed acquisition of the qualifying holding.

Article 72

(1) The Agency shall without delay, but no later than 2 working days of receiving the application for issuance of approval for acquisition of or increase in a qualifying holding and of any additional information referred to in Article 73 of this Act, inform the proposed acquirer in writing about the receipt thereof, indicating the date on which the assessment period expires.

(2) The Agency shall carry out the assessment referred to in Article 74 of this Act within 60 working days of the date when the proposed acquirer received the information referred to in paragraph 1 of this Article (assessment period).

Article 73

(1) The Agency may, if necessary, during the assessment period, but not later than the fiftieth working day of the assessment period, request additional information necessary for completion of the assessment. The Agency shall request this information in writing indicating which additional information is required.

(2) The assessment period shall be suspended as from the date when the Agency requests the additional information referred to in paragraph 1 of this Article until the date of receipt of the reply from the proposed acquirer, whereby the period of suspension shall last no more than 20 working days.

(3) Upon expiry of the period referred to in paragraph 2 of this Article, the Agency may set further requirements for supplementing or clarifying the information, but the assessment period shall not be suspended.

(4) The Agency may extend the period of suspension referred to in paragraph 2 of this Article up to a maximum of 30 working days if the proposed acquirer:

- a. has a registered office/permanent residence outside the Republic of Croatia or is subject to the legal provisions applicable outside the Republic of Croatia;
- b. has a registered office/permanent residence outside the Member State or is subject to the legal provisions applicable outside the Member State;
- c. is a legal or natural person who is not subject to the supervision in accordance with this Act or the legal provisions governing the establishment and management of UCITS, the establishment and operation of investment firms, pension companies for management of compulsory pension funds, pension companies for management of voluntary pension funds, insurance undertakings and credit institutions.

(5) If the Agency establishes that there are reasons for refusal of approval for the proposed acquisition, it shall notify, within the assessment period, the proposed acquirer thereof in writing, giving the reasons for taking such decision.

(6) The Agency may publish a statement on the reasons for the decision referred to in paragraph 5 of this Article on its own initiative or at the request of the proposed acquirer.

(7) If the Agency does not refuse approval for the proposed acquisition within the time limit and in the manner referred to in paragraph 5 of this Article, the acquisition shall be considered as approved.

(8) The Agency may set the final deadline by which the proposed acquisition must be completed and may extend it for justified reasons.

(9) If the proposed acquirer does not acquire a qualifying holding within the time limit referred to in paragraph 8 of this Article, the Agency's approval shall lapse in full.

Article 74

(1) When reviewing the application referred to in Article 68, paragraph 1 of this Act and the information requested in accordance with Article 73, paragraphs 1, 2 and 3 of this Act, the Agency shall evaluate, with a view to establishing whether the operations of the AIFM in which the acquisition is proposed will be conducted with due professional care and taking into account possible influence of the proposed acquirer over the AIFM, the suitability of the proposed acquirer, taking into account the criteria laid down by technical standards established by the European Commission and, in addition, by the Agency's ordinance as referred to in Article 27 of this Act.

(2) The Agency may refuse approval for a proposed acquisition only in the case that the requirements imposed by paragraph 1 of this Article are not satisfied or if the proposed acquirer has submitted incomplete, inaccurate or misleading information.

(3) The documentation required for the review, which must be submitted to the Agency along with the application for issuance of approval for acquisition of or increase in a qualifying holding must be adjusted and appropriate to the proposed acquirer and the proposed acquisition.

(4) The Agency shall adopt an ordinance specifying a list of the documentation referred to in paragraph 3 of this Article.

(5) If the Agency receives two or more applications for acquisition of or increase in qualifying holdings in the same AIFM, it shall treat all proposed acquirers equally.

(6) If an AIFM becomes aware of an acquisition or disposal of a qualifying holding in the AIFM which exceeds or falls below 20%, 30% or 50%, it shall notify the Agency thereof without delay.

(7) The AIFM shall submit to the Agency once a year, no later than 31st March of the current year, the list of all shareholders or members possessing business stakes, as well as

members that have qualifying holdings and the size of such holdings as at 1st January of the current year.

Legal consequences of acquisition without approval and withdrawal of approval for acquisition of a qualifying holding

Article 75

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

(2) In the case referred to in paragraph 1 of this Article the Agency shall order sale of the shares or business stakes so acquired.

(3) The Agency may withdraw approval for acquisition of a qualifying holding in the case that:

1. the person possessing a qualifying holding obtained the approval by making false or misleading statements or by any other irregular means;
2. the conditions imposed by the provisions of this Act under which approval for acquisition of a qualifying holding was granted no longer exist.

(4) In the case referred to in paragraph 3 of this Article, the person from whom approval for acquisition of a qualifying holding has been withdrawn shall not have the right to exercise voting rights attaching to the shares or business stakes in respect of which the approval has been withdrawn. In that case the Agency shall order the sale of the acquired shares or business stakes in respect of which the approval for acquisition of a qualifying holding has been withdrawn from the member possessing the qualifying holding.

(5) Costs of the sale of shares or business stakes referred to in paragraph 4 of this Article shall be borne by the member possessing the qualifying holding.

Measures taken by the Agency in the cases likely to be prejudicial to the sound and prudent management of the AIFM

Article 76

(1) Where the influence exercised by members possessing qualifying holdings is likely to be prejudicial to the sound and prudent management of the AIFM, the Agency shall be empowered to take appropriate measures to put an end to such influence.

(2) The measures referred to in paragraph 1 of this Article shall comprise, in addition to supervisory measures, submission of application to the competent court for imposition of interim measures related to the acquisition of voting rights attaching to the qualifying holdings possessed by the members that have qualifying holdings referred to in paragraph 1 of this Article.

Section 9

Subsection 1

Voluntary transfer of the AIF management activities to another AIFM

Transfer of the AIF management activities to another AIFM

Article 77

(1) AIF management activities may be transferred to another AIFM (AIFM transferee) by:

1. AIFM (AIFM transferor),
2. annual general meeting or general meeting of the closed-ended AIF in accordance with the rules of the AIF, prospectus where applicable, statute or instruments of incorporation,
3. investors in the open-ended AIF in the manner and if provided by the rules of the AIF and prospectus where applicable.

(2) Prior to the transfer of the AIF management activities, the AIFM transferee shall obtain approval from the Agency.

(3) In the case of a closed-ended AIF, where applicable, the AIFM transferor shall also notify the supervisory board of the closed-ended AIF of its intention to transfer the management activities, and the supervisory board shall convene the annual general meeting or the general meeting of shareholders of the closed-ended AIF for the purpose of taking a decision on the transfer of the management activities.

(4) In the case referred to in paragraph 1, points 2 and 3 of this Article, the AIFM shall carry out all the activities needed for an unobstructed transfer of activities to the AIFM transferee, which shall be defined in the agreement referred to in paragraph 5 of this Article.

(5) The transfer of the AIF management activities shall be subject to an agreement which must contain:

1. a description of all procedures and actions which the AIFM will take with regard to the transfer of the management activities;
2. the period in which the management activities will be transferred to another AIFM. Unless otherwise provided by the AIF rules and prospectus where applicable, this period shall not be shorter than one month and shall begin to run upon the expiry of an 8-day time limit for the AIF with a public offering and upon the expiry of a 15-day time limit for the AIF with a private offering as of the day of the receipt of the Agency's decision;

(6) In the process of transfer of the AIF management activities, the complete AIF shall be transferred to another AIFM.

(8) Where the AIF rules, and prospectus where applicable, so provide, the transferring AIFM may be entitled to a fee, which depends on the yield for the period in which it managed the AIF. If there is such right, it must be regulated by the transfer agreement between the transferor, the transferee and, if necessary, the AIF.

(8) In accordance with the AIF rules, and prospectus where applicable, AIF management by an external AIFM may be transferred to an internal AIFM and vice versa, subject to compliance with the relevant provisions of this Act, and in particular with regard to the provisions of Article 12, paragraph 7, item b) of this Act, the legal form of the respective AIF and the provisions on the initial capital of the AIFM as referred to in this Act.

(7) The Agency may adopt an ordinance regulating in more detail the procedure, the conditions for and the method of transfer of the AIF management activities.

Application for approval for takeover of the AIF management activities

Article 78

The transferee shall enclose the following information and documents with its application for approval for takeover of the AIF management activities:

1. the agreement on the transfer of the AIF management activities referred to in Article 77, paragraph 5 of this Act;
2. the text of the information referred to in Article 80, paragraph 1 of this Act;
3. the text of the investor notification referred to in Article 80, paragraph 1 of this Act;
4. application for approval for the conclusion of or amendment to the agreement on the pursuit of the business of depositary referred to in Article 228 of this Act;
5. decision of the annual general meeting or general meeting of the closed-ended AIF on the transfer of management activities referred to in Article 77, paragraph 1, point 2 and paragraph 3, and decisions of investors referred to in Article 77, paragraph 1, point 3 of this Act;
6. as and when necessary, other documents in accordance with the AIF rules and prospectus where applicable, or at the request of the Agency.

Deciding on application for approval for takeover of the AIF management activities

Article 79

(1) The Agency shall refuse approval for takeover of the AIF management activities if:

1. the AIFM transferee does not satisfy the requirements for the management of the AIF which is the object of the transfer;
2. the contents of the information to be published and the investor notification referred to in Article 80, paragraph 1 of this Act does not comply with the provisions of this Act and the legal provisions adopted on the basis of this Act;
3. in the opinion of the Agency the transfer of the management activities could damage the interests of the investors in the AIF which is the object of the transfer or the interests of the public.

(2) If application for issuance of approval for takeover of the AIF management activities is submitted by the transferee from a Member State, the Agency shall consult with the competent authorities of the Member State prior to the refusal.

Notifying unit-holders of the transfer of management activities

Article 80

(1) The transferor and the transferee shall, within 15 days as of the receipt of the approval of the Agency, inform all investors of the transfer, and where the transfer refers to the AIF with a public offering, they shall, within 8 days as of the receipt of the approval of the Agency publish the information on the transfer of management activities.

(2) The investors shall not pay exit charges in consequence of the transfer of management of an open-ended AIF to another AIFM in the period from the date of granting of approval by the Agency to the date of expiry of the one-month period after the date when the legal consequences of the transfer of management activities have arisen.

(3) The Agency may adopt an ordinance specifying the contents of the information on the transfer and the investor notification, the method of publication and submission of the information and of the notification referred to in paragraph 1 of this Article.

Legal consequences of the transfer of management activities

Article 81

(1) On expiry of the period referred to in Article 77, paragraph 5, item 2 of this Act, the following legal consequences shall arise:

1. all rights and obligations of the transferor as regards management of the AIF shall be transferred to the transferee;
2. the transferor's authorisation for management of the AIF which is the object of the transfer shall lapse.

(2) The transferor and the transferee shall, by the date of expiry of the period referred to in Article 77, paragraph 5, item 2 of this Act, complete all the procedures and actions necessary for the transfer of management of the AIF and submit to the Agency notification of all procedures and actions that have been taken.

(3) By way of exception, the Agency may, at the request of the AIF transferor and AIF transferee, extend the time limit referred to in Article 77, paragraph 5, point 2 of this Act, if it serves the interests of investors.

Subsection 2

Compulsory transfer of the AIF management activities to another AIFM

Reasons for compulsory transfer of the AIF management activities

Article 82

A compulsory transfer of the AIF management activities shall take place in the case when:

1. the Agency has withdrawn authorisation for management of an AIF or AIFs from an AIFM;
2. bankruptcy or liquidation proceedings have been instituted against an AIFM.

Obligations regarding the depositary and supervisory board of a closed-ended AIF

Article 83

(1) Unless otherwise provided by the AIF rules and prospectus where applicable, from the time when the reasons have arisen for a compulsory transfer of the open-ended AIF management activities until the time when legal consequences of the transfer of management activities to another AIFM (transferee) have ensued, the depositary shall perform those open-ended AIF management activities which cannot be delayed pursuant to the AIF rules and prospectus where applicable.

(2) Unless otherwise provided by the AIF rules and prospectus where applicable, from the time when the reasons have arisen for a compulsory transfer of the closed-ended AIF management activities until the time when legal consequences of the transfer of management activities to the transferee have ensued, the supervisory board of the closed-ended AIF shall perform those closed-ended AIF management activities which cannot be delayed pursuant to the AIF rules and prospectus where applicable.

(3) The AIF management activities referred to in paragraphs 1 and 2 of this Article which cannot be delayed shall be considered to be, for example:

- a) the activities, the non-performance of which on the part of the depositary or the supervisory board would cause damage to the AIF;
- b) the administrative tasks referred to in Article 13, paragraph 3, items 2, 7 and 8 of this Act.

(4) From the time when the reasons for a compulsory transfer of the open-ended AIF management activities have arisen, the depositary shall suspend issue and redemption of units of the AIF.

(5) From the time when the reasons for a compulsory transfer of management activities have arisen until the time when legal consequences of the transfer of management activities to the transferee have ensued, the depositary of the open-ended AIF shall be entitled to the fee which, in accordance with the rules, and prospectus where applicable, of the open-ended AIF, is due to the AIFM.

Selection of another AIFM and transfer of management functions

Article 84

(1) Unless otherwise provided by the AIF rules and prospectus where applicable, the depositary of an open-ended AIF or the supervisory board of a closed-ended AIF shall, within 60 days of the date when the reasons for a compulsory transfer of the AIF management functions referred to in Article 82 of this Act have arisen, carry out the relevant tender procedure following a call for tenders to be submitted by the AIFMs which meet the requirements for management of AIFs and which are interested in taking over management of an AIF, and the procedure for selection of a new AIFM.

(2) Where, following the call referred to in paragraph 1 of this Article, more than one AIFMs which meet the requirements for takeover of management of an AIF respond to the depositary of an open-ended AIF or the supervisory board of a closed-ended AIF, the depositary or the supervisory board shall act in the best interests of the unit-holders of the AIF in the selection of the AIFM.

(3) In the case of a closed-ended AIF, the supervisory board of the closed-ended AIF shall convene the annual general meeting of shareholders or the general meeting of the closed-ended AIF to decide on selection of a new AIFM.

(4) The depositary of the open-ended AIF or the supervisory board of the closed-ended AIF in accordance with the decision referred to in paragraph 3 of this Article and the transferee shall enter into an agreement on the transfer of management activities.

(5) The provisions of Article 77, paragraph 5 of this Act shall apply accordingly to the agreement referred to in paragraph 4 of this Article, subject to the period in which the depositary of the open-ended AIF or the supervisory board of the closed-ended AIF and the transferee will complete the transfer of management activities not exceeding one month from the date of conclusion of the agreement referred to in paragraph 4 of this Article, unless otherwise provided by the AIF rules and prospectus where applicable.

(6) The provisions of Article 77, paragraphs 2, 3 and 6 and Articles 78 to 81 of this Act shall apply accordingly to the compulsory transfer of management activities.

Liquidation of an AIF in cases when compulsory transfer of management activities is not possible

Article 85

Unless otherwise provided by the AIF rules and prospectus where applicable, the depositary shall carry out liquidation of the AIF:

1. if no AIFM which meets the requirements for AIF management responds to the call for tenders referred to in Article 84, paragraph 1 of this Act;
2. if the transferee does not submit, within 15 days of the date of conclusion of an agreement with the depositary of the open-ended AIF or the supervisory board of the closed-ended AIF, application for approval for takeover of the AIF management activities;

3. if the Agency rejects or refuses application submitted by the transferring AIFM for approval for takeover of the AIF management activities;
4. if the annual general meeting or general meeting of the closed-ended AIF, in accordance with the decision referred to in Article 84 paragraph 3 of this Act, failed to adopt a decision on the selection of a new AIFM within 60 days upon the expiry of the time limit referred to in Article 84 paragraph 1 of this Act.

Article 86

Unless otherwise provided by the AIF rules, where there is no supervisory board in the case of a closed-ended AIF established as a limited-liability company, the functions referred to in this Subsection shall be performed by the depositary.

Section 10

Voluntary termination of conduct of the business of AIFM

Article 87

An AIFM may discontinue its registered business if it:

1. takes a decision on termination of the business; and
2. communicates the decision referred to in item 1 and the information about termination of the business at least 2 months prior to the date of termination of the AIF management activities to the depositary of the AIFs, the supervisory boards of the closed-ended AIFs it manages and the Agency.

Article 88

(1) The AIFM shall, within 2 months of communication of the decision referred to in Article 87 of this Act, carry out the procedure for transfer of the AIF management to another AIFM, pursuant to the AIF rules and prospectus where applicable and the provisions of Section 9, Subsection 1 of this Title of the Act.

(2) If the AIFM does not find a new AIFM to which the AIF management would be transferred in accordance with the provisions of paragraph 1 of this Article, the AIFM shall initiate the procedure for liquidation of the AIF in accordance with the AIF rules and prospectus where applicable and the provisions of Part Fifteen of this Act.

(3) Only upon completion of the procedure for transfer of the AIF management to another AIFM or completion of liquidation of the AIFs managed by the AIFM, the authorisation to take up the business shall lapse on the AIFM's own request.

Section 11

Reporting obligations to the Agency

Article 89

(1) An AIFM which has its registered office in the Republic of Croatia shall regularly report to the Agency on the markets and instruments in which it trades on behalf of the AIFs it manages.

(2) The reports referred to in paragraph 1 of this Article shall contain a comprehensive information on the instruments in which the AIFM is trading, on markets of which it is a member or where it actively trades, and on the exposures and concentrations of each of the AIFs it manages.

(3) An AIFM which has its registered office in the Republic of Croatia shall, for each of the AIFs it manages and for each of the AIFs it markets, provide the following to the Agency:

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- (d) information on the main categories of assets in which AIF assets were invested; and
- (e) the results of the stress tests which have been performed.

(4) The Agency may adopt an ordinance specifying in more detail the submission deadlines for and the contents of the reports referred to in paragraph 3 of this Article.

(5) An AIFM managing AIFs employing leverage on a substantial basis shall, at the request of the Agency, make available information about overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements. That information shall include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

(6) For non-EU AIFMs, the reporting obligations referred to in the preceding paragraph are limited to AIFs from the Republic of Croatia managed by them and non-EU AIFs marketed by them in the Republic of Croatia.

(7) Where necessary for the effective monitoring of systemic risk, the Agency may require information in addition to that described in this Article, on a periodic as well as on an ad-hoc basis. The Agency shall inform ESMA about the additional information requirements.

(8) In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth, ESMA may request the Agency to impose additional reporting requirements on the AIFM.

(9) The Agency may adopt an ordinance specifying in more detail when leverage is to be considered to be employed on a substantial basis for the purposes of paragraph 5 of this Article.

Section 12

AIFMs managing leveraged AIFs or AIFs which acquire control of non-listed companies or issuers

Subsection 1

AIFMs managing leveraged AIFs

Use of information by the Agency and other competent authorities, supervisory cooperation and limits to leverage

Article 90

(1) The Agency shall use the information gathered under Article 89 of this Act for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy in the Republic of Croatia.

(2) The Agency shall ensure that all information gathered under Article 89 of this Act in respect of all AIFMs that it supervises and the information gathered in the procedure for granting authorisation to AIFMs and AIFs to take up the business is made available to competent authorities of other relevant Member States, ESMA and the ESRB in accordance with the provisions of Part Seventeen of this Act. The Agency shall also provide, in accordance with the provisions of Part Seventeen of this Act, information to the competent authorities of other Member States directly concerned, if an AIFM under their responsibility, or an AIF managed by that AIFM could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States.

(3) The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times.

(4) The Agency shall assess the risks that the use of leverage by an AIFM with respect to the AIFs it manages could entail, where deemed necessary in order to ensure the stability and integrity of the financial system, if it is the competent authority for the AIFM, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF.

(5) Where the Agency is not the competent authority for the AIF, it shall have the right to impose limits to the level of leverage that an AIFM is entitled to employ or other restrictions on the management of the AIF with respect to the AIFs under its management to limit the extent to which the use of leverage contributes to the build up of systemic risk in the financial system or risks of disorderly markets. The Agency shall duly inform ESMA, the ESRB and the competent authorities of the AIF of actions taken in this respect in accordance with the provisions of Part Seventeen of this Act.

(6) The Agency shall make the notification referred to in paragraph 4 of this Article not less than 10 working days before the proposed measure is intended to take effect or to be renewed. The notification shall include details of the proposed measure, the reasons for the measure and when the measure is intended to take effect. In exceptional circumstances, the Agency may decide that the proposed measure takes effect within the period less than 10 working days.

(7) If the Agency deems it necessary to take action contrary to ESMA's opinion about the measures that should be taken in order to limit the level of leverage that the AIFM or a group of AIFMs is entitled to employ, it shall inform ESMA, stating its reasons.

Subsection 2

Obligations for AIFMs managing AIFs which acquire control of non-listed companies or issuers

Article 91

(1) This Subsection shall apply to the following:

- a) AIFMs which, by managing one or more AIFs, either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company;
- b) AIFMs which, by cooperating with one or several other AIFMs, on the basis of an agreement pursuant to which the AIFs managed by those AIFMs acquire control of a non-listed company.

(2) This Subsection shall not apply where the non-listed companies are:

- a) small and medium-sized enterprises which on average employ fewer than 250 persons in the course of a financial year and which have an annual turnover not exceeding HRK 400 million and an annual balance sheet total not exceeding HRK 344 million;
- b) special purpose vehicles with the purpose of purchasing, holding or administrating real estate.

(3) Without prejudice to paragraphs 1 and 2 of this Article, Article 92, paragraph 1 of this Act shall also apply to AIFMs managing AIFs that acquire a participation, not considered, for the purpose of this Subsection, to be a controlling participation, in a non-listed company.

(4) Article 93, paragraphs 1, 2 and 3 and Article 95 of this Act shall also apply to AIFMs which, by managing AIFs, acquire control over issuers. For the purposes of those Articles, paragraphs 1 and 2 of this Article shall apply *mutatis mutandis*.

(5) For the purpose of this Subsection, for non-listed companies, control shall mean more than 50% of the voting rights of the company.

(6) When calculating the percentage of voting rights held by AIFMs in a non-listed company, pursuant to paragraphs 1 and 5 of this Article, in addition to the voting rights held by AIFMs, the voting rights of the following shall be taken into account:

- a) undertakings controlled by AIFMs pursuant to paragraphs 1 and 5 of this Article; and
- b) natural or legal persons acting in their own name, but on behalf of AIFMs or on behalf of undertakings controlled by AIFMs pursuant to paragraphs 1 and 5 of this Article.

(7) The percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is limited.

(8) For the purpose of Article 93, paragraphs 1, 2 and 3 and Article 95 of this Act in regard to issuers control shall be determined in accordance with the provisions of the act regulating the takeover of joint-stock companies or laws, regulations and administrative provisions of another Member State by which Directive 2004/25/EC is transposed into national law of that State.

(9) This Subsection shall apply subject to the conditions and restrictions set out in the provisions of the Labour Act that regulate treatment of confidential information or in the legal provisions of the Member State by which Article 6 of Directive 2002/14/EC is transposed into national law of the concerned State.

Notification of the acquisition of major holdings and control of non-listed companies

Article 92

(1) An AIFM that, by managing an AIF, acquires, disposes of or holds shares of a non-listed company, shall notify the Agency of the percentage of voting rights of the non-listed company held by the AIF any time when that percentage reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2) When an AIFM, by managing an AIF, pursuant to Article 91, paragraphs 1 and 5 of this Act acquires, individually or jointly, control over a non-listed company, it shall notify the following of the acquisition of control:

- a) the non-listed company;
- b) the shareholders of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access;
- c) the Agency.

(3) The notification referred to in paragraph 2 of this Article shall contain the following information:

- a) the resulting situation in terms of voting rights;
- b) the conditions subject to which control was acquired, including information about the identity of the different shareholders or members possessing holdings involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;
- c) the date on which control was acquired.

(4) In its notification to the non-listed company, the AIFM shall request the board of directors of the non-listed company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIFM, pursuant to Article 91, paragraphs 1 and 5 of this Act, and of the information referred to in paragraph 3 of this Article. The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves are duly informed by the board of directors of the non-listed company in accordance with this Article.

(5) The notifications referred to in paragraphs 1, 2 and 3 of this Article shall be made without delay, but no later than 10 working days after the date on which the AIFM, pursuant to Article 91, paragraph 1 of this Act, has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Disclosure in case of acquisition of control

Article 93

(1) When an AIFM, by managing an AIF pursuant to Article 91, paragraphs 1 and 5 of this Act acquires, individually or jointly, control of a non-listed company or an issuer, it shall make the information referred to in paragraph 2 of this Article available to:

- a) the non-listed company or the issuer;
- b) the shareholders or members possessing holdings of the company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or the issuer or through a register to which the AIFM has or can obtain access; and
- c) the Agency if the AIFM is from the Republic of Croatia or to the competent authorities of the home Member State of the AIFM.

(2) The AIFM shall make available the information on:

- a) the identity of the AIFMs which either individually or jointly with other AIFMs have acquired control by managing AIFs;
- b) the policy for managing and preventing conflicts of interest, in particular between the AIFM, the AIF and the non-listed company or the issuer, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the non-listed company or the issuer is concluded at arm's length; and

c) the policy for external and internal communication relating to the non-listed company or the issuer, in particular as regards employees.

(3) In its notification to the non-listed company or the issuer, pursuant to item a), paragraph 1 of this Article, the AIFM shall request the board of directors of the non-listed company or the issuer to inform the employees' representatives or, where there are none, the employees themselves, without delay of the information referred to in paragraph 1 of this Article. The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors of the non-listed company or the issuer in accordance with this Article.

(4) When an AIFM, by managing an AIF pursuant to Article 91, paragraphs 1 and 5 of this Act, acquires, individually or jointly, control of a non-listed company it shall disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:

a) the non-listed company;

b) the shareholders or members possessing holdings of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or the issuer or through a register to which the AIFM has or can obtain access.

(5) Apart from the disclosure referred to in paragraph 4 of this Article, the AIFM shall request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in paragraph 4 of this Article to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

(6) When an AIFM acquires, by managing an AIF pursuant to Article 91, paragraphs 1 and 5 of this Act, control of a non-listed company, it shall provide the Agency and the AIF's investors with information on the financing of the acquisition.

Specific provisions regarding annual reports of AIFs managed by an AIFM which acquired control of non-listed companies by managing those AIFs

Article 94

(1) When an AIFM acquires, by managing an AIF pursuant to Article 91, paragraphs 1 and 5 of this Act, individually or jointly, control of a non-listed company, it shall:

a) request and use its best efforts to ensure that the annual reports of the non-listed company drawn up in accordance with paragraph 2 of this Article are made available by the board of directors of the non-listed company to the employees' representatives or, where there are none, to the employees themselves within the period such annual reports have to be drawn up in accordance with the legal provisions regulating accounting;

b) for each such AIF include in the annual reports provided for in Article 215 of this Act the information referred to in paragraph 2 of this Article relating to the relevant non-listed company.

(2) The additional information to be included in the annual reports of the non-listed company and the AIF, in accordance with paragraph 1 of this Article, shall include at least a fair review of the development and the results of the non-listed company representing the situation at the end of the period covered by the annual reports. The annual reports shall also include information on:

- a) any important events that have occurred since the end of the financial year;
- b) the company's likely future development; and
- c) the information concerning acquisitions of own shares.

(3) The AIFM that has, by managing an AIF pursuant to Article 91, paragraphs 1 and 5 of this Act, acquired control over a non-listed company shall:

a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in item b) of paragraph 1 of this Article relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period specified in the Agency's ordinance as referred to in Article 215, paragraph 2 of this Act; or

b) make available the information referred to in item a) of paragraph 1 of this Article to the investors of the AIF, in so far as already available, within the period specified in the Agency's ordinance as referred to in Article 215, paragraph 2 of this Act.

Asset stripping

Article 95

(1) When an AIFM, by managing an AIF pursuant to Article 91, paragraphs 1 and 5 of this Act, individually or jointly, acquires control of a non-listed company or an issuer, it shall, for a period of 24 months following the acquisition of control of the non-listed company or the issuer:

a) not be allowed to facilitate, support or instruct any distribution capital reduction, redemption of shares or holdings and/or acquisition of own shares or holdings by the company contrary to paragraph 2 of this Article, and shall not be allowed to vote at the general meeting of that company in favour of such decisions;

b) in any event use its best efforts to prevent distribution, initial capital reduction, redemption of shares or holdings and/or acquisition of own shares or holdings by the company in which it has acquired control contrary to paragraph 2 of this Article.

(2) The prohibited distributions referred to in paragraph 1 shall include the following:

a) any distribution to shareholders or members of the company made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed initial capital plus those reserves which may be not distributed under the law

or the articles of association or the instrument of incorporation, on the understanding that where the unpaid part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital;

b) any distribution of profits to shareholders or members of the company the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the articles of association or the instrument of incorporation of the company in which it has acquired control;

c) to the extent that acquisitions of own shares or business stakes are permitted, each of such acquisitions by the company in which it has acquired control, including shares or business stakes previously acquired by the company and held by it, and shares or business stakes acquired by third parties acting in their own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in item a) of this paragraph.

(3) For the purposes of paragraph 2 of this Article:

a) the term "distribution" referred to in paragraph 2, items a) and b) of this Article shall include, in particular, the payment of dividends and other rights relating to shares or business stakes;

b) prohibited distributions referred to in paragraph 2 of this Article shall not include a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10% of the reduced subscribed capital; and

c) the restriction set out in item c) of paragraph 2 shall be subject to points (b) to (h) of Article 20(1) of Directive 77/91/EEC.

Part Three

Relationship between an AIFM, open-ended AIF and investors

Section 1

General provisions

Article 96

(1) The provisions of this Part of the Act shall apply to relationships entered into by AIFMs, in conjunction with the relevant open-ended AIF they manage.

(2) The provisions of this Part of the Act shall also apply to third parties to which the business of AIF management has been delegated.

Article 97

In the case of an open-ended AIF, the AIFM shall manage and dispose of a separate pool of assets of an open-ended AIF and shall exercise all rights attaching to such assets in its own name and for the joint account of all unit-holders of the open-ended AIF in accordance with the provisions of this Act, the AIF rules and prospectus where applicable.

Section 2

Contract on investment in an open-ended AIF

Article 98

(1) A trust relationship between the AIFM and the investors of open-ended AIFs shall be based on investment contracts, which shall be in place between the AIFM and each unit-holder of the relevant open-ended AIF.

(2) Under the investment contract the AIFM shall undertake to issue a unit in the open-ended AIF to the respective investor, enter the unit in the register of units, redeem the unit from the investor when the investor so requests in accordance with the rules of the open-ended AIF and the prospectus where applicable, and shall continue to invest this capital and manage the open-ended AIF for the joint account of the investors and carry out any other legal transaction and take any action necessary for the management of the open-ended AIF in accordance with the provisions of this Act, the AIF rules and prospectus where applicable.

(3) In the case of original acquisition of units, the investment contract shall be deemed to be concluded when the investor submits to the AIFM a duly completed application for subscription of units, and effects due payment of the amount specified in the application and the AIFM does not oppose to the conclusion of the contract. In all other cases the investment contract shall be deemed to be concluded at the time when the AIFM or the operator of the register, registers the acquirer in the register of units.

(4) On the basis of the investment contract the investor shall gain the position of an authorised person, attaching to the unit concerned, in respect of the property, rights and claims pertaining to a separate pool of assets of the open-ended AIF.

(5) The AIFM shall be permitted to invest the paid-up funds referred to in paragraph 3 of this Article only after the investor is registered in the register of units, unless otherwise provided for in the AIF rules and prospectus where applicable or legal provisions regulating specific types of AIFs.

Opposition to conclusion of contract on investment in an open-ended AIF

Article 99

(1) An AIFM may oppose to conclusion of an investment contract, as defined in the preceding Article, where:

- (a) in its judgement, the objective of the payment or the request for the redemption of shares is to make use of the ineffectiveness arising from statutory or otherwise imposed obligations related to the procedures for calculation of the price of the units;
- (b) the conclusion of the contract, i.e. acceptance of the investor's proposal would cause damage to other investors by exposing the AIF to the risk of illiquidity or insolvency or prevent achievement of the investment objective and the investment strategy of the AIF;
- (c) the relationship between the AIFM and the investor are seriously deteriorated (existence of a judicial or similar proceedings, reckless behaviour of the investor or a potential investor etc.).

Article 100

If the AIFM opposes to conclusion of the investment contract, the investor's proposal for the conclusion of the investment contract shall be deemed not to have been accepted.

Assets of open-ended AIFs

Article 101

(1) Assets of an open-ended AIF shall not belong to the AIFM, shall not be part of its assets, its liquidation or bankruptcy estate and may not be the object of enforcement proceedings for the purpose of settlement of claims made against the AIFM. Assets of an open-ended AIF shall be held and kept separately from assets of the AIFM.

(2) Anything that the AIFM acquires on the basis of the rights to which an open-ended AIF is entitled or on the basis of transactions related to open-ended AIF assets or which is acquired by the person authorised for the management of an open-ended AIF as compensation for the right to which the AIF is entitled shall also belong to the open-ended AIF and shall constitute assets of the open-ended AIF.

Units in open-ended AIFs

Article 102

(1) Units in open-ended AIFs are freely transferable dematerialised financial instruments.

(2) Units may be denominated in the amount that cannot be divided by the whole number, i.e. they may be denominated in the decimal amount.

(3) Units in open-ended AIFs may carry different rights for their holders and may differ with regard to such rights, for instance, in relation to distribution of the AIF's income or profits, denomination, the right of issue and/or redemption, management fee payable to the AIFM, initial price of the units or a combination of these rights (classes of units).

(4) The Agency may adopt an ordinance regulating in more detail classes of units and the method of their introduction.

Article 103

(1) No investor may request division of a separate pool of assets of an open-ended AIF, unless the AIF rules and prospectus where applicable or legal provisions regulating individual types of AIFs provide otherwise.

(2) Division of a separate pool of assets of an open-ended AIF may not be requested by a lien creditor or fiduciary creditor, enforcement creditor or bankruptcy administrator of an investor.

Part Four

Conduct of the business of AIFMs and AIFs

Liability of AIFs

Article 104

(1) An AIF shall not be liable for the obligations of an external AIFM.

(2) Investors in an AIF shall not be liable for the obligations of the AIFM arising from legal transactions concluded by the AIFM in its own name and for the joint account of the investors or on behalf of and for the account of the AIF. An AIFM may not conclude a legal transaction which would result in an obligation directly for the investor. All legal transactions contrary to this paragraph shall be null and void.

(3) Any power of attorney under which the AIFM would represent the investors shall be null and void.

(4) The AIFM may settle its receivables arising out of costs and fees relating to the conclusion of legal transactions for the joint account of the investors exclusively out of the AIF's assets, with no possibility to charge these costs or fees directly against the investors' accounts.

Article 105

(1) The AIFM may not issue a power of attorney to the investors for exercise of voting rights attaching to financial instruments belonging to the AIF's assets.

(2) The AIFM shall exercise, alone or via a depositary and with clear voting instructions, voting rights attaching to the shares and business stakes which form part of the AIF's assets as well as other rights attaching to other instruments forming part of the AIF's assets.

(3) Voting rights attaching to the shares and business stakes, including rights arising from other instruments, which form part of the AIF's assets, may also be exercised by a proxy to whom the AIFM shall issue a special power of attorney in writing with clear voting instructions.

Article 106

An AIFM shall:

1. be able to meet, in a timely manner, its liabilities as they fall due (liquidity principle) and permanently meet all its liabilities (solvency principle);
2. manage AIFs in such manner as to ensure that the AIFs are able to meet their liabilities as they fall due (liquidity principle) and that AIFs are able to permanently meet all their liabilities (solvency principle);
3. ensure that units of AIFs are marketed exclusively by the persons referred to in Article 188 of this Act;
4. acquire assets for AIFs exclusively in its own name and for the account of the relevant AIF where an open-ended AIF is concerned, and on behalf and for the account of the AIF where a closed-ended AIF is concerned, by placing these in safe-keeping with a depositary, pursuant to this Act, regulations adopted pursuant to this Act and other relevant regulations;
5. submit to the depositary photocopies of all original documents related to transactions involving assets of AIFs immediately upon preparation of these documents or receipt thereof, as well as any other document or file important for the performance of the activities or fulfilment of the duties of a depositary as provided for in this Act, regulations adopted pursuant to this Act and other relevant regulations;
6. publish information on the AIFs it manages and on the AIFM in accordance with this Act, regulations adopted pursuant to this Act and other relevant regulations;
7. charge one person with the duty to maintain contacts with the Agency for the purpose of implementation of reporting and other correspondence activities required by the provisions of this Act;
8. manage the AIF in accordance with investment limits and the specified risk profile of each individual AIF it manages;
9. issue orders to the depositary for exercise of the rights attaching to the AIF's assets;
10. also comply with other requirements set out in this Act and regulations adopted pursuant to this Act.

Prohibited activities for AIFMs

Article 107

An AIFM shall not be permitted to:

1. engage in intermediary activities in the purchase and sale of financial instruments;
2. acquire or divest assets of the AIF it manages for its own account or for the account of the relevant persons;
3. purchase, out of the funds of the AIF, the categories of assets or arrange transactions that are not provided for in its rules and the prospectus, where applicable;
4. effect transactions by which it would violate the provisions of this Act, regulations adopted pursuant to this Act, the AIF rules and prospectus where applicable, including the provisions on asset investment limits with regard to the AIFs it manages;
5. dispose assets of the AIF without receiving adequate compensation;
6. acquire or dispose assets of the AIFs it manages at a price less favourable than the market price or estimated value of the respective assets;
7. arrange, whether directly or indirectly, simultaneously or with a deferment, sale, purchase or transfer of assets between two AIFs managed by the same AIFM or between an AIF and UCITS if they are managed by the AIFM under conditions other than market conditions or conditions that favour one AIF over the others;
8. issue other financial instruments of open-ended AIFs other than their units;
9. invest the AIF's assets in financial instruments issued by the AIFM;
10. pay dividends and bonuses to the employees and the board of directors if it does not meet the capital requirements.

Article 108

(1) Any setting-off of claims on the AIFM against claims against the AIF's assets, regardless of whether the claims on the AIFM are related to the management of the AIF, shall be null and void.

(2) Unless otherwise provided for by the AIF rules and prospectus where applicable, where the investment fund acquires shares which are not fully paid-up, the AIFM shall use its own assets to cover the liabilities for payment of the remaining portion of the shares.

Liability of AIFMs

Article 109

(1) AIFMs shall be liable to the investors for the sound and prudent conduct of the business activities provided for in this Act, the legal provisions adopted on the basis of this Act, the AIF rules and the prospectus, where applicable.

(2) In the case that an AIFM does not perform or fails to perform, in whole or in part, or if it improperly performs any activity or duty provided for in this Act, the AIF rules and the prospectus, where applicable, the AIFM shall be liable to the unit-holders for the damage caused to the AIF's assets, which has occurred as a consequence of the failure on the part of the AIFM to perform and fulfil its duties.

(3) AIFMs shall be liable to unit-holders according to the presumed fault criterion.

(4) AIFMs shall not be liable for damage occurred as a consequence of force majeure.

(5) The AIFM shall, for the case of wrong calculation of the value of units and for the case of violation of investment limits within the meaning of Article 258, paragraph 6 of this Act, provide for adequate procedures for compensation of loss to the investors, which shall in particular cover development and verification of the loss compensation scheme, as well as the loss compensation measures.

(6) The loss compensation procedures referred to in paragraph 5 of this Article must be audited by an auditor within the framework of audit of AIF's annual financial reports.

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

1. details of the loss compensation procedure, the minimum amount of wrongly calculated value of units above which the loss compensation procedure is to be carried out, and the details of a simplified loss compensation procedure in the case of absence of a defined total loss value;

2. loss compensation measures which should be taken in relation to the investors or the AIF and bagatelle limits within which such loss compensation measures would incur disproportionate cost;

3. notification obligations to the Agency and the competent authorities of the home Member State of the AIFM;

4. obligation to provide information to investors;

5. contents and development of a loss compensation scheme and the details of loss compensation measures;

6. contents and scope of audit of the loss compensation scheme and loss compensation measures by an auditor.

Assertion of claims and exercise of rights by AIFMs

Article 110

(1) An AIFM shall be empowered and obliged to exercise, in its own name, the rights of investors against a depositary.

(2) An AIFM shall be empowered and obliged to file legal redress, in its own name, if an enforcement procedure has been initiated against the AIF's assets in relation to demands

and claims for which the AIF does not guarantee and is not liable. In such case the investors do not have a possibility of filing such legal redress.

Investor information

Article 111

When this Act and the legal provisions adopted on the basis of this Act require AIFMs to provide investor information in a durable medium, an AIFM may also provide information by way of electronic mail if the following requirements are met:

1. the investor concerned has submitted to the AIFM a valid electronic mail address; and
2. the investor concerned has chosen such way of submission of information.

Part Five

Closed-ended AIFs

Section 1

Concept

Article 112

(1) A closed-ended AIF is a legal person which shall be established and operate as a joint-stock company or a limited-liability company pursuant to the act regulating the establishment and operation of companies, unless otherwise provided by this Act.

(2) The AIFM shall manage and dispose of assets of a closed-ended AIF and shall exercise all rights arising from such assets on behalf and for the account of the relevant AIF in accordance with the provisions of this Act and the AIF rules or prospectus where applicable.

(3) A closed-ended AIF may be established on the basis of the Agency's authorisation by:

- a) an external AIFM;
- b) an internal AIFM in which case the closed-ended AIF acts as AIFM.

(4) The provisions of the act regulating the establishment and operation of companies shall apply to closed-ended AIFs, unless otherwise provided by this Act.

(5) For the purposes of the company name, part of the company name or promotional campaigns, the term "closed-ended alternative investment fund" may be used only by closed-ended AIFs authorised by the Agency.

Closed-ended AIF established in the form of a joint-stock company

Article 113

(1) A closed-ended AIF established in the form of a joint-stock company shall have articles of association and rules and, if it is marketed by a public offering, it shall also have prospectus.

(2) The articles of association of a closed-ended AIF established in the form of a joint-stock company shall contain provisions prescribed by the act regulating the establishment and operation of companies and investment objectives of a closed-ended AIF, as well as other information stipulated by this Act and other relevant legal provisions.

(3) A closed-ended AIF established in the form of a joint-stock company shall carry on the activity of raising capital through a public or private offering of its shares and investing this capital in accordance with the law, the prospectus, where applicable, the rules and the articles of association, and shall register this activity in the court register as its core business activity.

(4) The provisions of the act regulating the establishment and operation of companies and of the act regulating the capital market shall apply accordingly to the subscription of and payment for shares of a closed-ended AIF.

(5) Shares of a closed-ended AIF shall be paid in cash and must be fully paid up prior to entry of the establishment of a closed-ended AIF in the court register or prior to entry of increase in the initial capital in the court register.

(6) Shares of a closed-ended AIF shall be issued in a dematerialised form pursuant to the provisions of the act regulating the establishment and operation of companies, shall be registered in the name of the holder and shall give shareholders the rights established by this Act, the act regulating the establishment and operation of companies, the prospectus where applicable, the rules and the articles of association.

Closed-ended AIF established in the form of a limited-liability company

Article 114

(1) A closed-ended AIF established in the form of a limited-liability company shall have the instrument of incorporation and rules.

(2) The instrument of incorporation of a closed-ended AIF established in the form of a limited-liability company shall contain the provisions prescribed by the act regulating the establishment and operation of companies and investment objectives of a closed-ended AIF, as well as other information stipulated by this Act and other relevant legal provisions.

(3) A closed-ended AIF established in the form of a limited-liability company shall carry on the activity of raising capital through a private offering of business stakes and

investing this capital in accordance with the law, the rules and the instrument of incorporation, and shall register this activity in the court register as its core business activity.

(4) The provisions of the act regulating the establishment and operation of companies shall apply accordingly to the contribution of initial capital to a closed-ended AIF established in the form of a limited-liability company.

(5) Initial capital of a closed-ended AIF shall be paid in cash and must be fully paid up prior to entry of the establishment of a closed-ended AIF in the court register or prior to entry of increase in the initial capital in the court register.

Board of directors of a closed-ended AIF established as a joint-stock company with an external AIFM

Article 115

(1) A closed-ended AIF established as a joint-stock company with an external AIFM shall not have the board of directors.

(2) The obligations and powers which are imposed and conferred on the board of directors of a joint-stock company pursuant to the Companies Act shall in the case of closed-ended AIFs be imposed and conferred on the board of directors of an AIFM which manages the closed-ended AIF.

(3) The AIFM shall manage the operations of a closed-ended AIF and shall represent it with regard to all matters, except for those where the supervisory board of a closed-ended AIF is empowered for representation of the closed-ended AIF.

Board of directors of a closed-ended AIF with internal management

Article 116

(1) In the case when a closed-ended AIF has an internal AIF, it shall have the board of directors.

(2) The board of directors of a closed-ended AIF with an internal AIF shall manage the operations of a closed-ended AIF and shall represent it with regard to all matters, except for those where the supervisory board of the closed-ended AIF is empowered for representation of the closed-ended AIF.

Section 2

Supervisory board of a closed-ended AIF with an external AIFM

Article 117

(1) The supervisory board of a closed-ended AIF established in the form of a joint-stock company with an external AIFM shall:

- a) have at least five members where the AIF's units are marketed by a public offering;
- b) have at least three members where the units of the AIF are marketed by a private offering.

(2) Members of the supervisory board of a closed-ended AIF with an external AIFM shall have sufficient professional knowledge and experience in the field of management of assets in which assets of the AIF will be invested in accordance with the investment strategy of that AIF.

(3) Where units of a closed-ended AIF with an external AIFM are marketed by a public offering, the supervisory board of that AIF should be composed mainly of independent members who do not have business- or family relations or other links with the AIFM, the major shareholder or a group of major shareholders or members of the board of directors or supervisory board of the AIFM or of the major shareholder.

(4) An independent member of the supervisory board who exercises that duty for more than two terms of office shall make a written statement confirming his or her independent status.

(5) The Agency shall adopt an ordinance specifying in more detail the conditions which must be satisfied by the members of the supervisory board of a closed-ended AIF with an external AIFM.

Article 118

The provisions of the act regulating the establishment and operation of companies shall apply accordingly to the supervisory board of a closed-ended AIF established in the form of a limited-liability company if the AIF has a supervisory board.

Article 119

Members of the supervisory board of a closed-ended AIF with an external AIFM shall be appointed for a term of office not exceeding 4 years and may be re-appointed.

Article 120

The annual financial reports of a closed-ended AIF with an external AIFM shall disclose the total amount of remunerations and costs paid to a member of the supervisory board, as well as the number and value of all shares or business stakes held or possessed by a member of the supervisory board in the closed-ended AIF. Members of the supervisory board shall not be allowed to receive any remuneration from the issuer of financial instruments in which the closed-ended AIF invests its assets, except for emoluments to which they are entitled under the employment contract.

Competence of the supervisory board

Article 121

(1) All members of the supervisory board of a closed-ended AIF with an external AIFM shall only represent the closed-ended AIF in relation to the AIFM jointly.

(2) In addition to the powers conferred on the supervisory board in accordance with the provisions of the act regulating the establishment and operation of companies, the following shall also come within the competence of the supervisory board of a closed-ended AIF with an external AIFM:

1. giving approval for conclusion of an agreement with persons providing services to the closed-ended AIF, in which case such agreements shall not be concluded for a period exceeding 3 years;
2. monitoring execution of the agreement referred to in item 1 of this paragraph, whereby the supervisory board shall have the right to terminate the agreement in the case of a lasting non-fulfilment of the obligations, in which case no remuneration payable following such termination shall exceed the sum of remunerations for a three-month period provided for by the terminated agreement;
3. conclusion of the agreement with the external AIFM referred to in Article 124 of this Act;
4. supervising compliance of the operations with the provisions of this Act, the prospectus, the rules and the articles of association, as well as with the investment objectives and limits of respective closed-ended AIFs;
5. giving approval for the proposed decision to be taken by the annual general meeting of shareholders of a closed-ended AIF in regard to issue of shares of the closed-ended AIF, or to be taken by the general meeting of shareholders of a closed-ended AIF in regard to issue of business stakes;
6. notifying the Agency of any failure on the part of the closed-ended AIF and the depositary to comply with this Act and the relevant legal provisions;
7. determination of financial reports of the closed-ended AIF upon the AIFM's proposal;
8. carrying on the activities related to compulsory transfer of management of a closed-ended AIF to another AIFM.

Section 3

Annual general meeting and general meeting of a closed-ended AIF

Article 122

(1) The provisions of the act regulating the establishment and operation of companies shall apply accordingly to the competence, convening and holding of the annual general meeting or the general meeting of a closed-ended AIF.

(2) When exercising voting rights at the annual general meeting or the general meeting of a closed-ended AIF, the shareholders or the members possessing business stakes shall not be represented by:

1. the AIFM;
2. the person possessing a direct qualifying holding of the AIFM, i.e. the person which has dominant position in relation to the person possessing the qualifying holding of the AIFM;
3. the person who exercises the function of a member of the board of directors or a member of the supervisory board in the persons referred to in items 1 and 2 of this paragraph.

Article 123

As part of decision-making by the annual general meeting or the general meeting, the following decisions shall be taken by votes which represent at least three quarters of the initial capital represented at the annual general meeting or the general meeting of a closed-ended AIF:

1. increase in the annual management fee payable to the AIFM over the amount specified in the applicable prospectus and/or rules;
2. change of investment objectives and risk profile of the relevant closed-ended AIF in relation to the objectives and risk profile specified in the prospectus, the rules, the articles of association and/or instrument of incorporation;
3. acquisition of own shares of the closed-ended AIF for the purpose of their withdrawal;
4. where the closed-ended AIF has been established for a fixed term, extension of the duration of the closed-ended AIF in relation to the term specified in the AIF rules and prospectus where applicable;
5. if the closed-ended fund has been established for a fixed period of time, decision on the termination of the closed-ended AIF before the termination date defined in the AIF rules and prospectus where applicable
6. if the closed-ended fund has been established for a fixed period of time, decision on the extension of operation of the closed-ended AIF
7. merger and consolidation with another closed-ended AIF or division of a closed-ended AIF into new closed-ended AIFs;
8. termination of the management agreement entered into with an AIFM;
9. liquidation of an AIF;
10. granting approval for the supervisory board's decision on the transfer of management functions to another AIFM.

Section 4

Agreement on managing a closed-ended AIF with external management

Article 124

(1) An agreement on managing a closed-ended AIF with external management shall be concluded in writing for indefinite period.

(2) At the time of conclusion of the agreement on managing a closed-ended AIF with external management, pursuant to the provisions of this Act and the relevant legal provisions in force the closed-ended AIF shall be jointly represented by the following in relation to the AIFM:

- i. where the AIF has been established in the form of a joint-stock company, all members of its supervisory board;
- ii. where the AIF has been established in the form of a limited-liability company, members of the supervisory board if the limited-liability company has supervisory board, and where it is not required under this Act to have supervisory board, members of the board of directors.

(3) Under the agreement on managing a closed-ended AIF with external management, the AIFM shall undertake to manage a closed-ended AIF in accordance with the provisions of this Act, subordinate regulations adopted on the basis of this Act, the AIF rules, the prospectus, where applicable, the articles of association and/or instrument of incorporation of the closed-ended AIF, whereas the closed-ended AIF shall undertake to pay to the AIFM management fee at the amount and frequency determined by the rules of the closed-ended AIF and prospectus where applicable, and to reimburse other AIFM's costs envisaged by the rules of the closed-ended AIF and prospectus where applicable.

(4) The AIFM shall without delay notify the Agency of any alteration to the management agreement referred to in paragraph 1 of this Article.

(5) The Agency may prescribe, by virtue of an ordinance, the compulsory content of the management agreement entered into by the AIFM and an externally managed closed-ended AIF.

Article 125

(1) The AIFM may not terminate the management agreement.

(2) The externally managed closed-ended AIF may terminate the management agreement subject to three-month notice, unless the articles of association or instrument of incorporation of the closed-ended AIF provides for a longer notice, which shall, however, not exceed 6 months.

(3) The depositary of the closed-ended AIF shall give its opinion about the proposed decision to terminate the management agreement to be put on the agenda of the annual general meeting or general meeting. In this opinion the depositary shall draw attention to the legal consequences of the termination of the management agreement.

(4) The externally managed closed-ended AIF shall, upon the expiry of the time period referred to in paragraph 2 of this Article, transfer management activities to another AIFM. Otherwise, the winding-up of the closed-ended AIF shall be carried out.

Section 5

Establishment of closed-ended AIFs

Article 126

- (1) A closed-ended AIF shall be established on the basis of the approval of the Agency.
- (2) A closed-ended AIF in the form of a joint-stock company may be established by successive establishment only.
- (3) The application for the establishment and issuance of authorisation to take up the business of a closed-ended AIF shall be submitted to the Agency by the external AIFM or the board of directors of the AIF where the AIF is internally managed. The application shall contain the following:
1. the name of the closed-ended AIF;
 2. basic investment objectives of the closed-ended AIF and description of the manner in which these objectives are to be achieved;
 3. the articles of association or instrument of incorporation of the closed-ended AIF;
 4. rules of the closed-ended AIF and the prospectus, where applicable;
 5. programme of operations of the closed-ended AIF for the first 3 years of its operation, including the organisational structure of the closed-ended AIF and the risk management plan;
 6. decision on appointment of members of the first supervisory board, where applicable, and their written statements on acceptance of the appointment;
 7. the name, address, telephone, fax and electronic-mail address of the members of the first composition of the supervisory board of the closed-ended AIF, where applicable;
 8. management agreement concluded between the closed-ended AIF and the external AIFM, where applicable;
 9. safe-keeping agreement concluded with the depositary and a photocopy of an extract from the court register in respect of the depositary;
 10. where applicable, the application for listing of shares of the closed-ended AIF on a regulated market, and a certificate issued by a regulated market to the effect that shares of the closed-ended AIF meet the listing requirements;
 11. information about the auditor and an extract from the court register in respect of the auditor.
- (4) The Agency's ordinance shall specify in more detail the compulsory content of the application for issuance of the authorisation to take up the business, referred to in paragraph 1 of this Article, and it may also require additional information to be provided together with the application.

Article 127

- (1) The Agency shall decide on the application within two months of the date of receipt of the duly completed application. The application shall be deemed to be duly completed

if, in accordance with the provisions of the ordinance referred to in Article 126 paragraph 4 of this Act, it contains all the required information and is accompanied by all the required documentation.

(2) If the applicant submitting the application referred to in paragraph 1 of this Article, fails to rectify, within the time limit specified by the Agency, the deficiencies of the application in accordance with the notice received from the Agency, the applicant shall be deemed to have given up the application.

(3) The authorisation issued to a closed-ended AIF may not be transferred to another undertaking and shall not apply to its legal successor.

Refusal of the application for issuance of the authorisation

Article 128

The Agency shall refuse the authorisation to take up the business of the closed-ended AIF if:

- a) the application referred to in Article 126 of this Act and the accompanying documentation are not complete;
- b) the closed-ended AIF does not satisfy the requirements laid down in this Act or other relevant legal provisions in conjunction with the required form, shares, business stakes or initial capital;
- c) there are close links between the closed-ended AIF and other natural or legal persons as a result of which exercise of effective supervision by the Agency or other competent authorities is made difficult or impossible;
- d) exercise of effective supervision by the Agency or another competent authority is made difficult or impossible because of laws, regulations or administrative provisions of a third country which regulate one or more natural or legal persons with whom the closed-ended AIF has close links or because of difficulties in implementation thereof.

Article 129

(1) The closed-ended AIF shall comply with the conditions under which the Agency has granted the authorisation to take up the business on a permanent basis.

(2) The AIFM shall notify the Agency within 8 days of any material change to the information given in the application for the establishment and issuance of the authorisation to take up the business of a closed-ended AIF.

(3) The closed-ended AIF shall communicate to the Agency without delay the data, information and documentation in accordance with the provisions of this Act.

Part Six

AIF investor records

Section 1

Closed-ended AIF investor records

Article 130

The provisions of the act regulating the establishment and operation of companies shall apply to keeping of investor records of a closed-ended AIF.

Register of units of open-ended AIFs

Article 131

- (1) Units in an open-ended AIF shall be kept in electronic form, and may be kept in:
- (a) unit register maintained by the AIFM;
 - (b) the register of units maintained by the operator of the central register of dematerialised financial instruments in accordance with the provisions of the act regulating the capital market or a third person to whom the AIFM has delegated this administrative task.
- (2) A unit may be registered in the name of an investment firm or a credit institution providing the services of safe-keeping and administration of financial instruments for a client's account, including custody operations and related services, and portfolio management activities, whereby it shall be noted in the register of units that the investment firm or credit institution holds the unit for the account of a third party.
- (3) When units in an open-ended AIF are kept in the register of units maintained by the AIFM or another person to whom the AIFM has delegated this administrative task, the AIFM shall be responsible for maintaining that register.
- (4) The Agency may adopt an ordinance regulating organisation and keeping of the register, as well as publication of information contained in the register of units of an open-ended AIF.

Confidentiality of information contained in the register of units

Article 132

- (1) The person who keeps the register of units of an open-ended AIF shall ensure confidentiality of the information about the investors, balance of units, payments and pay-offs. The person who keeps the register of units may communicate the said information:

1. at investor's request, in which case only the information may be communicated relating to that investor, irrespective of the provisions of the act regulating the capital market, in the part related to the availability of data from the central depository;
2. to the depository;
3. to the person who proves a legal interest;
4. to judicial and administrative authorities and other persons on request and within the framework of authorisation in accordance with the provisions of a *lex specialis*.

(2) The Agency and the AIFM shall at any time have access to the register of units of an open-ended AIF.

The manner and the conditions for entry in the register of units of open-ended AIFs

Article 133

(1) Units and rights attaching to units in an open-ended AIF shall be acquired upon their entry in the register referred to in Article 131, paragraph 1 of this Act.

(2) The time limit for entry of units in the register shall be 7 working days from the day when:

- a) pursuant to the provisions of Article 98, paragraph 3 of this Act, an investor submitted a complete application to the AIFM for the issuance of units and made a valid payment of the amount specified in the application, and the AIFM does not reject the conclusion of the agreement, or
- b) the complete documents referred to in Article 134 of this Act were submitted.

(3) The AIFM, i.e. the operator of the register shall submit to the investors, at least once a year, an extract from the register showing the balance of and the transactions involving the units in open-ended AIFs which they hold.

(4) Notwithstanding the provisions of paragraph 3 of this Article, the investors or their representatives shall be provided on request and at their expense with an extract from the register showing the balance of and the transactions involving the units in the open-ended AIF which they hold.

Section 2

Disposition of units in open-ended AIFs

Article 134

(1) Unit-holders in open-ended AIFs shall be entitled to freely dispose of their units (buying and selling, donation, transfer etc.) and encumber them (right of liens, fiduciary transfer) on the basis of complete documents which represent a valid legal basis for such disposition in accordance with the AIF rules and prospectus where applicable.

(2) The operator of the register may prescribe and publish a form for entry of the disposition in the register of units.

(3) If all the elements necessary for a valid disposition of units cannot be undoubtedly established on the basis of the documents which constitute the legal basis of the transfer, the investor shall, upon the operator's invitation, complete and submit the form referred to in paragraph 2 of this Article.

(4) The AIFM or the operator of the register shall refuse entry in the register if:

1. all the elements necessary for a valid disposition of units (for example, which legal transaction is involved, the parties to the legal transaction, units etc.) cannot be undoubtedly established on the basis of the documents which constitute the legal basis for the transfer or the completed form referred to in paragraph 2 of this Article, or
2. the acquirer of the units does not meet the eligibility requirements for an investor in the AIF in accordance with the provisions of this Act and the AIF rules, or
3. the acquirer of the units acquires or has acquired such units in the manner contrary to the permitted manner of acquisition of units in the AIF as defined by the provisions of this Act and the AIF rules and prospectus where applicable, or
4. upon such transfer the acquirer or transferor of the unit would possess a unit in the AIF which is of smaller size than is the smallest unit prescribed by the AIF rules and prospectus where applicable or if this would constitute breach of provisions on the lowest number of units in the AIF, whether on the part of the transferor or on the part of the acquirer of units.

(5) The AIFM or the operator of the register shall retain the documents about the disposition of units in an open-ended AIF for a period of 5 years.

Revocation of disposition of units

Article 135

The documentation that has been submitted for the purpose of disposition of units may be revoked, exclusively prior to finalization of entry in the register of units, on the condition that:

1. it is revoked in writing and by mutual consent of the investor and the third party to whom units are transferred, and
2. such revocation is received by the operator of the register prior to finalization of the entry in the register on the basis of application for the transfer.

Rights or encumbrances on units in open-ended AIFs

Article 136

(1) If there are rights attaching to or encumbrances on a unit in an open-ended AIF in favour of third parties, they may freely dispose of the unit only with the consent of the

person in whose favour rights or encumbrances on units are established. Any investor request to the contrary shall be null and void.

(2) Only one right of liens may be registered on a unit in an open-ended AIF.

Certificate of acquisition of units and conditions for pay-off in the case of redemption of units of an open-ended AIF

Article 137

(1) Certificates of acquisition of units shall be issued on investor's request within 7 working days of the date of acquisition of units at the latest.

(2) The certificate of acquisition of units shall contain:

1. date of issue, i.e. acquisition of units;
2. the name of the open-ended AIF and the name and registered office of the AIFM;
3. the number of units in the assets of the open-ended AIF for which the certificate is issued;
4. name and surname or the name and personal identification number of the unit-holder;
5. place and date of issue of the certificate;
6. signature of the authorised person of the AIFM. The signature may be electronic or derived by mechanical duplication of signatures.

(3) The amount paid out as a result of redemption of a unit in an open-ended AIF shall be remitted to the holder of the redeemed unit in accordance with the AIF rules and prospectus where applicable.

(4) In the event of change of a unit-holder on the basis of disposition by a unit-holder, a decision taken by the court or another competent authority, on the basis of inheritance or law, the certificate of acquisition of the unit shall be issued to the acquirer on his request.

(5) If an acquirer acquires a unit on the basis of a decision taken by the court or other competent authorities or according to law or otherwise, but does not meet the eligibility requirements for an investor in the open-ended AIF pursuant to the provisions of this Act and the AIF rules and prospectus where applicable, or if he has acquired a unit which is of smaller size than is the smallest unit specified by the AIF rules and prospectus where applicable, or the AIFM has refused entry in the register pursuant to Article 134, paragraph 4 of this Act, the AIFM shall repurchase the unit from him.

Part Seven

Cross-border pursuit of business activities

Title 1

General provisions

Article 138

An AIF shall be deemed to have been established in the Member State or country in which authorisation to take up the business of AIFs has been granted (home Member State or country of the AIF).

Article 139

(1) An AIFM from the Republic of Croatia may pursue, in a Member State or a third country, the activity referred to in Article 13, paragraph 1, point 1 of this Act, directly or through a branch, under the conditions laid down by this Act.

(2) Pursuant to the provisions of this Act, an AIFM from the Republic of Croatia may establish and manage, in a host Member State or country, only AIFs of the same type which it may establish and manage in the Republic of Croatia.

(3) An AIFM from another Member State may pursue in the Republic of Croatia the activity referred to in Article 13, paragraph 1, point 1 of this Act for which it has been authorised by the competent authorities of the Member State, directly or through a branch, under the conditions laid down by this Act.

(4) Pursuant to the provisions of this Act, an AIFM from another Member State may establish and manage in the Republic of Croatia only AIFs of the same type which it may establish and manage in the home Member State.

(5) A non-EU AIFM may pursue, in the Republic of Croatia, the activity referred to in Article 13, paragraph 1, point 1 of this Act for which it has been authorised by the competent authorities of the Member State of reference, directly or through a branch, under the conditions laid down by this Act.

(6) Pursuant to the provisions of this Act, a non-EU AIFM may establish and manage in the Republic of Croatia only AIFs of the same type which it may establish and manage in the Member State of reference.

Section 1

Conduct of the business by an AIFM from the Republic of Croatia in a host Member State

Subsection 1

Marketing of AIF units in a host Member State

Article 140

(1) An AIFM from the Republic of Croatia may market units of the AIF it manages to professional investors in the host Member State as soon as the conditions laid down in this Article are met.

(2) Where the AIF referred to in paragraph 1 of this Article is a feeder AIF, it is necessary that the master AIF is also an AIF established in the Republic of Croatia or another Member State and that it is managed by an AIFM which has its registered office in the Republic of Croatia or another Member State.

(3) The AIFM referred to in paragraph 1 of this Article shall submit a notification to the Agency of its intention to market AIFs in respect of each AIF it intends to market to professional investors in another Member State.

(4) The notification referred to in paragraph 3 of this Article shall comprise the following information:

a) identification of the AIF the AIFM intends to market, a programme of the operations it intends to carry on and information on the country of the establishment of the AIF;

b) the AIF rules;

c) identification of the depositary of the AIF;

d) a description of the AIF;

e) information on the country of the establishment of the master AIF if the AIF is a feeder AIF;

f) identification of the Member State in which the AIFM intends to market units of the AIF;

g) information on the arrangements established to market units of the AIF and information on the arrangements established to prevent units of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

(5) Within 20 working days following receipt of a complete documentation referred to in paragraph 4 of this Article, the Agency shall transmit the documentation to the competent authorities of the host Member State in which the AIFM intends to market the AIF.

(6) The Agency shall also transmit to the competent authorities of the host Member State a statement to the effect that the AIFM is authorised to manage the concerned AIF with a particular investment strategy.

(7) The Agency shall not transmit the notification and documentation referred to in paragraphs 4 and 6 of this Article if the AIFM's management of the AIF does not or will not comply with the provisions of this Act or if the AIFM otherwise does not or will not comply with this Act.

(8) In the case referred to in paragraph 7 of this Article, the Agency shall take a decision to refuse transmission of the notification and documentation referred to in paragraphs 4 and 6 of this Article.

(9) Upon the Agency's transmission of the complete documentation and statement referred to in paragraph 6 of this Article to the competent authorities of the host Member State, it shall without delay inform the AIFM thereof.

(10) The AIFM may start marketing units of the AIF in the host Member State from the date of receipt of the notification referred to in paragraph 9 of this Article.

(11) Where applicable, the Agency shall inform the competent authorities of the home Member State of the AIF that the AIFM may start marketing units of the AIF in the host Member State.

(12) The competent authorities of the host Member State shall be responsible for supervision of the arrangements established by the AIFM pursuant to paragraph 4, item g) of this Article.

Language of notification letter

Article 141

(1) The AIFM shall submit to the Agency the notification letter and documentation referred to in Article 140, paragraph 4 of this Act in:

- a) Croatian and English; or
- b) Croatian and the official language of the host Member State if the Agency and the competent authorities of the host Member State have reached such agreement in advance; or
- c) Croatian and the language approved by the competent authorities of the host Member State.

(2) The Agency shall provide the statement referred to in Article 140, paragraph 6 of this Act in:

- a) English; or
- b) the official language of the host Member State if the Agency and the competent authority of the host Member State have reached such agreement in advance.

(3) The AIFM shall be responsible for authenticity and faithfulness of the translation referred to in paragraph 1 of this Article.

Material changes to particulars

Article 142

(1) In the event of a material change to any of the particulars communicated in accordance with Article 140, paragraph 4 of this Act, the AIFM shall give written notice of that change to the Agency at least one month before implementing the change or immediately after an unplanned change has occurred.

(2) If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the provisions of this Act, the Agency shall inform the AIFM without delay that it is not to implement the change.

(3) If a planned change is implemented notwithstanding paragraph 2 of this Article or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the provisions of this Act, the Agency shall take due measures in accordance with Part Sixteen of this Act, including, if necessary, the prohibition of marketing of units of the AIF.

(4) Where a planned or unplanned change has no influence over the compliance of the management of the AIF with the provisions of this Act or the compliance of the AIFM with the provisions of this Act, the Agency shall inform thereof the competent authorities of the host Member State without delay.

Subsection 2

Management of AIFs in a host Member State directly or by establishing a branch

Article 143

(1) An AIFM from the Republic of Croatia may manage in a host member State AIFs established in the Republic of Croatia, either directly or by establishing a branch, provided that the AIFM is authorised to manage that type of AIF and as soon as the conditions laid down in this Article are met.

(2) An AIFM from the Republic of Croatia intending to manage AIFs pursuant to paragraph 1 of this Article, shall communicate the following information to the Agency:

- a) identification of the Member State in which it intends to manage AIFs directly or establish a branch;
- b) a programme of operations stating the activities referred to in Article 13 of this Act which it intends to provide and identifying the types of AIFs it intends to manage.

(3) Where the AIFM intends to establish a branch pursuant to paragraph 1 of this Article, it shall provide the Agency with the following information in addition to that referred to in paragraph 2 of this Article:

- a) the organisational structure of the branch;
- b) the address of the branch in the home Member State of the AIF from which documents may be obtained;
- c) the names and contact details of the persons responsible for the management of the branch.

(4) The Agency shall, within one month of receiving the documentation referred to in paragraph 2 of this Article or within 2 months of receiving the documentation referred to

in paragraph 3 of this Article, transmit the documentation to the competent authorities of the host Member State of the AIFM.

(5) The Agency shall also communicate to the competent authorities of the host Member State a statement to the effect that the AIFM is authorised by it.

(6) The Agency shall not communicate the information and documentation referred to in paragraphs 2, 3 and 5 of this Article if the AIFM's management of the AIF does not or will not comply with the provisions of this Act or if the AIFM otherwise does not or will not comply with this Act.

(7) In the case referred to in paragraph 6 of this Article, the Agency shall take a decision to refuse transmission of the information and documentation referred to in paragraphs 2, 3 and 5 of this Article.

(8) Upon the Agency's transmission of the complete documentation and statement referred to in paragraph 5 of this Article to the competent authorities of the Member State, it shall without delay inform the AIFM thereof.

(9) The AIFM from the Republic of Croatia may start providing its services in the host Member State from the date of receipt of the information referred to in paragraph 8 of this Article.

Article 144

(1) The provisions of Article 141 of this Act shall apply accordingly to the language of the information and documentation referred to in Article 143, paragraphs 2, 3 and 5 of this Act.

(2) The provisions of Article 142 of this Act shall apply accordingly to changes to any particulars communicated in accordance with Article 143, paragraphs 2 and 3 of this Act.

Subsection 3

Marketing of units of EU AIFs in the Republic of Croatia

Article 145

(1) An AIFM from the Republic of Croatia which manages an AIF from another Member State may market units of that AIF to professional investors in the Republic of Croatia as soon as the conditions laid down in this Article are met.

(2) Where the AIF referred to in paragraph 1 of this Article is a feeder EU AIF, it is necessary that the master AIF is also an AIF which is managed by an AIFM with a registered office in the Republic of Croatia or another Member State.

(3) The AIFM referred to in paragraph 1 of this Article shall submit a notification to the Agency in respect of each AIF that it intends to market in the Republic of Croatia.

(4) Article 140, paragraph 4 of this Act shall apply accordingly to the information contained in the notification referred to in paragraph 3 of this Article.

(5) Within 20 working days following receipt of a complete documentation referred to in paragraph 4 of this Article, the Agency shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph 3 of this Article, whereby the Agency shall refuse its approval only if the AIFM's management of the AIF does not or will not comply with the provisions of this Act or the AIFM otherwise does not or will not comply with the provisions of this Act.

(6) In the case of granting of the approval referred to in paragraph 5 of this Article, the AIFM may start marketing units of the EU AIF from the date of receipt of the notification referred to in paragraph 5 of this Article.

(7) The Agency shall inform the competent authorities of the home Member State of the AIF that the AIFM may start marketing units of that AIF in the Republic of Croatia.

(8) Article 141 of this Act shall apply accordingly to the language of the notification letter and documentation referred to in paragraphs 3, 4 and 7 of this Act.

(9) The provisions of Article 142, paragraphs 1, 2 and 3 of this Act shall apply accordingly to change to any particulars submitted in accordance with paragraph 4 of this Act.

Section 2

Pursuit of activities of EU AIFMs in the Republic of Croatia

Establishing a branch of an EU AIFM in the Republic of Croatia

Article 146

(1) An EU AIFM which has adequate authorisation for management of AIFs granted by the competent authorities of the home Member State may establish a branch in the Republic of Croatia and pursue, within the territory of the Republic of Croatia, the activity referred to in Article 13, paragraph 1, item a) of this Act.

(2) An EU AIFM may start marketing units of an AIF to professional investors in the Republic of Croatia from the date of receipt of the notification by the competent authorities of the home Member State to the effect that they transmitted to the Agency the information referred to in Article 143, paragraphs 2, 3 and 5 of this Act.

(3) An EU AIFM may establish and manage in the Republic of Croatia only those types of AIFs in respect of which it is authorised by the competent authorities of the home Member State of the AIFM.

Direct pursuit of activities of EU AIFMs in the Republic of Croatia

Article 147

(1) An EU AIFM which has adequate authorisation for management of AIFs granted by the competent authorities of the home Member State may directly pursue, in the Republic of Croatia, the activities for which it is authorised by the competent authorities.

(2) An EU AIFM may start marketing units of an AIF to professional investors in the Republic of Croatia from the date of receipt of the notification by the competent authority of the home Member State to the effect that it transmitted to the Agency the information referred to in Article 143, paragraphs 2, and 5 of this Act.

(3) An EU AIFM may establish and manage in the Republic of Croatia only those types of AIFs in respect of which it is authorised by the competent authorities of the home Member State of the AIFM.

Application of the provisions of this Act to EU AIFMs

Article 148

(1) An EU AIFM which pursues, in the Republic of Croatia, its activity through a branch shall act in accordance with the provisions of this Act and the legal provisions adopted on the basis of this Act.

(2) An EU AIFM which pursues its activity in the Republic of Croatia directly shall act in accordance with the laws, regulations and administrative provisions of the home Member State of the AIFM.

(3) An EU AIFM which establishes and manages AIFs in the Republic of Croatia shall:

1. act in accordance with the provisions of this Act and the legal provisions adopted on the basis of this Act, as well as other legal provisions applicable to the operations of AIFs in the Republic of Croatia;
2. fully comply with the rules of that AIF and the prospectus of the AIF where applicable;
3. establish organisational structure and procedures and adopt all the arrangements which are necessary to ensure compliance with the provisions of items 1 and 2 of this paragraph.
4. appoint a legal representative from the Republic of Croatia, which will be the contact point of that AIFM in the Republic of Croatia and in charge of any official correspondence between between the Agency and the AIFM and between the investors of the relevant AIF and the AIFM. Along with the AIFM, the legal representative shall

perform the compliance function relating to the management and marketing of units of the relevant AIF.

EU AIFMs which intend to market AIFs to retail investors in the Republic of Croatia

Article 149

(1) An EU AIFM wishing to market units of AIFs to retail investors in the Republic of Croatia shall acquire prior authorisation by the Agency.

(2) The Agency shall establish on a case-by-case basis whether the relevant AIF may be considered as the type of AIF which may be marketed, pursuant to the ordinance referred to in Article 7, paragraph 8 of this Act, to retail investors in the Republic of Croatia.

(3) The Agency shall prescribe the procedure for granting the authorisation referred to in paragraph 1 of this Article and the required documentation by virtue of an ordinance.

EU AIFMs which intend to establish and manage within the territory of the Republic of Croatia AIFs from the Republic of Croatia

Article 150

(1) The Agency shall refuse application submitted by an EU AIFM for establishment and operation of an AIF from the Republic of Croatia if:

1. the AIFM has failed to submit the documentation referred to in Article 251 of this Act; or
2. the AIFM is not authorised for management of that type of AIF according to the scope of the AIFM's authorisation issued to it by the competent authorities of the home Member State; or
3. the AIF the AIFM intends to establish does not comply with the provisions of this Act which relate to the constitution of AIFs from the Republic of Croatia, including the provisions which relate to the obligations of AIFMs as regards the constitution of AIFs from the Republic of Croatia.

(2) Before taking a decision to refuse application submitted by an EU AIFM for establishment of an AIF in the Republic of Croatia, the Agency shall notify the competent authorities of the home Member State of the AIFM of the reasons for refusal and ask for clarification and opinion of the competent authorities if this is necessary.

Section 3

AIFMs from the Republic of Croatia which manage or market units of non-EU AIFs or AIFs from the Republic of Croatia

AIFMs from the Republic of Croatia which manage non-EU AIFs in a third country

Article 151

AIFMs from the Republic of Croatia which intend to manage non-EU AIFs which are not marketed within the territory of the Republic of Croatia or a Member State shall:

- a) comply with all the provisions of this Act, except for the provisions of Part Eleven of this Act which regulates the depositary and the provisions of Section 3 of Part Ten of this Act which regulates financial reporting of AIFs in respect of a particular non-EU AIF;
- b) ensure appropriate cooperation arrangements are in place between the Agency and the supervisory authorities of the third country where the AIF is established in order to ensure at least an efficient exchange of information that allows the Agency to carry out its duties in accordance with the provisions of this Act.

AIFMs from the Republic of Croatia which market units of non-EU AIFs in the Republic of Croatia

Article 152

(1) An AIFM from the Republic of Croatia which intends to market to professional investors in the Republic of Croatia units of non-EU AIFs it manages and of feeder AIFs that do not fulfil the requirements referred to in Article 140, paragraph 2 of this Act, shall comply with all the provisions of this Act with the exception of the provisions of Articles 140 to 150 of this Act.

(2) In addition to the requirement laid down in paragraph 1 of this Article, the following conditions shall be met:

- a) appropriate cooperation arrangements must be in place between the Agency and the supervisory authorities of the third country where the AIF is established in order to ensure at least an efficient exchange of information that allows the Agency to carry out its duties in accordance with the provisions of this Act.
- b) the third country where the AIF is established is not listed as a non-cooperative country or territory by FATF;
- c) the third country where the AIF is established has signed an agreement with the Republic of Croatia and with each other Member State in which the AIFM intends to market units of the non-EU AIF, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

Article 153

(1) An AIFM from the Republic of Croatia which intends to market to professional investors in the Republic of Croatia units of the non-EU AIF it manages shall submit a notification to the Agency in respect of each AIF it intends to market.

(2) The notification referred to in paragraph 1 of this Article shall contain the following information:

- a) identification of the AIF the units of which the AIFM intends to market, a programme of the operations it intends to carry on and information on the country of establishment of the AIF;
- b) the AIF rules;
- c) identification of the depositary of the AIF;
- d) a description of the AIF;
- e) information on the country of establishment of the master AIF if the AIF is a feeder AIF;
- f) information on the arrangements established to prevent units of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

(3) Within 20 working days following receipt of a complete documentation referred to in paragraph 2 of this Article, the Agency shall inform the AIFM whether it may start marketing the units of the AIF identified in the notification referred to in paragraph 2 of this Article in the Republic of Croatia, whereby the Agency shall refuse its approval only if the AIFM's management of the AIF does not or will not comply with the provisions of this Act or the AIFM otherwise does not or will not comply with the provisions of this Act.

(4) In the case of granting of the approval referred to in paragraph 3 of this Article, the AIFM may start marketing, in the Republic of Croatia, the units of the non-EU AIF it manages from the date of receipt of the notification referred to in paragraph 3 of this Article.

(5) The Agency shall inform ESMA that the AIFM may start marketing the units of non-EU AIFs it manages in the Republic of Croatia.

AIFMs from the Republic of Croatia which market units of non-EU AIFs in a host
Member State

Article 154

(1) An AIFM from the Republic of Croatia which intends to market units of non-EU AIFs it manages in a Member State other than its home Member State, shall submit a notification to the Agency in respect of each AIF that it intends to market.

(2) In addition to the information listed in Article 153, paragraph 2 of this Act, the notification referred to in paragraph 1 of this Article shall contain identification of the host Member State in which the AIFM intends to market the units of the non-EU AIFs to professional investors.

(3) The Agency shall, no later than 20 working days after the date of receipt of the complete documentation referred to in paragraph 2 of this Article, transmit that complete documentation to the competent authorities of the host Member State in which the AIFM intends to market the units of the AIFs.

(4) The Agency shall also transmit to the competent authorities of the host Member State a statement to the effect that the AIFM is authorised to manage the concerned AIF with a particular investment strategy.

(5) The Agency shall not transmit the information and documentation referred to in paragraphs 2 and 4 of this Article if the AIFM's management of the AIF does not or will not comply with the provisions of this Act or if the AIFM otherwise does not or will not comply with the provisions of this Act.

(6) In the case referred to in paragraph 5 of this Article, the Agency shall take a decision to refuse transmission of the information and documentation referred to in paragraphs 2 and 4 of this Article.

(7) Upon the Agency's transmission of the complete documentation and statement referred to in paragraph 4 of this Article, it shall, without delay, notify the AIFM about the transmission.

(8) The AIFM from the Republic of Croatia may start marketing the units of the non-EU AIF in the host Member State as of the date of receipt of the notification referred to in paragraph 7 of this Article.

(9) The Agency shall inform ESMA that the AIFM from the Republic of Croatia may start marketing the units of the non-EU AIF in the host Member State.

(10) Arrangements established by the AIFM in accordance with Article 153, paragraph 2, item f) of this Act shall be subject to supervision of the competent authorities of the host Member State.

(11) Article 141 of this Act shall apply accordingly to the information and documentation referred to in this Article.

(12) In the event of a material change to any of the particulars communicated in accordance with Articles 153 and this Article, the provisions of Article 142, paragraphs 1 to 3 of this Act shall apply accordingly.

(13) If planned or unplanned changes do not affect the compliance of the AIFM's management of the non-EU AIF with the provisions of this Act or the compliance of the AIFM with the provisions of this Act, the Agency shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of units of a certain AIF or additional AIFs the units of which are marketed and the competent authorities of the host Member State of those changes.

AIFMs from the Republic of Croatia which manage AIFs from the Republic of Croatia in a third country

Article 155

(1) An AIFM intending to market units of an AIF from the Republic of Croatia in a third country shall notify the Agency thereof prior to the commencement of marketing, including the following data in the notification:

1. the country in which it intends to market units
2. programme of planned activities which it intends to carry out in that country
3. precise description of the marketing methods and facilities established for the purpose of carrying out such marketing
4. precise description of business relationships established with respect to marketing of units in that country
5. list of AIFs the units of which are intended to be marketed in that country.

(2) The Agency may prohibit the AIFM from marketing units of the AIF from the Republic of Croatia in the third country in case of suspicion of improper marketing method and facilities established for the purpose of carrying out such marketing, improper disclosures to investors and improper business relationships established with respect to marketing of units in that country.

(3) The Agency may also prohibit the AIFM from marketing units of the AIF from the Republic of Croatia in the third country if, regarding the regulations of the third country in which the AIFM intend to market units of the AIF and regarding the practice with respect to the implementation of those regulations, probability exists that the supervision pursuant to the provisions of this Act could be made difficult.

(4) The AIFM shall, not later than within 3 working days as of the day of the commencement of marketing AIF units in a third country, notify the Agency thereof.

(5) Where the AIFM intends to change certain facts and circumstances referred to in paragraph 1 of this Article, it shall notify the Agency thereof prior to the introduction of those changes.

Title 2

Pursuit of activities of non-EU AIFMs in the Republic of Croatia

Section 1

Granting authorisation to take up the business to non-EU AIFMs

Article 156

(1) A non-EU AIFM intending to manage AIFs from the Republic of Croatia or to market units of AIFs managed by it within the territory of the Republic of Croatia shall acquire prior authorisation by the Agency if the Republic of Croatia is the Member State of reference of the non-EU AIFM.

(2) A non-EU AIFM intending to obtain prior authorisation as referred to in paragraph 1 of this Article shall comply with all the provisions of this Act, with the exception of Articles 140 to 150 of this Act.

(3) If the requirement referred to in paragraph 2 of this Article is incompatible with compliance with the law of the third country in which the AIFM and/or AIF is established, there shall be no obligation on the AIFM to comply with the relevant provisions of this Act if it can demonstrate that:

- a) it is impossible to combine compliance with the provisions of this Act and the laws of the third country in which the AIFM and/or AIF is established;
- b) the laws of the third country in which the AIFM and/or AIF is established provide for the equivalent provisions having the same regulatory purpose and offering the same level of protection to the investors of the relevant AIF;
- c) the non-EU AIFM and/or the non-EU AIF complies with the equivalent rule referred to in the preceding item.

(4) A non-EU AIFM intending to obtain prior authorisation as referred to in paragraph 1 of this Article shall appoint a legal representative established in the Republic of Croatia who shall be the contact person of that AIFM in the Republic of Croatia and any official correspondence between the Agency and the AIFM and between the investors of the relevant AIF and the AIFM shall take place through that legal representative. The legal representative shall perform the compliance function relating to the management and marketing of the relevant AIF together with the AIFM.

Member State of reference of a non-EU AIFM

Article 157

The Member State of reference of a non-EU AIFM shall be determined as follows:

a) if the non-EU AIFM intends to manage only one AIF or several AIFs established in the Republic of Croatia and does not intend to market any AIF in accordance with Articles 169, 170 and 171 of this Act, the Republic of Croatia is deemed to be the Member State of reference of that AIF and the Agency shall be competent for the authorisation procedure and for the supervision of the AIFM;

b) if the non-EU AIFM intends to manage several AIFs established in different Member States and does not intend to market any AIF in accordance with Articles 169, 170 and 171 of this Act, the Member State of reference is either:

- i. the Member State where most of the AIFs are established; or
- ii. the Member State where the largest amount of assets is being managed.

c) if the non-EU AIFM intends to market units of only one EU AIF in only one Member State, the Member State of reference is determined as follows:

- i. if the AIF is established in a Member State, the home Member State of the AIF or the Member State where the AIFM intends to market the AIF;
 - ii. if the AIF is not authorised by a Member State, the Member State where the AIFM intends to market the units of the AIF;
- d) if the non-EU AIFM intends to market units of only one non-EU AIF in only one Member State, the Member State of reference is that Member State;
- e) if the non-EU AIFM intends to market units of only one EU AIF, but in different Member States, the Member State of reference is determined as follows:
- i. if the AIF is established in a Member State, the home Member State of the AIF or one of the Member States where the AIFM intends to develop effective marketing; or
 - ii. if the AIF is not authorised by a Member State, one of the Member States where the AIFM intends to develop effective marketing;
- f) if the non-EU AIFM intends to market units of only one non-EU AIF, but in different Member States, the Member State of reference is one of those Member States;
- g) if the non-EU AIFM intends to market units of several EU AIFs in the European Union, the Member State of reference is:
- i. in so far as those AIFs are established in the same Member State, the home Member State of those AIFs or the Member State where the AIFM intends to develop effective marketing for most of those AIFs;
 - ii. in so far as those AIFs are not established in the same Member State, the Member State where the AIFM intends to develop effective marketing for most of those AIFs;
- h) if the non-EU AIFM intends to market units of several EU and non-EU AIFs, or units of several non-EU AIFs in the European Union, the Member State of reference is the Member State where it intends to develop effective marketing for most of those AIFs.

More than one Member State of reference of a non-EU AIFM

Article 158

(1) In the cases referred to in Article 157, items b), c), indent (i), items e), f) and g), indent (i), it is possible for a non-EU AIFM to have more than one Member State of reference.

(2) In the cases referred to in paragraph 1, a non-EU AIFM intending to manage EU AIFs without marketing their units and/or intending to market the units of the AIFs managed by it in the European Union shall, in accordance with Articles 169, 170 and 171 of this Act, submit to the Agency application for issuance of authorisation to take up the business if the Republic of Croatia is one of possible Member States of reference, as well as to the competent authorities of all of the Member States that are possible Member States of reference.

(3) The Agency and the competent authorities of other Member States referred to in paragraph 2 of this Article shall jointly decide the Member State of reference of the AIFM within one month of the date of receipt of the application for authorisation to take up the business.

(4) If the Republic of Croatia is appointed as Member State of reference of the AIFM, the Agency shall inform the non-EU AIFM of that appointment within 7 days of the date of the decision referred to in paragraph 3 of this Article.

(5) If the Agency and the competent authorities of the Member States do not take a decision about the Member State of reference of the AIFM within the period referred to in paragraph 3 of this Article or if the Agency does not inform the AIFM of the decision within the period referred to in paragraph 4 of this Article, the non-EU AIFM may itself choose its Member State of reference based on the criteria set out in the preceding Article.

Article 159

If the Republic of Croatia is the Member State of reference of the non-EU AIFM, the AIFM shall prove its intention to develop effective marketing of units of AIFs it manages in the Republic of Croatia by disclosure of its marketing strategy to the Agency.

Article 160

(1) A non-EU AIFM intending to manage EU AIFs without marketing their units and/or intending to market the units of the AIFs managed by it in the European Union shall, in accordance with Articles 169, 170 and 171 of this Act, submit to the Agency application for authorisation to take up the business if the Republic of Croatia is the Member State of reference of the non-EU AIFM.

(2) After receiving the application referred to in paragraph 1 of this Article the Agency shall assess whether the choice of the Republic of Croatia as the Member State of reference complies with the criteria laid down in Article 157 of this Act.

(3) The Agency shall refuse the application referred to in paragraph 1 of this Article if it considers that the choice of the Republic of Croatia as the Member State of reference does not comply with the criteria laid down in Article 157 of this Act.

(4) If the Agency considers that the Republic of Croatia has been chosen as the Member State of reference in accordance with the criteria laid down in Article 157 of this Act, it shall notify ESMA, requesting advice on its assessment.

(5) In the notification referred to in paragraph 4 of this Article, the Agency shall provide ESMA with the justification by the AIFM regarding the choice of the Member State of reference and with information on the marketing strategy.

(6) The term referred to in Article 25, paragraph 3 of this Act shall be suspended until such time as the Agency receives ESMA's advice referred to in paragraph 4 of this Article.

(7) If the Agency intends to grant authorisation contrary to ESMA's advice referred to in paragraph 4 of this Article, it shall inform ESMA, stating its reasons.

(8) If the Agency intends to grant authorisation contrary to ESMA's advice referred to in paragraph 4 of this Article, and the non-EU AIFM intends to market units of AIFs managed by it in Member States other than the Member State of reference, the Agency shall also inform the competent authorities of those Member States thereof and, in so far as applicable, the competent authorities of the home Member States of the AIFs managed by the non-EU AIFM, stating its reasons.

Deciding on the application for authorisation of AIFMs from third countries

Article 161

- (1) The Agency shall refuse authorisation to a non-EU AIFM unless the following conditions are met:
- a) the Republic of Croatia is indicated as the Member State of reference in accordance with the criteria set out in Article 157 of this Act, the Agency was sent the data on the marketing strategy and the procedure referred to in Article 160 of this Act is completed,
 - b) the AIFM appointed a legal representative from the Republic of Croatia,
 - c) the legal representative shall, together with the AIFM, be the contact person for the investors of the relevant AIF, for ESMA, for the Agency and for the competent authorities of other Member States as regards the activities for which the AIFM is authorised in the European Union,
 - d) the legal representative shall be sufficiently equipped to perform the compliance function pursuant to the relevant regulations in accordance with this Act,
 - e) appropriate cooperation arrangements are in place between the Agency, the competent authority of the home Member State of the AIF concerned and the supervisory authorities of the third country where the AIF is established in order to ensure at least an efficient exchange of information that allows the Agency to carry out its duties in accordance with the provisions of this Act,
 - f) the third country where the AIF is established is not listed as a Non-Cooperative Country and Territory by FATF,

- g) the third country where the AIF is established has signed an agreement with the Republic of Croatia and any other Member State where the AIFM intends to market units of the non-EU AIF, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.
 - h) the exercise of the Agency's supervisory functions under this Act is neither prevented by the laws of a third country nor by the powers of that third country's supervisory authorities.
- (2) Where a competent authority of the home Member State of the AIF does not enter into the required cooperation arrangements as set out in paragraph 1, point e), of this Article, the Agency may refer the matter to the ESMA.

Article 162

- (1) The provisions of Articles 12 to 33 of this Act shall apply, as appropriate, to the authorisation to a non-EU AIFM.
- (2) Apart from the information referred to in Article 24 of this Act, the non-EU AIFM shall submit the following:
- a) a justification regarding the selection of the Republic of Croatia as the Member State of reference with the information on the marketing strategy,
 - b) a list of the provisions of this Act for which compliance with the law of the third country where the AIFM is established is impossible, in accordance with Article 156, paragraph 3, item b), of this Act,
 - c) written evidence based on the regulatory technical standards developed by ESMA that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant AIF and that the AIFM complies with that equivalent rule,
 - d) the written evidence referred to in the previous item shall be supported by a legal opinion on the existence of the incompatible regulations of the third country and including a description of the regulatory purpose of the equivalent provision and the method of protection of the investor of the relevant AIF provided by it,
 - e) the name of the legal representative of the AIFM and the place where it is established.

Article 163

- (1) In case the Agency considers that the AIFM, pursuant to Article 156, paragraph 3, of this Act, need not fully comply with the provisions of this Act, it shall, without undue delay, notify ESMA thereof and submit the information referred to in Article 162, paragraph 2, items b), c) and d), of this Act.
- (2) The time limit referred to in Article 25, paragraph 3 of this Act shall not start running until the Agency receives ESMA's advice based on the notification referred to in paragraph 1 of this Article.
- (3) If the Agency intends to grant authorisation contrary to ESMA's advice referred to in paragraph 2 of this Article, it shall inform ESMA, stating its reasons.
- (4) If the Agency intends to grant authorisation contrary to ESMA's advice referred to in paragraph 2 of this Article, and the non-EU AIFM intends to market units of AIFs it manages in other Member States as well, the Agency shall inform about it the competent authorities of those Member States, stating its reasons.

Article 164

- (1) The Agency shall, without undue delay, inform ESMA of any granted authorisation, any changes in the authorisation and any withdrawal of authorisation of a non-EU AIFM.
- (2) The Agency shall inform ESMA about any authorisation request that it has rejected, providing data about the AIFM having asked for authorisation and the reasons for refusal.
- (3) The Agency shall have the right of access to ESMA's central register of data on AIFMs from the third countries which applied for authorisation in the Member States.

Article 165

- (1) The determination of the Member State of reference shall not be affected by the further business development of the AIFM in the European Union.
- (2) By way of derogation from paragraph 1 of this Article, where the AIFM changes its marketing strategy within two years of its initial authorisation granted by the Agency, and that change would have affected the selection of the Member State of reference, it shall notify the Agency and indicate the new Member State of reference in accordance with the criteria set out in Article 157 of this Act, and based on the new strategy.
- (3) Together with the notification referred to in paragraph 2 of this Article, the non-EU AIFM shall submit to the Agency the new marketing strategy and the information about its legal representative from the new Member State of reference and its registered office.
- (4) After the Agency receives the notification referred to in paragraph 2 of this Article, it shall assess whether the AIFM's decision referred to in paragraph 2 of this Article is justified and inform ESMA thereof, and provide the AIFM's

justification of its assessment regarding the new Member State of reference and information on the new marketing strategy.

- (5) After receipt of ESMA's advice based on the notification referred to in the previous paragraph, the Agency shall inform the non-EU AIFM, its legal representative and ESMA of its decision.
- (6) In the case of a positive decision referred to in paragraph 5 of this Article, the Agency shall inform the competent authority of the new Member State of reference about the changes and, without undue delay, submit a copy of the authorisation and supervision file of the non-EU AIFM.
- (7) From the date of transmission of the information referred to in paragraph 6 of this Article, the competent authorities of the new Member State of reference shall be competent for granting, changing or withdrawing the authorisation and supervising the non-EU AIFM.
- (8) Where the Agency's decision referred to in paragraph 5 of this Article is contrary to ESMA's advice referred to in paragraph 4 of this Article, the Agency shall state the reasons and:
 - a) inform ESMA,
 - b) inform the competent authorities of the Member States where the non-EU AIFM markets the units of AIFs it manages and, where applicable, the competent authorities of the home Member States of AIFs.

Article 166

- (1) Where it appears from the actual course of the business development of the AIFM in the European Union within two years after its authorisation that the marketing strategy as presented by the AIFM at the time of its authorisation was not followed, the AIFM made false statements in relation to the marketing strategy or the AIFM has failed to comply with the previous Article when changing its marketing strategy, the Agency shall order the non-EU AIFM to indicate the Member State of reference based on its actual marketing strategy, where the provisions of Article 165 of this Act shall apply as appropriate.
- (2) If the non-EU AIFM does not comply with the Agency's order referred to in paragraph 1 of this Article, the Agency shall withdraw its authorisation.

Article 167

Where the non-EU AIFM changes its marketing strategy after a period of two years after the Agency granted its authorisation, and on account of this intends to change its Member State of reference, it may submit a request to change its Member State of reference to the Agency, where the provisions of Article 165 of this Act shall apply as appropriate.

Article 168

- (1) Any disputes arising between the Agency and the non-EU AIFM shall be settled in accordance with the Croatian law and subject to the jurisdiction of the Croatian courts.
- (2) Any disputes between the non-EU AIFM and/or the AIF and Croatian investors of the relevant AIF shall be settled in accordance with the Croatian law and subject to the jurisdiction of the Croatian courts.

Section 2

Marketing of units of AIFs managed by a non-EU AIFM with a passport of EU

Article 169

If the non-EU AIFM holds authorisation granted by the Agency or the competent authorities from another Member State, it shall be considered that it holds an EU passport and it may market to professional investors in the European Union the units of the AIFs it manages in the Republic of Croatia, in other Member States or third countries, in accordance with the provisions of this Act.

Article 170

- (1) In case a non-EU AIFM intends to market units of an AIF from another Member State or the third country in the Republic of Croatia as a Member State of reference, the AIFM shall submit a notification to the Agency in respect of each AIF whose units it intends to market.
- (2) The notification referred to in paragraph 1 of this Article shall comprise the information set out in Article 153, paragraph 2, of this Act which shall be submitted to the Agency in the Croatian language.
- (3) No later than 20 working days after receipt of the complete documentation pursuant to paragraph 2 of this Article, the Agency shall inform the AIFM whether it may start marketing the units of the AIF identified in the notification referred to in paragraph 2 of this Article in the Republic of Croatia. The Agency may reject its approval if the AIFM's management of the AIF does not or will not comply with the provisions of this Act or if the AIFM otherwise does not or will not comply with other provisions of this Act.
- (4) In the case of granting the approval referred to in paragraph 3 of this Article, the AIFM may start marketing the units of an AIF from another Member State or a third country in the Republic of Croatia as of the date of the notification referred to in paragraph 3 of this Article.
- (5) The Agency shall inform ESMA and the competent authorities of the home Member State of the AIF that the AIFM may start marketing the units of the AIF from another Member State or a third country in the Republic of Croatia.

Article 171

- (1) In case the non-EU AIFM whose Member State of reference is the Republic of Croatia intends to market units of the AIF from the Republic of Croatia, another Member State or a third country, it shall submit a notification to the Agency in respect of each AIF whose units it intends to market
- (2) The notification referred to in paragraph 1 of this Article shall comprise the information set out in Article 154, paragraph 2, of this Act.
- (3) No later than 20 working days after the date of receipt of the complete notification file referred to in paragraph 2 of this Article, the Agency shall transmit the complete notification file to the competent authority of the Member State where the AIFM intends to market units of the AIF.
- (4) The Agency shall submit to the competent authority of the Member State a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.
- (5) The Agency shall not submit the notification and documentation referred to in paragraphs 2 and 4 of this Article if the AIFM's management of the AIF is not or will not comply with the provisions of this Act, or if the AIFM is not or will not comply with other provisions of this Act.
- (6) In the event referred to in paragraph 5 of this Article, the Agency shall adopt a decision refusing to submit the notification and documentation referred to in paragraphs 2 and 4 of this Article.
- (7) Upon transmission to the competent authority of the Member State of the complete documentation and statement referred to in paragraph 4 of this Article, the Agency shall, without delay, notify the AIFM thereof.
- (8) The non-EU AIFM may start marketing the units of the AIF in another host Member State as of the date of the notification referred to in paragraph 7 of this Article.
- (9) The Agency shall also inform ESMA and the competent authority of the home Member State of the AIF that the AIFM may start marketing the units of the AIF from the Republic of Croatia, another Member States or a third country in another host Member State.
- (10) Supervision of arrangements established by the AIFM in accordance with Article 153, paragraph 2, item f), of this Act shall be the responsibility of the competent authorities of the host Member State.
- (11) The notification and documentation, or in the event of material changes to any information, the provisions of Article 154, paragraphs 11, 12 and 13 of this Act shall apply as appropriate.

Section 3

Non-EU AIFMs managing AIFs established in other Member States

Article 172

- (1) A non-EU AIFM whose Member State of reference is the Republic of Croatia may manage in the host Member State EU AIFs established in another Member State either directly or via the establishment of a branch.
- (2) Any non-EU AIFM intending to manage EU AIFs established in another Member State shall communicate the following information to the Agency as the Member State of reference:
 - a) the Member State in which it intends to manage AIFs directly or establish a branch,
 - b) a programme of operations stating the services which it intends to perform and identifying the types of AIFs it intends to manage.
- (3) Where the non-EU AIFM intends to establish a branch, it shall provide, in addition to the information requested in paragraph 2 of this Article, the following information:
 - a) the organisational structure of the branch,
 - b) the address of the branch in the home Member State of the AIF from which documents may be obtained,
 - c) the names and contact details of persons responsible for the management of the branch.
- (4) The Agency shall, within 30 days of receiving the documentation referred to in paragraph 2 of this Article or within two months of receiving the documentation referred to in paragraph 3 of this Article, transmit that documentation to the competent authority of the host Member State of the AIFM.
- (5) The Agency shall submit to the competent authority of the host Member State a statement to the effect that the AIFM concerned is authorised by it.
- (6) The Agency shall not submit the notification and documentation referred to in paragraphs 2, 3 and 4 of this Article if the AIFM's management of the AIF is not or will not comply with the provisions of this Act, or if the AIFM is not or will not comply with other provisions of this Act.
- (7) In the event referred to in paragraph 6 of this Article, the Agency shall adopt a decision refusing to submit the notification and documents referred to in paragraphs 2, 3 and 4 of this Article.
- (8) Upon transmission of the complete documentation and statement referred to in paragraph 5 of this Article, the Agency shall, without delay, notify the AIFM thereof.
- (9) The non-EU AIFM may start marketing units of the AIF in another host Member State as of the date of the notification referred to in paragraph 7 of this Article.
- (10) The Agency shall inform ESMA that the AIFM may start managing the AIF in another host Member State.

Article 173

- (1) The language of the notification and the documentation referred to in Article 172, paragraphs 2 3, and 5 of this Act shall be subject to the provision of Article 141 of this Act, as appropriate.
- (2) Any changes to any information submitted in accordance with Article 172, paragraphs 2 and 3, of this Act shall be subject to the provisions of Article 142 of this Act, as appropriate.

Section 4

Activity of a non-EU AIFM in the Republic of Croatia, where the Republic of Croatia is not the Member State of reference of the AIFM

Activity of a non-EU AIFM through a branch in the Republic of Croatia

Article 174

- (1) A non-EU AIFM granted the relevant authorisation to manage AIFs by the competent authority of the Member State of reference of the AIFM, where Republic of Croatia is not the Member State of reference of the AIFM, may establish a branch in the Republic of Croatia and, through the branch, engage in the activity referred to in Article 13, paragraph 1, item a), of this Act in the territory of the Republic of Croatia.
- (2) A non-EU AIFM may start marketing the units of the AIF in the Republic of Croatia to professional investors as of the date of the notification from the Member State of reference of the AIFM that it transmitted to the Agency the notification and confirmation corresponding to the one referred to in Article 171, paragraphs 3 and 4 of this Act.
- (3) A non-EU AIFM may establish and manage in the Republic of Croatia only those types of AIFs for which it is authorised by the competent authority of the Member State of reference of the AIFM.

Activity of a non-EU AIFM directly in the territory of the Republic of Croatia

Article 175

- (1) A non-EU AIFM granted the relevant authorisation to manage AIFs by the competent authority of the Member State of reference of the AIFM, may engage in the activity authorised by the competent authority directly in the territory of the Republic of Croatia.
- (2) A non-EU AIFM may start marketing the units of the AIF in the Republic of Croatia to professional investors as of the date of the notification from the Member State of reference of the AIFM that it transmitted to the Agency the notification and confirmation corresponding to the one referred to in Article 171, paragraphs 3 and 4 of this Act.

- (3) A non-EU AIFM may establish and manage in the Republic of Croatia only those types of AIFs for which it is authorised by the competent authority of the Member State of reference of the AIFM.

Application of the provisions of this Act on non-EU AIFMs

Article 176

- (1) A non-EU AIFM performing its activity in the Republic of Croatia through a branch shall comply with the provisions of this Act and regulations adopted pursuant to this Act.
- (2) A non-EU AIFM performing its activity directly in the Republic of Croatia shall comply with the regulations of the Member State of reference of the AIFM.
- (3) A non-EU AIFM which establishes and manages an AIF in the Republic of Croatia shall:
1. comply with the provisions of this Act and regulations adopted pursuant to this Act, and other regulations applicable to the operation of AIFs in the Republic of Croatia,
 2. fully comply with the rules of the relevant AIF and prospectus where appropriate,
 3. establish the organisational structure and procedures and adopt all the necessary measures ensuring compliance with the provisions in items 1 and 2 of this paragraph.

Non-EU AIFMs intending to market in the Republic of Croatia the units of AIFs
to retail investors

Article 177

- (1) A non-EU AIFM intending to market in the Republic of Croatia the units of AIFs to retail investors shall obtain the prior approval from the Agency.
- (2) The Agency shall establish in each specific case whether the relevant AIF may be considered to be the type of AIF whose units, in accordance with the ordinance referred to in Article 7, paragraph 8, of this Act, may be marketed to retail investors in the Republic of Croatia.
- (3) The procedure for issuing the approval referred to in paragraph 1 of this Article and the required documentation shall be stipulated by the Agency in an ordinance.

Non-EU AIFM which intends to establish and manage in the Republic of Croatia an AIF
from the Republic of Croatia

Article 178

- (1) The Agency shall reject the request by a non-EU AIFM to establish and manage an AIF from the Republic of Croatia if:

1. the AIFM has not submitted the documentation referred to in Article 251 of this Act, or
 2. the AIFM is not authorised to manage this type of the AIF in accordance with the authorisation issued to the AIFM by the competent authority of the Member State of reference, or
 3. the AIF which the AIFM intends to establish does not comply with the provisions of this Act pertaining to the establishment of AIFs from the Republic of Croatia, including the provisions pertaining to the obligations of the AIFM relating to the establishment of the AIF from the Republic of Croatia.
- (2) Before adopting a decision rejecting the request made by the non-EU AIFM to establish an AIF in the Republic of Croatia, the Agency shall inform the competent authority of the Member State of reference of the AIFM about the reasons for refusal of the request and ask for additional explanation and opinion from the competent authority, where appropriate.

Section 5

Conditions for trading

Article 179

- (1) The AIFM from another Member State or a third country which intends to market in the Republic of Croatia the units of an AIF established in another Member State or a third country shall provide all available conditions in the Republic of Croatia ensuring uninterrupted:
1. payments to the unit-holders in AIFs,
 2. issue and redemption of the units of AIFs,
 3. publication of the documentation and information related to the AIF and the transmission of the documents and information to the investors who purchased the units in the Republic of Croatia, and
 4. solving of the complaints by investors in accordance with Article 59 of this Act.
- (2) The Agency may adopt an ordinance stipulating the requirements referred to in paragraph 1 of this Article in more detail.

Part Eight

Trading the units of AIFs Promotion of AIFs Marketing the shares of AIFs

Section 1

General provisions

Article 180

- (1) Trading the units of AIFs, pursuant to the provision of Article 3, paragraph 1, point 25 of this Act, includes all services and activities which are in any way linked to the distribution of the units of AIFs by the AIFM to the investor. Trading units also includes the activities related to promotion, disclosure and marketing of the units of AIFs.
- (2) Promotion of AIFs includes all promotional materials, on printed or electronic media, which is intended for the investors or potential investors of AIFs, the purpose of which is to attract new purchases of the units of AIFs.

Article 181

- (1) Trading the units of AIFs in the Republic of Croatia is effected pursuant to the provisions of this Act and regulations adopted under this Act, and the regulations governing consumer protection, and prevention of money laundering and funding of terrorism, which are in force in the Republic of Croatia.
- (2) The Republic of Croatia allows promotion of those AIFs whose units may be marketed in the territory of the Republic of Croatia in accordance with the provisions of this Act.
- (3) The Agency shall publish on its website, in a clear and comprehensible manner and in the English language, the legislative and administrative provisions governing the trading the units of AIFs established in the Member States and third countries, in the territory of the Republic of Croatia, which are not directly regulated by Directive 2011/61/EU of the European Parliament and of the Council.

Section 2

AIFs with authorisation for trading the units in the Republic of Croatia

Article 182

In accordance with the provisions of this Act, trading the units of the following AIFs is allowed in the Republic of Croatia:

1. of AIFs established pursuant to the provisions of this Act, if the conditions in this Part of the Act are met,
2. of EU AIFs, if the conditions in Part Seven of this Act are met,
3. of non-EU AIFs, if the conditions in Part Seven of this Act are met.

Trading the units of AIFs established pursuant to the provisions
of this Act in the Republic of Croatia

Article 183

The units of AIFs in the Republic of Croatia established in the Republic of Croatia may be traded by:

1. an AIFM granted authorisation to manage such AIFs,
2. an EU AIFM granted authorisation to manage such AIFs pursuant to this Act.
3. a non-EU AIFM granted authorisation to manage such AIFs pursuant to this Act.

Section 3

Title 2

Promotion of AIFs in the Republic of Croatia

Article 184

Promotion of AIFs it manages may be effected by:

1. an AIFM from the Republic of Croatia,
2. an EU AIFM,
3. a non-EU AIFM.

Promotion of AIFs

Article 185

- (1) Any promotional material on printed or electronic media which is intended for the investors or potential investors in AIFs, the purpose of which is to collect funds (promotional material), must be clearly recognisable as such.
- (2) Promotional material shall be clear, direct and must not be misleading.
- (3) Promotional material must not be contrary to the rules and, where applicable, the prospectus of the AIF.
- (4) Promotional material must comprise the information about where, how and in which language the AIF rules are available to the investors and, where applicable, the prospectus of the AIF.
- (5) The Agency may adopt an ordinance stipulating the promotion and promotional material of AIFs in more detail.

Article 186

- (1) In the case of AIFs with a public offering, the provisions on the promotion of UCITS funds in the Republic of Croatia set out in the act regulating the establishment and operation of open-ended investment funds with a public offering shall apply as appropriate.

- (2) Public promotion of AIFs with a private offering for the purpose of attracting potential investors shall not be allowed.

Article 187

- (1) Public promotion of AIFs with a private offering referred to in Article 186, paragraph 2, of this Act shall not be deemed to be making available to the public of presentation materials which, along with the name and activity of the AIFM, presents the AIFM to the potential investors.
- (2) Any information presenting an AIF with a private offering and the AIFM managing it must be complete, clear, authentic and accurate and must not be misleading, particularly in relation to associated risks and charges, and it must be approved by the members of the management of the AIFM.
- (3) Report of business results of the AIF with a private offering shall:
 1. comprise updated information available at the moment of reporting business results of the AIF,
 2. comprise business results of the AIF at least from its establishment until the date of the report or in the last five years, depending on which of the two periods is shorter,
 3. be composed consistently relative to the periods, including or excluding the factors which affect these results (for example, basis for the price, costs, tax, payment of dividends, income or profit etc.),
 4. not be presented in a way which could be construed as implying a forecast of the future business results of the AIF.
- (4) The Agency may adopt an ordinance governing the mandatory content and methods of presenting business results of the AIF with a private offering.

Section 4

Marketing of units of AIFs

Article 188

- (1) The marketing of units of AIFs, apart from the AIFMs, may be performed by other legal persons in the Republic of Croatia, based on the business cooperation agreement, when this is allowed by the provisions of this Act or some other act.
- (2) The provisions of this Section of the Act shall also apply, as appropriate, to EU AIFMs and non-EU AIFMs when they market the units in the Republic of Croatia.

Article 189

- (1) When marketing the units of AIFs, the persons referred to in Article 188 of this Act shall act as the sales representatives of the AIFM based on the contract concluded in writing with the AIFM.

- (2) The AIFM shall inform the Agency about any concluded contracts referred to in paragraph 1 of this Article.
- (3) The Agency shall set out in an ordinance the manner and time limits for submitting the notifications referred to in paragraph 2 of this Article.
- (4) It is allowed to the sales representatives to regulate by means of a contract with the AIFM the right to a remuneration payable by the AIFM for the services of marketing of the units of AIFs with a private offering to potential investors, which may correspond to the results of such marketing (collected funds).

Article 190

- (1) The persons referred to in Article 188 of this Act shall not market the units of an AIF in the period when the Agency, the Croatian National Bank, or some other competent authority, have withdrawn their authorisation in accordance with special regulations.
- (2) The persons referred to in Article 188 of this Act shall immediately inform the AIFM with which they concluded a marketing agreement about the withdrawn authorisation.
- (3) The Agency shall stipulate in an ordinance the conditions to be fulfilled by the persons referred to in Article 188 of this Act, and by natural persons who in these legal persons market the shares of AIFs.
- (4) The Agency shall set out in an ordinance the conditions relating to the manner of operation of the persons referred to in Article 188 of this Act, and the conditions relating to the reports on the marketing of units of AIFs.

Article 191

The persons referred to in Article 188 of this Act that are authorised to market the units of AIFs with a public offering, shall engage in this activity in the manner envisaged for the UCITS funds pursuant to the act regulating the establishment and operation of open-ended investment funds with a public offering.

Part Nine

Valuation of assets and units price of AIFs

Title 1

Section 1

Determining the value of assets of AIFs

Article 192

- (1) The AIFM shall determine the value of assets and liabilities for each AIF it manages when establishing the net asset value of the AIF per unit, i.e. the unit price.
- (2) The AIFM shall ensure that the net asset value per unit of the AIF is calculated and disclosed to the investors in accordance with this Act, regulations adopted pursuant to this Act, other relevant regulations, the AIF rules and prospectus where applicable.
- (3) The AIF rules lay down the manner in which the investors shall be informed about the valuation and calculation of the net asset value of the AIF.
- (4) The Agency may adopt an ordinance stipulating in more detail the valuation of assets of the AIF for individual types of AIFs and with respect to whether the units of AIFs are marketed through a public or private offering.

Responsibility for calculating the net asset value of the AIF, i.e. unit price

Article 193

- (1) The AIFM shall ensure that adopted accounting policies and valuation methods are in accordance with the provision of Article 192, paragraph 2 of this Act.
- (2) The valuation of assets of the AIF, in accordance with paragraph 1 of this Article, shall be performed by:
 - (a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM, or
 - (b) the AIFM itself, provided that the valuation task is functionally independent from the management of assets and the remuneration policy and other measures ensure that conflicts of interest are prevented and that undue influence upon the employees is prevented.
- (3) The AIFM shall adopt accounting policies, i.e. valuation methods for each AIF it manages when it is established, and submit them without delay to the AIF's depositary and an external valuer.
- (4) The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF. The depositary shall ensure that the AIFM or the external valuer calculates the net asset value of the AIF and the price of units in accordance with the adopted accounting policies or valuation methods and with the provision of Article 192 paragraph 2 of this Act.
- (5) The calculation of the value referred to in paragraph 2 of this Article shall be verified by the depositary in charge of the verification of the calculation.
- (6) Where an external valuer performs the valuation function, the AIFM shall demonstrate that:
 - (a) the external valuer is subject to mandatory professional registration,
 - (b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance

with Article 192, paragraphs 1, 2 and 3, and Article 195, paragraph 2, of this Act, and

- (c) the appointment of the external valuer complies with the requirements of Articles 64 through 67 of this Act.
- (7) The appointed external valuer shall not delegate the valuation function to a third party.
- (8) AIFMs shall without delay notify the appointment of the external valuer to the Agency, which may require that another external valuer be appointed instead, where the conditions laid down in paragraph 4 of this Article are not met.
- (9) Where the valuation function is not performed by an independent external valuer, the Agency may require the AIFM to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate, by an auditor, the costs of which shall be charged to the AIFM.
- (10) AIFMs are responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its investors shall, therefore, not be affected by the fact that the AIFM has appointed an external valuer.
- (11) Notwithstanding paragraph 10 of this Article and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.
- (12) The auditor of the AIF shall, during the audit of annual reports, audit the application of principles for determining the values contained in regulations adopted pursuant to this Act, in order to verify whether the calculated net asset values of the AIF and prices of units are correct, and whether management fees and other fees and charges stipulated by this Act, regulations adopted pursuant to this Act, rules of the AIF and prospectus where applicable, exceed the permitted amounts.
- (13) The Agency may adopt an ordinance specifying the following:
- a) the criteria concerning the procedures for the proper valuation of the assets and the calculation of the net asset value per unit of the AIF and disclosure requirements regarding the calculation of the net asset value of assets and the price of units,
 - b) additional professional guarantees the external valuer must be able to provide to effectively perform the valuation function.

Principles of establishing the AIF net asset value

Article 194

The calculation of the net value of AIFs shall ensure impartiality toward all investors of the AIF, irrespective of the type of AIF, and must promote the best interests of the investors.

Article 195

- (1) The rules applicable to asset valuation and calculation of the net asset value per unit of the AIF are laid down in the AIF rules and prospectus where applicable, unless otherwise prescribed by the Agency.
- (2) AIFMs shall ensure that, for each AIF they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with the adopted policies and valuation methods.
- (3) The valuation procedures used shall ensure that the assets are valued and the net asset value per unit of the AIF is calculated at least once a year.
- (4) If the AIF is of the open-ended type, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency in accordance with the AIF rules and prospectus where applicable.
- (5) If the AIF is of the open-ended type whose units are marketed in a public offering, the calculations of the net asset value and net asset value per unit shall be performed every day on which units of an open-ended AIF with a public offering were issued or redeemed.
- (6) If the AIF is of the closed-ended type, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF in accordance with the AIF rules and prospectus where applicable.
- (7) If the AIF is of the closed-ended type whose units are listed on a regulated market, the calculations of the net asset value and net asset value per unit shall be performed at least once a month at the time indicated in the AIF rules and prospectus.
- (8) The Agency may specify in an ordinance the criteria for the frequency of valuation carried out by AIFs both appropriate to the assets they invest in and their issuance and redemption policy.

Section 2

Determination of unit price

Article 196

- (1) In the initial collection of funds for open-ended AIFs, i.e. initial offering of units in an open-ended AIF, the price of issue is determined by the AIFM and indicated in the AIF rules and prospectus where applicable. The units are distributed to the investors in the manner prescribed by the AIF rules and prospectus where applicable.
- (2) The initial offering of units in a closed-ended AIF shall be subject to the provisions of the act regulating the capital market, and the initial offering of business stakes in closed-ended AIFs shall be subject to the provisions of the act regulating the establishment and operation of companies.
- (3) After expiration of the period for the initial collection, i.e. initial offering, determining the price of units in an open-ended AIF is specified in the AIF rules and prospectus where applicable.

- (4) Unless otherwise specified in the rules, and prospectus where applicable, of an open-ended AIF, any issues of units after the initial offering of units referred to in paragraph 1 of this Article shall be at the price which is, at any given moment, equal to the last determined valid net asset value per unit.

Unit price of open-ended AIFs

Article 197

- (1) Unless otherwise specified in the AIF rules and prospectus where applicable, issue and redemption of units in open-ended AIFs shall be performed during any given day at the price which, at the time of execution of the request for the issue or redemption of units is not determined, but may be determined in accordance with this Act and regulations adopted pursuant to this Act, i.e. under the AIF rules and prospectus where applicable. The determined price may be subject to charging and collecting entry and exit fees.
- (2) Unless otherwise specified in the AIF rules and prospectus where applicable, issue and redemption of units in an open-ended AIF for the price lower or higher than the price per unit (net asset value per unit) shall not be allowed.
- (3) Unless otherwise specified in the AIF rules and prospectus where applicable, the price of unit in an open-ended AIF shall be calculated using the following formula: net asset value of the AIF divided by the number of issued shares, where the:
 - (a) net asset value is calculated in accordance with the provisions of Article 192 of this Act,
 - (b) the number of issued units equals the number of units at the time of calculating the price, taking into account the issues and redemption concluded by the time of the last calculation of price until the time of calculating the new price.

Redemption of units in open-ended AIFs

Article 198

- (1) Redemption of units in open-ended AIFs is a legal transaction whereby the investor finally and unconditionally divests the units of the AIF, the AIFM repurchases them and such units are paid from the assets of the AIF.
- (2) The investor may divest all or part of its shares in the AIF and request such shares to be paid out from the assets of the AIF, and the AIFM is obliged to repurchase such shares on the conditions stipulated in the AIF rules and prospectus where applicable.
- (3) The investor is entitled to request the redemption of the units in the AIF provided it is authorised to freely dispose thereof.

In specie redemption

Article 199

- (1) A redemption *in specie*, or redemption by means of transfer of an appropriate percentage of each type of assets of an open-ended AIF at a total value which equals the value of the shares thus redeemed, shall be allowed, to the extent possible and feasible, in cases when the sale of assets of the AIF, necessary to meet the requirements for large value redemption, might compromise the position of other investors in the AIF, provided that the AIF rules, and prospectus where applicable, envisage the *in specie* redemption.
- (2) Where the redemption of shares referred to in Article 198 of this Act could compromise the position of other investors, a combination of the redemption *in specie* in paragraph 1 of this Article and redemption in Article 198 of this Act shall be allowed, provided that it is envisaged in the AIF rules and prospectus where applicable.

Replacement of units in open-ended AIFs

Article 200

The replacement of units in an open-ended AIF is a simultaneous redemption of units of one AIF and issue of units of another open-ended AIF managed by the same AIFM, by the same investor, for the funds paid to the investor on the basis of redemption of units in the AIF.

Section 3

Suspension of the issue and redemption of units in open-ended AIFs

Article 201

- (1) Redemption of units in an open-ended AIF may be suspended only if the AIFM and the depository consider that there are justified and strong reasons to suspend the redemption in the interest of unit-holders or potential unit-holders. The same reasons shall be the cause for a simultaneous suspension of any issue of units.
- (2) If the depository disagrees with the decision of the AIFM concerning the suspension of the issue and redemption of units in an open-ended AIF, it shall inform the Agency without delay, and the suspension must not be effected.
- (3) Any suspension of the issue and redemption of units shall be immediately notified by the AIFM to the Agency, the competent authority of the country where the AIF is established and the competent authorities in all countries where units are traded. If it fails to comply with this obligation, it shall be carried out by the depository.
- (4) Any suspension of the issue and redemption of units shall be published online by the AIFM, where applicable, during the whole period of suspension, and, in the case of units of the AIF with a public offering, without delay in one daily

newspaper with circulation in the entire or major part of the territory of the Republic of Croatia, and the country where units are traded.

- (5) The Agency may order the issue and redemption of units in an open-ended AIF if that is in the public interest or the interest of investors in the AIF.
- (6) The Agency may order the AIFM and the depositary to suspend temporarily the issue and redemption of units if there are justified and strong reasons to suspend the issue and redemption in the interest of unit-holders or potential unit-holders.

Article 202

- (1) Suspension of the issue and redemption of units referred to in paragraph 1 of the previous Article of this Act shall cease as soon as possible, or as soon as reasons for suspension no longer exist, and no later than within 28 days from the beginning of suspension, unless the Agency gives its express consent for the extension of the said time limit.
- (2) A notification of resuming business operation of an open-ended AIF shall be reported to the Agency immediately and published on the AIFM's website, where applicable, and, in the case of units of the AIF with a public offering, in one daily newspaper with regular circulation in the entire or major part of the territory of the Republic of Croatia, and in the country where units are traded.
- (3) The Agency shall adopt an ordinance stipulating the conditions and method for the receipt of the requests for acquisition or redemption of units, the conditions for determining the price of units, the time limits for the payment, and the conditions for resuming the operation after the suspension of the issue and redemption of units.

Section 4

Entry and exit fee of AIFs

Article 203

- (1) Upon the issue or redemption of units of the AIF, the investor shall be charged for the price of the unit and entry and exit fees, where applicable.
- (2) The fees referred to in paragraph 1 of this Article shall be shown separately from the price of the unit.

Article 204

- (1) No exit fee shall be charged in case of winding-up of an AIF, regardless of the reason for its winding-up.

Article 205

The Agency may adopt an ordinance stipulating the following:

- a) the duration and the conditions of the initial offering of units in open-ended AIFs,
- b) the procedure, the time limits and the execution of issue and redemption of units in open-ended AIFs,
- c) the suspension and resumption of the issue and redemption of units in open-ended AIFs,
- d) redemption *in specie*,
- e) the replacement of units in one open-ended AIF for units in another open-ended AIF managed by the same AIFM.

Publication of unit price and net asset value

Article 206

- (1) The determined price of the unit in an open-ended AIF with a public offering shall be published for each day of valuation on which an issue or redemption of units in an open-ended AIF is executed, not less than twice a year.
- (2) The publication referred to in paragraph 1 of this Article shall be made not only in electronic form on the AIFM's website but may also be published in one or several dailies with circulation in the entire or major part of the territory of the Republic of Croatia, and it shall be made available to any investor that requests the AIFM to do so over the telephone, by post or by e-mail, or made available on the premises of the authorised sales representative.

Part Ten

Notifying investors
The AIF rules
Annual reports
Other notices

Section 1

General provisions

Documents, notifications and other publications

Article 207

- (1) The AIFM shall:
 - 1. for each AIF it manages adopt the AIF rules pursuant to the provisions of Section 2 of this Part of the Act,
 - 2. for each AIF it manages adopt and publish audited annual reports pursuant to the provisions of Section 3 of this Part of the Act,

3. with respect to business operations of an open-ended AIF with a public offering, regularly inform the investors about other notifications stipulated by the provisions in Section 5 of this Part of the Act,
- (2) In the case of an closed-ended AIF, the annual general meeting or general meeting of the AIF shall adopt the statute or instruments of incorporation in accordance with the provisions of the act regulating the establishment and operation of companies and with the provisions of Section 5 of this Act.
- (3) Where the units of an open-ended AIF are marketed in a public offering, the AIFM shall draw up a prospectus of the AIF which shall be subject to the provisions of the act regulating the establishment and operation of open-ended investment funds with a public offering, as appropriate.
- (4) Where units of a close-ended AIF established in the form of a joint-stock company are marketed, the AIFM shall act in accordance with the provisions of the act regulating the capital market.
- (5) If not otherwise stipulated by this Act, the documents as notifications referred to in paragraphs 1, 2 and 3 of this Article shall be drawn up and published in the Croatian language.
- (6) The latest version of the documents and notifications referred to in paragraphs 1, 2 and 3 of this Article shall be published on the AIFM's website, where applicable.

Liability for damage of the AIFM for accurate and complete information

Article 208

- (1) The AIFM shall be liable in accordance with the criteria of presumption of guilt for the damage caused to unit-holders of the AIF, on account of:
 1. issue or redemption of units in the AIF,
 2. failure to redeem units in the AIF,if these actions or failure to take action the unit-holder committed based on the documents or notifications referred to in Article 207, paragraphs 1, 2 and 3 of this Act, containing inaccurate or incomplete data and information or misleading data and information.
- (2) The AIFM shall be liable in accordance with the criteria of presumption of guilt for the damage caused to unit-holders in the AIF on account of actions or failure to take actions on the part of the unit-holder committed based on inaccurate or incomplete data and information or misleading data and information contained in:
 1. other publications or notifications by the AIFM, or
 2. based on the data and statement transmitted to the unit-holder by the persons that in the name and on behalf of the AIFM offer the units in the AIF.

Section 2

The AIF rules

Article 209

- (1) The AIF rules are the basic document of the AIF which regulates all essential characteristics, rights and obligations of the AIF and, among other things, regulates the fiduciary relationship between the AIFM and the investor, and the AIF and the investor.
- (2) If the investor is not informed about the AIF rules at the time of concluding the investment contract, the provisions of the AIF rules shall not have effect on the investor, and the investment contract shall be null and void.
- (3) The AIF rules in the case of an open-ended AIF require the approval of the supervisory board of the AIFM, where appropriate, and the depositary, and in the case of a closed-ended AIF the approval of the supervisory board of the AIF, where appropriate, and the depositary.
- (4) In the case of an open-ended AIF with a public offering the AIF rules shall be enclosed with the prospectus of the AIF and constitute its integral part, save in the cases where the prospectus envisages the AIF rules to be supplied to the investor at its request, or it envisages a place in every country where the units of the AIF are traded and where the AIF rules shall be made available.
- (5) The AIF rules shall enter into force and become applicable after the Agency's approval.

Issuing approval of the AIF rules

Article 210

- (1) The Agency shall adopt an ordinance specifying the mandatory content of the request for the approval of the AIF rules, and it may lay down additional information to be enclosed with the request.
- (2) The Agency shall decide on the request for the approval of the AIF rules within two months from the date of receipt of the properly completed request. The request shall be considered to be properly completed if, in accordance with the provisions of the ordinance referred to in paragraph 1 of this Article, it contains all the prescribed information and all the required documents with the prescribed content are enclosed therewith.
- (3) If the applicant submitting the request for the approval of the AIF rules fails to eliminate the defects in the request within the period set by the Agency and in accordance with the received notification from the Agency, it shall be considered that it has withdrawn its request.
- (4) If, within two months from the receipt of the properly completed request, the Agency fails to pass a decision on the request for the approval of the AIF rules, the AIFM shall consider the approval to have been granted.

Article 211

The Agency may simultaneously decide on the following:

1. the application for establishing and for authorisation of an AIF,
2. the request for approval to market the units of AIFs to retail investors,
3. the request for approval of the prospectus of the AIF, where appropriate,
4. the request for approval of the AIF rules,
5. the request for approval of the changes of status of the AIF.

Content of the AIF rules

Article 212

(1) The AIF rules shall contain at least the following information, where applicable, formulated so as to be clear, simple and easily understood by the investors:

1. name of the AIF and type of the AIF,
2. the date of establishing the AIF and the time of duration of the AIF in case it was established for a fixed term,
3. the place where a copy of the rules and, where appropriate, of the prospectus and the statute or instruments of incorporation of the AIF and additional information on the fund may be obtained,
4. the lowest amount of financial resources that will be raised, and actions planned to be taken in case the lowest specified amount is not raised,
5. brief information about the tax legislation applicable to the AIF important for the investor, and details on whether the income deductions or capital gain paid to the investor by the AIF are calculated,
6. details about the main characteristics of units of the AIF, and in particular:
 - a) legal nature of the rights arising from the holdings (property rights, obligatory rights, personal or other),
 - b) indication of the possible categories of holdings,
 - c) the right arising from the units: the right to information (audited annual reports), the right to a share in the profits, the right to buy of the units of the AIF, that is the obligation to redeem units, the right to be paid out what's left of the AIF's liquidation estate and other rights arising from units,
7. the conditions which have to be met for a decision to be made on the winding-up of the AIF and the winding-up procedure of the AIF,
8. the procedures and conditions for issuing units, minimum individual investment in the AIF, the manner of subscription and issue of units, the initial unit price, procedures and conditions for the marketing of units, the manner and conditions for redemption and payment of units, and circumstances under which there may be a suspension of issue or redemption,
9. information about the manner and the frequency of payments of income or profit to unit-holders in the AIF,
10. a description of the investment strategy and objectives of the AIF,
11. a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, and any applicable limitations on investment,

12. the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF
13. a description of the procedures by which the AIF may change its investment strategy or investment policy, or both,
14. a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established,
15. the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights,
16. a description of any delegated management function by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations,
17. a description of how the AIFM is complying with the requirements of Article 18, paragraph 4, of this Act,
18. a description of the AIF's valuation procedure and of the pricing method for valuing assets, including the methods used in valuing hard-to-value assets, and the time for calculating the value of assets of the AIF, in accordance with the provisions of Part Nine of this Act,
19. the time, the method and the frequency of price calculation for the issue of the new or redemption of the existing units and the manner of publication of such prices, a description of the amounts and frequency of payments of permitted fees and costs of issue and redemption units,
20. a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors,
21. a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors, and a clear and unambiguous description of calculation of such fees,
22. a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or the AIFM,
23. the method of access to the latest audited annual reports,
24. where available, the historical performance of the AIF,
25. the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets,

- and information about any transfer of liability to the prime broker that may exist,
26. a description of how and when the information required under Articles 223, 224 and 225 of this Act will be disclosed,
 27. duration of the business year, and
 28. the date of publication of the prospectus,
 29. other information stipulated by this Act and regulations adopted pursuant to this Act.
- (2) The AIF rules shall also contain the information about any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article 235, paragraph 6, of this Act, and any changes relevant to the liability of the depositary.
- (3) Apart from the information referred to in paragraphs 1 and 2 of this Article, the AIF rules shall contain the following:
- a) the main rights, obligations and liability of the AIFM to the investor and the AIF, and the manner and conditions for their exercise and protection,
 - b) the main rights, obligations and liability of the AIFM to the depositary, of the depositary to the AIFM and investors, and of the investors to the depositary,
 - c) the main information about the terms and conditions of the AIFM and supervision of its business operations,
 - d) business objectives and strategy of the AIFM,
 - e) organisational structure of the AIFM with clearly indicated lines of responsibility,
 - f) the conditions for borrowing on the part of AIF,
 - g) procedures for indemnification of investors in the case of incorrect calculation of the value of units and breach of the investment limitation, in accordance with the provisions of Article 109, paragraph 5, of this Act,
 - h) the information about the conflicts of interest and the way they are managed, especially in relation to the potential conflicts of interest between the AIFM and/or persons associated with the AIFM, the conflicts of interest between AIFMs and conflicts of interest arising from other activities and tasks referred to in Article 13 of this Act, if performed by the AIFM,
 - i) a description of the procedure for the settlement of disputes arising between the AIFM And investors.
- (4) In the case of a closed-ended AIF, when the AIFM is obliged to draw up and publish the prospectus in accordance with the provisions of the act regulating the capital market, if the AIF rules are an integral part of the prospectus, they shall contain only that information referred to in paragraphs 1 through 3 of this Article which supplements the information already contained in the prospectus concerned.
- (5) In the case of the open-ended AIF with a public offering, when the AIFM is obliged to draw up and publish the prospectus in accordance with the provisions

of the act regulating the establishment and operation of investment funds with a public offering, if the AIF rules are an integral part of the prospectus, they shall contain only that information referred to in paragraphs 1 through 4 of this Article which supplements the information already contained in the prospectus concerned.

Publication of the AIF rules

Article 213

- (1) In the case of the AIF with a public offering, the publication of the prospectus and the AIF rules shall be subject to the provisions of the act regulating the establishment and operation of investment funds with a public offering, as appropriate.
- (2) In the case of the AIF with a private offering, after obtaining the approval of the Agency, the AIF rules and amendments thereto, shall not be made publicly available but are exclusively supplied to the investors of the AIF in the manner envisaged by the AIF rules.

Section 3

Reporting of AIFs

Business year of the AIF and application of the financial reporting standards

Article 214

- (1) Business year of the AIF is determined by the AIFM in accordance with the rules of each respective AIF, or its prospectus where applicable.
- (2) The AIF financial reports shall be subject to the regulations governing accounting and the International Financial Reporting Standards, unless otherwise stipulated by the Agency.
- (3) The Agency may lay down a chart of accounts for the AIF.

Reports of AIFs

Article 215

- (1) Annual reports of the AIF shall comprise annual financial reports and supplementary reports of the AIF which shall be prepared and submitted to the investors upon request.
- (2) The Agency shall lay down in an ordinance the structure and content of annual financial reports of AIFs and the manner of their delivery and publication.

- (3) The Agency shall lay down in an ordinance the structure, content, method and time limits for delivery of supplementary reports by the AIF which the AIFM shall prepare and deliver to the investors upon request.
- (4) Apart from the reports referred to in paragraphs 2 and 3 of this Article, the Agency may adopt an ordinance stipulating the structure, content, manner and time limits of delivery for other reports on the AIF which the AIFM is obliged to prepare for the Agency's purposes.

Audit of reports of AIFs

Article 216

- (1) Annual reports of AIFs referred to in Article 215 of this Act shall be audited by an auditor in the manner and on conditions stipulated in the regulations governing accounting and audit, and meeting professional auditing standards, unless otherwise stipulated by this Act and regulations adopted pursuant to this Act.
- (2) The Agency may specify in an ordinance the scope and content of the audit, auditing procedures and auditor's report on the completed audit of financial reports of the AIF or other reports of the AIF.
- (3) The Agency may request the auditor additional explanation in relation to the audited annual reports or other audited reports of the AIF.
- (4) The same auditing firm may audit not more than 7 successive annual reports on the same AIF.
- (5) If the Agency establishes that the audit of annual reports of the AIF is not carried out or that the auditor's report is not prepared in accordance with this Act, regulations adopted pursuant to this Act, the regulations governing accounting and audit functions and professional auditing standards, or if supervision of the AIF's business operation shows or in some other way establishes that the audit and auditor's report on audit reports of the AIF is not founded on objective facts, it can reject the auditor's report and request the AIFM that the audit be carried out by authorised auditors from another auditing firm, at the cost of the AIFM.

Time limits for preparing audited annual reports of AIFs

Article 217

Audited annual reports of AIFs shall be submitted to the Agency within four months following the end of the business year in the case of AIFs with a public offering, and within six months following the end of the business year in the case of AIFs with a private offering.

Consolidated reports of AIFs

Article 218

- (1) The AIF which is obliged to prepare consolidated annual reports in accordance with the regulations governing accounting and International Financial Reporting Standards shall be subject to the provisions of this Section of the Act, as appropriate.
- (2) The Agency may lay down:
 - a) the obligation to prepare consolidated annual reports regardless of the provisions of paragraph 1 of this Article,
 - b) the scope of consolidation and the method and frequency of preparing consolidated reports.

Section 4

Delivery of documents and reports to investors

Article 219

Before concluding the investment contract, the AIFM and any person that in the name and on behalf of the AIFM trades the units of an open-ended EU AIF or units of an open-ended non-EU AIF in the Republic of Croatia, shall make available to the investor free of charge the AIF rules and, at its request, audited financial reports of an open-ended AIF for the previous period, if any, and all documentation as stipulated in the AIF rules, prospectus where applicable or the provisions of this Act and regulations adopted pursuant to this Act.

Article 220

- (1) The AIFM shall submit the AIF rules, the prospectus of the AIF, if any, and any changes thereto, including audited annual reports of the AIF, to the competent authorities of the country where the AIF is established.
- (2) At the request of the competent authorities of the country where the AIFM is established, the AIFM shall supply the documents referred to in paragraph 1 of this Article these authorities as well.

Availability of the rules, prospectus and audited annual report

Article 221

- (1) In all places where the units of an open-ended AIF are marketed, the AIF rules and the prospectus of the AIF, if any, and the latest audited financial reports, if any, shall be made available to the investors.
- (2) Access to the documents referred to in paragraph 1 of this Article shall be made available to the investors in cases when the marketing of units of an open-ended AIF, outside of the points of sale, are effected by the staff of the AIFM or another entity authorised by the AIFM.

- (3) The investors shall, at their request and free of charge, be supplied with the rules of the AIF, prospectus of the AIF where applicable and the latest audited annual reports.
- (4) If the units of an open-ended AIF with a public offering are marketed, such marketing shall be subject to the provisions on marketing UCITS funds in the act regulating the establishment and operation of open-ended investment funds with a public offering.

Method of delivery of documents and reports

Article 222

- (1) An open-ended AIF rules shall be delivered to investors in the manner determined in the AIF rules.
- (2) In the case of an open-ended AIF with a public offering, the rules and the prospectus of the AIF shall be supplied to the investor in the manner specified for UCITS funds in the act regulating the establishment and operation of open-ended investment funds with a public offering.
- (3) The latest audited annual reports shall be supplied to the investor in the manner envisaged by the AIF rules, and where the AIF rules do not envisage it, in the manner envisaged for supplying the prospectus, as described in paragraph 2 of this Article.

Section 5

Other notices and notifications to investors

Article 223

- (1) AIFMs shall, for each AIF that they manage and for each AIF they market, periodically disclose to investors:
 - (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature,
 - (b) any new arrangements for managing the liquidity of the AIF,
 - (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.
- (2) AIFMs managing or marketing AIFs employing leverage shall, for each such AIF disclose, on a regular basis:
 - (a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right to reuse collateral or any guarantee granted under the leveraging arrangement,
 - (b) the total amount of leverage employed by that AIF.
- (3) The Agency may adopt an ordinance, depending on the type of the AIF, specifying the disclosure of information referred to in this Article, including the frequency of the disclosure of information referred to in this Article.

Disclosure of legal and business transactions

Article 224

- (1) The AIFM shall, where possible and appropriate, make public on its website any legal and business transaction in relation to the AIFM and the AIF with a public offering it manages, in the case of transactions which could have an impact on business operations of the AIF with a public offering.
- (2) The AIFM shall notify without delay the Agency about legal and business transactions referred to in paragraph 1 of this Article.
- (3) The information referred to in paragraph 1 of this Article in relation to closed-ended AIFs listed on a regulated market shall also be subject to the provisions of the act regulating the capital market.

Delivery of additional information

Article 225

At the request of the investor, the AIF shall, without delay, supply any additional information concerning the limits applied in the risk management of AIFs managed by the AIFM, procedures used for this purpose, and about any changes in the risk and yield on the basic types of financial instruments in which the assets of the AIF are invested.

Section 6

Notifying investors in the Republic of Croatia by the EU AIFM and non-EU AIFM

Providing information to investors in the Republic of Croatia

Article 226

- (1) The EU AIFM, or its legal representative, shall supply to investors in the Republic of Croatia, in relation to the business of the EU AIF whose units are marketed in the Republic of Croatia, any documents and information it provides to the investors in the country where the AIF is established.
- (2) The non-EU AIFM, or its legal representative, shall supply to investors in the Republic of Croatia, in relation to the business of the non-EU AIF whose units are marketed in the Republic of Croatia, any documents and information it provides to the investors in the country where the AIF has its registered office or where it was established.

- (3) Notwithstanding the provisions of paragraphs 1 and 2 of this Article, the documents and information on the EU AIF and non-EU AIF shall be supplied, or made available to the investor that purchased units of such AIFs in the Republic of Croatia, even after the trading of units of such AIFs stops, as long as there are unit-holders of these AIFs who purchased their units in the Republic of Croatia.
- (4) The EU AIFM and non-EU AIFM shall provide to the investors all documents and information referred to in paragraphs 1 and 2 of this Article in the manner envisaged by this Act for supplying documents and information in respect of an AIF.
- (5) Notwithstanding the provisions of paragraph 4 of this Article, the frequency of publication of unit prices of an EU AIF or non-EU AIF, shall be subject to the applicable law shall be of the Member State where the AIF has its registered office or a third country where the AIF has its registered office.
- (6) The documents and information in respect of an EU AIF or non-EU AIF referred to in paragraphs 1 and 2 of this Article shall be made available to investors in the Republic of Croatia or supplied no later than on the day such documents and information were made available or supplied to investors in the home Member State where the AIF is established or a third country where the AIF is established.

Language of the document

Article 227

- (1) EU AIF rules or prospectus where applicable or non-EU AIF rules or prospectus where applicable shall be made available to investors in the Republic of Croatia in the Croatian language.
- (2) The remaining documents and information in respect of an EU AIF or non-EU AIF shall be made available or supplied to investors in the Republic of Croatia in the Croatian or the English language.
- (3) An EU AIFM or non-EU AIFM shall be responsible for authenticity and accuracy of translated documents and information referred to in paragraphs 1 and 2 of this Article.

Part Eleven

Depositary

Section 1

General provisions

Article 228

- (1) The assets of the AIF shall be entrusted to the depositary for safe-keeping and administration.
- (2) The depositary of an AIF established in the Republic of Croatia may be one of the following:
 1. a credit institution having its registered office in the Republic of Croatia and holding authorisation from the Croatian National Bank to provide the service of safe-keeping and administration of financial instruments for the account of clients, including custody and services related thereto, for example management of financial resources and security of payment instruments,
 2. a branch of an EU credit institution, established in the Republic of Croatia in accordance with the provisions of the act regulating the establishment and business operations of credit institutions, holding authorisation from the competent authority of that member state to provide the service of safe-keeping and administration of financial instruments for the account of clients, including custody and services related thereto, for example management of financial resources and security of payment instruments,
 3. a branch of a non-EU credit institution, established in the Republic of Croatia in accordance with the provisions of the act regulating the establishment and business operations of credit institutions, holding authorisation from the Croatian National Bank to provide the service of safe-keeping and administration of financial instruments for the account of clients, including custody and services related thereto, for example management of financial resources and security of payment instruments.
- (3) The depositary shall perform the tasks specified in this Act based on a written contract on performing depositary functions concluded with the AIFM.
- (4) The depositary shall be prepared and capable of fulfilling all organisational requirements and conditions necessary to perform depositary functions pursuant to the provisions of this Act.
- (5) Depositary managers for the AIF shall have adequate experience. Depositary managers shall be considered to be the persons responsible for the operation of the organisational unit performing depositary functions within the credit institution or branch of the credit institution or the persons that can affect the business policy in depositary operation of the credit institution or branch of the credit institution.
- (6) No entity shall act as both the AIFM and the depositary.
- (7) A prime broker acting as a counterparty to an AIF shall not act as depositary for that AIF, unless he has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker and unless he properly identifies the potential conflicts of interest, manages, monitors and discloses them to the investors of the AIF.
- (8) Delegation of custodial services by the depositary to such prime broker is allowed if the relevant conditions for delegation are met in accordance with the provisions of this Act.
- (9) The person appointed as depositary of the AIF shall not be appointed by an external valuator for that AIF, unless he has functionally and hierarchically

separated the performance of its depositary functions from its tasks as prime broker and unless he properly identifies potential conflicts of interest, manages, monitors and discloses them to the investors of the AIF.

- (10) Each AIF can have appointed only one depositary.
- (11) The depositary shall act solely in the interest of the investors of the AIFs for which it performs depositary functions.

Selection and replacement of the depositary

Article 229

- (1) Any selection and replacement of the depositary by the AIFM shall be subject to the approval of the Agency.
- (2) The Agency shall lay down in an ordinance the procedure, conditions and method for the selection of the depositary and the documents to be enclosed with the request for approval referred to in paragraph 1 of this Article.
- (3) The Agency may order the AIFM at any time to replace the depositary, and especially in the case when:
 - 1. the depositary, according to the Agency's assessment, fails to fulfil its duties in accordance with the assumed obligations and/or provisions of this Act,
 - 2. there are circumstances casting doubt concerning the capability of the depositary to fulfil its duties properly, timely and in a quality manner, in accordance with the assumed obligations and/or provisions of this Act,
 - 3. the Agency has grounds for a reasonable doubt that the AIFM and the depositary act in collusion detrimental to the interests of the investors of the AIF,
 - 4. there are circumstances which objectively indicate there was a violation of the control obligations of the depositary and main obligations of the AIFM.

Section 2

Duties and obligations of the depositary

Article 230

- (1) A depositary shall perform the following tasks for the AIF, where applicable, considering the type of assets in which the AIF is investing:
 - a) safe-keeping and/or keeping records of assets of the AIF,
 - b) continually monitor the AIF's cash flows,
 - c) maintains accounts for the AIF's assets and separate the assets of each respective AIF from the assets of other AIFs, assets of the depositary and any another clients of the depositary, and the AIFM,

- d) ensures that the issue, redemption and payments of the units effected by or on behalf of the AIF or by the AIFM, are carried out in accordance with this Act, legal provisions adopted on the basis of this Act, the AIF rules and the AIF prospectus where appropriate,
 - e) controls that the AIF's assets are invested in accordance with the proclaimed objectives and provisions of the AIF rules, the AIF prospectus, where appropriate, this Act, legal provisions adopted on the basis of this Act and other regulations in force,
 - f) confirms that the calculation of the net asset value of AIFs and individual unit price of AIFs is disclosed in accordance with the adopted accounting policies and valuation methods, this Act, legal provisions adopted on the basis of this Act, regulations in force, the AIF rules and the AIF prospectus where appropriate,
 - g) notifies the Agency and the AIFM of the conducted procedure of calculating net asset value of the AIF and of the balance on the business purpose transaction account,
 - h) executes the AIFM's orders in relation to the transactions with the financial instruments and other assets comprising the AIF's portfolio, provided such orders are not contrary to this Act, legal provisions adopted on the basis of this Act, the AIF rules and the AIF prospectus where appropriate,
 - i) informs the AIFM about the corporate actions related to the AIF's assets which were entrusted to it and executes its orders arising therefrom,
 - j) collect income and other rights due to the benefit of the AIF, attaching to its assets,
 - k) ensures that AIF's income is used in accordance with this Act, legal provisions adopted on the basis of this Act, the AIF rules and prospectus, where appropriate, and that all the costs paid by the AIF are compliant with the conditions set out in its rules and prospectus, where appropriate, this Act, legal provisions adopted on the basis of this Act and other regulations,
 - l) performs other tasks envisaged in the contract on performing depositary functions,
 - m) report to the Agency any serious or grave infringements of this Act legal provisions adopted on the basis of this Act and the contract on performing depositary functions by the AIFM,
 - n) enables access to and exchanges information with the auditors and other authorised persons with access in relation to the information and accounts concerning the AIF and its assets.
- (2) The Agency may lay down in an ordinance the tasks of the depositary for individual types of assets in which the AIF is investing.

Record of infringement and notifications of the depositary concerning the issues
important for the supervision

- (1) At the request of the Agency, the depositary shall supply to the Agency any notices and information concerning all issues important for supervising the functions of the depositary of AIFs.
- (2) When the depositary, in the course of performing its duties and obligations referred to in Article 230 of this Act, establishes irregularities and/or violations resulting from the AIFM's activity, which present breach of the AIFM's obligations specified by this Act, regulations adopted pursuant to this Act or rules, or, where applicable, the prospectus of the AIF, it shall without delay warn the AIFM in writing thereof and request an explanation for such circumstances.
- (3) If the AIFM, following the depositary's warning referred to in paragraph 1 of this Article, continues violating its obligations, the depositary shall without delay inform the Agency thereof.
- (4) The Agency may specify in an ordinance the manner and time limits for notifications about the irregularities referred to in paragraphs 2 and 3 of this Article.

Manner of safe-keeping of the assets of AIFs

Article 232

- (1) The assets of the AIF shall be entrusted to the depositary for safe-keeping, as follows:
 1. for the financial instruments that can be entrusted to custody:
 - a) the depositary shall keep in custody all financial instruments that can be registered in a dematerialised securities account
 - b) financial instruments which cannot be registered in a dematerialised securities account and materialised financial instruments physically delivered to the depositary shall be registered in other adequate accounts.
 2. Unplaced financial resources shall be held on business purpose transaction accounts which cannot be object of enforcement proceedings related to claims towards the depositary or AIFM.
 3. for other assets:
 - a) the depositary shall verify and confirm the ownership of the AIF of such assets and it shall maintain a record of those assets,
 - b) the verification and confirmation whether the AIF holds the ownership of the assets shall be based on the information or documents provided to the depositary by the AIF and, where applicable, on public registers and records.
- (2) For the purpose of safe-keeping, depositary shall insure that all financial instruments and financial resources referred to in paragraph 1 items 1 and 2 of this Article in his bookkeeping records are maintained on separated accounts in a manner proscribed by the act regulating capital markets and legal provisions adopted on the basis of mentioned act in part related to clients asset protection, which are opened on behalf of AIF or AIFM but for account of AIF which he manages in a manner that at any time is possible to clearly determine and distinguish assets belonging to AIF.

- (3) The depositary shall keep his records up to date.
- (4) The Agency may adopt an ordinance additionally stipulating the manner of safe-keeping AIFs assets with depositaries.

Separation of the business of the depositary and asset control of AIFs

Article 233

- (1) Activities of safe-keeping and administration, and other activities performed by the depositary for the AIFM shall be separated, in terms of organizational structure, from the other activities performed by the depositary in accordance with the act regulating the establishment and business operations of credit institutions.
- (2) The assets of the AIF shall be safe-guarded and controlled by the depositary so that the assets belonging to the AIF can be clearly separated from the assets of the depositary and depositary's other clients.
- (3) Where the depositary was entrusted with the assets of the AIF for safe-keeping, the depositary shall apply the relevant measures to protect ownership and other rights of the AIF, especially in the case of illiquidity of the AIFM and the depositary.
- (4) The depositary and sub-depositary referred to in Article 241 of this Act shall not use the asset of the AIF referred to in items 1 and 3 paragraph 1 Article 232 of this Act for transactions for their own account or for obtaining any other benefit for themselves, their founders, employees or in any other purpose except for the benefit of investors.
- (5) The asset of the AIF referred to in items 1 and 3 paragraph 1 Article 232 of this Act shall not be included in the assets, or in liquidation or bankruptcy estate of depositary or sub-depositary referred to in Article 241 of this Act, and cannot be object of enforcement proceedings related to claims towards depositary or sub-depositary referred to in Article 241 of this Act.
- (6) Where the assets of the AIF referred to in items 1 and 3 paragraph 1 Article 232 of this Act are placed with the subdepository referred to in Article 241 paragraph 2 of this Act, the same level of investor asset protection as the one referred to in paragraph 5 of this Article shall be ensured.

Fulfilling depositary's obligations

Article 234

- (1) In performing its tasks and obligations envisaged by this Act and contract on performance of depositary functions, the depositary shall act with due professional care and diligence, in accordance with the principle of good faith, independently from the AIFM, its founder or the person possessing qualifying holdings and solely in the interests of the investors of AIFs for which it performs depositary functions.

- (2) The depositary shall execute the orders and instructions of the AIFM solely if they comply with the provisions of this Act, the AIF rules and the AIF prospectus where appropriate.
- (3) When executing the tasks, obligations and duties of the depositary envisaged by this Act and contract on performance of depositary functions, the depositary shall, by means of its organisational structure and internal acts, avoid the conflicts of interest between the depositary, its founder and/or the person possessing qualifying holdings of the depositary and the AIF, the investor of the AIF and the AIFM. Supervision of the depositary's functions in accordance with this provision shall be the responsibility of the depositary's body which is independent from the depositary's management.
- (4) The managers and other employees of the depositary, its procurators and proxies shall not be employed by the AIFM.
- (5) The members of the management and other staff of the AIFM, its procurators and proxies shall not be employed by the depositary.

Article 235

- (1) The depositary shall be liable to the AIFM or to the investors of the AIF, for the loss caused by the depositary or a third party to whom the custody of financial instruments has been delegated.
- (2) In the case of loss of a financial instrument which is held in custody, the depositary shall return a financial instrument of identical type or the corresponding amount to the AIF's assets without undue delay.
- (3) The depositary shall not be liable for the loss of financial instruments which are held in custody if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.
- (4) In case of loss of financial instruments held in custody by a third party to whom this function has been delegated pursuant to the provisions of this Act, the depositary may discharge itself of liability:
 - a) if all requirements for the delegating set out in Article 241, paragraph 1, of this Article are met;
 - b) if there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party which refers to loss of financial instrument or for the depositary to make such a claim on their behalf; and
 - c) if there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, which expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.
- (5) The depositary shall be liable for the loss suffered by the AIFM or the investors of the AIF if the loss is a result of intentional failure or negligence in performing other obligations of depositary.

- (6) Where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in Article 241, paragraph 1, item d), indents 2 and 3 of this Act, the depositary can discharge itself of liability to the AIFM and the investors of the AIF provided the following conditions are met:
- a) the AIF rules or the prospectus of the AIF, where applicable, expressly allow for such a discharge under the conditions set out in this paragraph,
 - b) the investors of the AIF have been duly informed of that discharge and of the circumstances justifying the discharge,
 - c) the AIFM instructed the depositary to delegate the custody of such financial instruments to a local entity,
 - d) there is a written contract between the depositary and the AIFM, which expressly allows such a discharge,
 - e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIFM and the investor to make a claim against that local entity in respect of compensating the loss and assets.

Audit of performance of depositary functions

Article 236

- (1) The performance of depositary functions shall be audited once a year by an auditor.
- (2) The auditor referred to in paragraph 1 of this Article shall be an authorised auditor from and auditing firm which audits the financial reports of the depositary, who must have adequate experience in respect of the subject of the audit.
- (3) The depositary shall appoint the auditing firm within the period set out in the regulations governing audit.
- (4) The depositary shall immediately inform the Agency about the selected auditing company.
- (5) Within 30 days from the receipt of the notification referred to in paragraph 4 of this Act, the Agency may order the depositary to appoint a new auditing firm if it considers this necessary to achieve the purpose of the audit.
- (6) After receiving the auditor's report, the depositary shall without delay submit the auditor's report to the Agency.
- (7) The Agency may lay down in an ordinance the scope and content of the auditor's report in respect of the completed audit of the performance of depositary functions.
- (8) If the Agency establishes that the audit of the performance of depositary functions has not been carried out or that the auditor's report has not been prepared in accordance with this Act, regulations adopted pursuant to this Act, the regulations governing accounting and audit functions and professional auditing standards, or if supervision of the depositary shows or in some other way establishes that the audit and auditor's report on the performance of depositary functions is not founded on objective facts, it can reject the auditor's report and request the

depository that the audit be carried out by authorised auditors from another auditing firm, at the cost of the depository.

Business secret

Article 237

The depository shall safeguard as business secret the data concerning the unit-holders, their holdings, and payments and redemptions that were made available to it in accordance with the provisions of this Act.

Section 3

Liability of the depository

Article 238

- (1) The depository shall be liable to the AIFM or the investors of the AIF for the loss suffered if it fails to perform or incorrectly performs the tasks envisaged by the contract on performance of depository functions, this Act, the AIF rules, the AIF prospectus, where appropriate, including the case where the depository delegates to third parties its functions referred to in paragraph 232 of this Act.
- (2) The depository shall be liable to the AIFM and the investor for the loss of the assets of the AIF resulting from the depository's negligence in the performance of depository functions.
- (3) The depository shall not be liable for the loss as a result of *force majeure*.

Making claims and exercising the rights on the part of the depository and against the depository

Article 239

- (1) The depository shall be entitled and obliged to, on its own behalf, make claims and exercise the rights of the investors against the AIFM, on account of infringement of the provisions of this Act, the AIF rules or the prospectus of the AIF, where applicable. This shall not prevent the investors from making individual and independent property-law claims against the AIFM.
- (2) The depository shall return to the assets of the AIF all that was disbursed from such assets without a valid legal basis.
- (3) The AIFM shall be authorised and obliged, on its own behalf, to exercise the rights of the investor against the depository.
- (4) In case that the AIFM fails to bring action referred to in paragraph 3 of this Article within 60 days from the infringement of this Act, the AIF rules or the prospectus of the AIF, where applicable, the investors shall have the right to bring action directly.

Disbursement of funds from the AIF's accounts

Article 240

- (1) The depositary shall disburse from the AIF's account to the AIFM only those funds that are designated for disbursement under the AIF rules or the prospectus of the AIF, where applicable.
- (2) The depositary may pay remuneration for the performed depositary functions from the AIF's account only with the approval of the AIFM, in accordance with the provisions of this Act.

Section 4

Delegation of depositary tasks to third parties

Article 241

- (1) The depositary may delegate to third parties (sub-depositary) the functions referred to in Article 232 of this Act, subject to the following conditions:
 - a) the tasks and duties are not delegated with the intention of avoiding the requirements of this Act,
 - b) the delegation is carried out on account of objective reasons and is solely aimed at increasing the efficiency in the performance of these tasks and duties,
 - c) the depositary shall prove it has exercised all due skill, care and diligence in the selection of the third party and that the depositary shall exercise all due skill, care and diligence in the on-going monitoring of delegated tasks,
 - d) the depositary shall prove that the third party meets the following conditions at all times during the performance of the delegation agreement:
 - has the organised internal structure and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF which have been entrusted to it for safe-keeping pursuant to the provisions of Article 232 of this Act,
 - the party is subject to effective prudential supervision and supervision under the provisions of the applicable law (including minimum capital requirements) in relation to the delegation of the custody tasks referred to in Article 232 paragraph 1 item 1 of this Act,
 - the party is subject to an external periodic audit to ensure and confirm that the financial instruments entrusted to it for custody are in its possession and/or control, relative to the delegation of custody tasks referred to in article in Article 232 paragraph 1 item 1 of this Act,

- the party segregates the assets of the depositary's clients from its own assets in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary,
 - the party does not make use of the assets entrusted to it for safe-keeping without the prior consent of the AIFM and prior notification to the depositary,
 - complies with the general obligations and prohibitions referred to in Articles 233 and 234 of this Act.
- (2) Where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities in the country concerned satisfy the delegation requirements laid down in paragraph 1 of this Article, the depositary may delegate its functions to such a local entity despite noncompliance with the said conditions provided that:
- a) it is required and to the extent required by the law of the third country,
 - b) no local entities satisfy the delegation requirements referred to in paragraph 1 of this Article,
 - c) the investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment,
 - d) the AIFM has instructed the depositary to delegate the custody of such financial instruments to such local entity.
- (3) The third party may, in turn, sub-delegate those delegated functions only if the conditions in this Article are met.
- (4) The third parties to which the depositary delegated the tasks and duties referred to in Article 232 of this Act may only be national or foreign credit institutions or foreign custodians authorised by the competent authority for the performance of the tasks of safe-keeping and administration of financial instruments for the account of clients, including custody tasks and services related thereto, such as cash/collateral management, prescribed by the act regulating the capital market.
- (5) The depositary shall be liable to the AIFM and all investors for the selection of the third party.
- (6) Within the meaning of Article, the services provided by securities settlement systems as specified in the provisions of the act regulating settlement finality in payment and financial instruments settlement systems or the law of the Member State whereby Directive 28/26/EC is transposed into its legal system, or similar provisions in the regulations of a third country, shall not be considered a delegation of depositary functions referred to in paragraph 1 of this Article.

Article 242

- (1) The depositary which delegated the tasks referred to in Article 232 of this Act to third parties shall immediately submit to the Agency:
- a) any agreements concluded with third parties,
 - b) a list of all third parties with which it concluded the delegation agreement, no later than by 31 March each year.

- (2) The depositary shall also submit the list referred to in paragraph 1, item b), of this Article to the AIFM and they shall publish it without delay on their respective website, where applicable.

Article 243

The depositary which delegated the tasks referred to in Article 232 of this Act to third parties shall:

- a) effectively, continuously and with due diligence supervise the performance of the delegated tasks, and especially of potential risks relating to the safe-keeping of the assets of the AIF in the circumstances which could alter such risks,
- b) without delay inform the Agency and the AIFM about the failure to perform and/or irregular performance of the obligation and negligence of the third party which could have a significant impact on the assets of the AIF entrusted for custody.

Article 244

Where the depositary has delegated the tasks referred to in Article 232 of this Act to third parties under the AIF rules or the prospectus, where applicable, the following information shall be listed in the part pertaining to the depositary:

1. agreements concluded between the depositary and third parties that could affect their liability to the investors (for example, the selected applicable law),
2. a description of the risks which the delegation could have on the assets of the AIF, especially in the case of failure and/or irregular performance of the obligation and negligence on the part of the sub-depositary.

Section 5

Replacement of the depositary

Article 245

- (1) The depositary intending to stop performing depositary functions or cancel the depositary agreement for the assets of the relevant AIF, shall at least two months before the planned termination of the activity, i.e. termination of the agreement, send a written notification about its intention to the Agency and the AIFM for which it performs depositary functions.
- (2) In case the AIFM does not conclude the depositary agreement with another depositary within two months following the receipt of the notification in paragraph 1 of this Article, the depositary shall, if possible, continue providing depositary functions for further 30 days.

- (3) Where the depositary terminates business activity as depositary, or where in the period of two months, i.e. in the additional period of 30 days, no depositary agreement is concluded between the AIFM and another depositary, the AIFs for which the depositary performed depositary functions shall be wound-up, pursuant to the provisions of Part Fifteen of this Act.

Article 246

- (1) The AIFM may replace one depositary with another with the approval of the Agency and on conditions stipulated by this Act.
- (2) The former depositary shall, within three days following the receipt of the AIFM's request for the termination of the depositary agreement, notify the Agency of whether there are, to its best knowledge, any unresolved infringements of this Act or other regulations.

Article 247

In the case of termination of the depositary agreement, the depositary shall transfer all the assets of the AIF for safe-keeping and administration to another depositary with which the AIFM concludes a depositary agreement, and shall also deliver the books of accounts, records and all other documents and materials significant for the business operations of the AIF for which it formerly provided depositary functions, in a written or electronic form, depending on the method of keeping the foregoing data.

Section 6

Article 248

- (1) The depositary shall, at the request of the competent authorities in the country where the AIF has its registered office, supply all data and information which it obtained, collected and learned in the course of performance of the tasks specified in this Act.
- (2) If the country where the AIFM has its registered office is not the country where the AIF has its registered office, the depositary shall conclude a special written agreement with the AIFM regulating the flow of information necessary to perform depositary functions referred to in Articles 230 and 231 of this Act and other acts and regulations applicable to the depositary in the country where the AIF has a registered office.

Section 6

Article 249

- (1) The written agreement referred to in Article 228 paragraph 3 and Article 248 paragraph 2 of this Act, concluded between the depositary and the AIFM shall be subject to the law of the country where the AIF has its registered office.
- (2) The Agency may stipulate in an ordinance the content of the written agreement referred to in Article 228 paragraph 3 and Article 248 paragraph 2 of this Act.

Article 250

- (1) The Agency shall withdraw the issued approval of the selection of the depositary in the following instances:
 - a) if the approval was granted based on untruthful, inaccurate or misleading information, or in any other irregular way,
 - b) if the depositary fails to meet the condition on which the authorisation was granted,
 - c) upon opening bankruptcy proceedings in the depositary,
 - d) upon opening of the winding-up procedure of the depositary,
 - e) if the Agency establishes that the depositary fails to meet its duties in accordance with the assumed obligations and/or provisions of this Act, especially concerning delegated tasks, and where withdrawal of the approval is more appropriate than replacement of the depositary referred to in Article 229, paragraph 3, of this Act,
 - f) if there are circumstances casting doubt on the capacity of the depositary to perform its functions in due time and in a quality manner, in accordance with the assumed obligations and/or provisions of this Act, especially concerning the delegated functions, and where withdrawal of the approval is more appropriate than replacement of the depositary referred to in Article 229, paragraph 3, of this Act,
 - g) if the depositary systematically and/or seriously violates the provisions of this Act or the AIF rules or, where applicable, the prospectus of the AIF,
- (2) The Agency may lay down in an ordinance the actions to be taken by the AIFM and the depositary in the cases where the depositary's authorisation or the approval of the selected depositary was withdrawn.

Part Twelve

Establishment of AIFs

Fees of AIFs

Derogation from limitations on investments

Title 1

Section 1

Establishment of AIFs

Article 251

- (1) Approval of the Agency shall be required to establish an AIF.
- (2) The application for the establishment and authorisation of the AIF, on behalf of the AIF, shall be submitted to the Agency by the AIFM. The application shall comprise:
 1. name of the AIF, its investment strategy and type of AIF in accordance with the ordinance referred to in Article 7, paragraph 8, of this Act,
 2. the AIF rules and prospectus, the statute and instruments of incorporation of the AIF, where applicable,
 3. information about the risks associated with the AIF it intends to manage,
 4. information about the master AIF, if the AIF concerned is a feeder AIF,
 5. the policy of the AIFM concerning the use of leverage, where applicable,
 6. the depositary agreement concluded between the AIFM and the depositary,
 7. information about the auditing firm, and
 8. evidence that the AIFM meets the organisational requirements referred to in Articles 47 through 62 of this Act.
- (3) The Agency shall specify in an ordinance the mandatory content of the application for the establishment and authorisation referred to in paragraph 2 of this Article, and it may lay down additional information to be enclosed with the application.
- (4) The Agency shall decide on the application within two months of receiving a complete application. The application shall be deemed complete if, in accordance with the provisions of the ordinance referred to in paragraph 3 of this Article, it contains all the set out information and all the necessary documentation with the prescribed content is enclosed with it.
- (5) If the applicant referred to in paragraph 2 of this Article fails to eliminate any defects in the application in the time limit set by the Agency in accordance with the notification supplied by the Agency, it shall be considered that it has withdrawn its request.
- (6) Where the application referred to in paragraph 2 of this Article is submitted by an EU AIFM or a non-EU AIFM, the Agency shall, for the purpose of verifying the compliance of business operations of the AU AIFM or non-EU AIFM in the Republic of Croatia, request the competent authorities of the home Member State of the AIFM or Member State of reference of the AIFM additional information whether the authorisation granted to the AIFM for the purpose of management of AIFs also includes the type of AIFs which are the subject of the application for authorisation.

AIFMs intending to market AIFs to retail investors

Article 252

- (1) The AIFM intending to market to retail investors in the Republic of Croatia the units of AIFs shall obtain prior approval from the Agency.

- (2) The Agency shall in each respective case establish whether the relevant AIF may be considered the type of AIF whose units, in accordance with the ordinance referred to in Article 7, paragraph 8 of this Act, may be marketed to retail investors in the Republic of Croatia.
- (3) The procedure for issuing the approval referred to in paragraph 1 of this Article and the required documentation shall be laid down by the Agency in an ordinance.

Rejection of the application for the establishment and authorisation of the AIF

Article 253

- (1) The Agency shall reject the AIFM's application for the establishment and authorisation of the AIF if:
 1. the AIFM has not concluded a depositary agreement with the depositary,
 2. the prospectus of an AIF and/or the AIF rules do not comply with the provisions of this Act and regulations adopted pursuant to this Act,
 3. the AIFM fails to comply with other conditions necessary to manage that type of an AIF set out in this Act and regulations adopted pursuant to this Act, or
 4. the AIFM has no adequate organisational structure and conditions to manage that type of AIFs.
- (2) The Agency may reject the AIFM's application for the establishment and authorisation if the AIFM already manages AIFs in the territory of the Republic of Croatia, and the Agency has already imposed supervisory measures on account of serious or frequent infringements of the provisions of this Act and regulations adopted pursuant to this Act, which the AIFM failed to observe.
- (3) The Agency shall, before rejecting the application for the establishment and authorisation of an AIF of an AU AIFM or non-EU AIFM, seek advice thereon from the competent authority of the Member State or Member State of reference.

Period of initial collection of financial resources (funds) in open-ended AIFs

Article 254

- (1) The period of initial collection of funds in an open-ended AIF is defined in the AIF rules and the AIF prospectus where appropriate.
- (2) During this period, depending on the rules of an open-ended AIF and the AIF prospectus where appropriate, the AIF can:
 - (a) raise financial resources, or
 - (b) collect binding offers to pay funds to the AIF.
- (3) In the case referred to in item a) of paragraph 2 of this Article:
 - (a) during this period the total amount of received financial resources shall be kept in the AIF's account with the depositary and must not be invested up until the time when the AIF has met the conditions to dispose of the assets under the AIF rules and the AIF prospectus where appropriate.

- (b) investment of the raised financial resources may start only upon the expiry of the initial collection of funds.
- (4) The price of issue and distribution of holdings to investors are set out in Article 196 of this Act.
- (5) Before successfully concluding the initial collection of funds in the AIF, no fees shall be charged and collected from investors.
- (6) In case that upon completion of the period for initial collection of funds the funds have not been collected in accordance with the AIF rules and the AIF prospectus, where appropriate, the AIFM shall:
 - a. in the case of item a) of paragraph 2 of this Article, return the paid funds to the investors within 15 days, or
 - b. in the case referred to in item b) of paragraph 2 of this Article, refuse the received binding offers of the investors and notify them in writing thereon.
- (7) If the AIF is not established within 12 months from the approval for its establishment and authorisation, the issued authorisation shall cease to be valid.
- (8) The Agency may specify in an ordinance the conditions for an initial offering of units referred to in this Article.

Issue of units of open-ended AIFs

Article 255

- (1) The issue of units of an open-ended AIF shall be carried out exclusively by payment financial resources to the AIF's account.
- (2) Notwithstanding paragraph 1 of this Article, the issue of units may be carried out by distributing the new units on the basis of distribution of a share in profits, i.e. when reducing the value of units on the basis of granting the new units, or in any other case prescribed by the AIF rules and the AIF prospectus, where appropriate, or set out by the Agency.
- (3) Payment in the AIF shall be shall be effected in financial resources, and exceptionally in:
 - a. financial instruments under special circumstances set out by the Agency in an ordinance, provided that the said financial instruments are admitted to trading on a regulated market, and that their exact price can be determined;
 - b. other forms of assets under special circumstances in the case of the AIF with a private offering, if envisaged in the AIF rules and the AIF prospectus, where appropriate, and if the acquisition of these assets is in accordance with the investment strategy of the AIF, provided that these assets were valued by an independent licenced valuer.

Section 2

Fees charged by the AIFM

Article 256

- (1) The fees that are charged by the AIFM directly to the investor of the AIF shall be set out in the AIF rules and the prospectus of the AIF, where applicable.
- (2) The fees that are charged by the AIFM to the AIF shall be set out in the AIF rules and the prospectus of the AIF, where applicable.
- (3) The AIF rules and the AIF prospectus, where applicable, must clearly define the conditions for payment of the fees from this Article, amount of the fee and method of its calculation as well as possibility of discount or exemption from the payment of certain fees based on decision of AIFMs.
- (4) The Agency may adopt an ordinance prescribing the conditions for charging, the level and the method for calculating the fees referred to in this Article.

Other expenses and AIF fees

Article 257

- (1) Apart from the fees referred to in Article 256 of this Act the AIF may be charged only those costs of operation and fees stipulated in paragraph 2 of this Article, the AIF rules and the prospectus of the AIF, where applicable.
- (2) Solely the following costs may be paid directly from the assets of the AIF:
 1. fees and costs payable to the depositary,
 2. costs, commissions or charges directly related to the acquisition or sale of assets,
 3. costs of keeping a units register, including the costs of issuing the transaction or unit balance certificates, if required, and the costs of payment of income or profits,
 4. costs of the annual audit,
 5. all the prescribed fees and charges paid to the Agency concerning the issuance of authorization to the AIF,
 6. taxes on assets or profits the AIF is obliged to pay,
 7. costs of publication of amendments to the rules and/or prospectus and other prescribed notifications, and
 8. other costs set out in the special acts (for example, costs of the Agency and/or other competent authority),
- (3) Claims for the expenses and fees which are charged pursuant the AIF rules and the AIF prospectus, where applicable, to AIF, can be settled solely from the AIF assets without any possibility of charging the said claims to investors.
- (4) The Agency may adopt an ordinance prescribing in more detail costs and fees which may be paid directly from the assets of the AIF, and specifying the respective categories of costs and fees referred to in paragraphs 1 and 2 of this Article.

Section 3

Limitations on investment and exceeding limitations on investment

Article 258

- (1) Investment of assets of AIFs shall be subject to the following limitations set out in the ordinances adopted by the Agency and the AIF rules, and the prospectus of the AIF, where applicable.
- (2) The AIF may exceed the limitation on investment referred to in paragraph 1 of this Article when exercising the priority subscription rights or subscription rights attaching to transferrable securities or money market instruments comprising part of its assets, and when selling the AIF's assets for the purpose of redemption of a larger number of units of the AIF.
- (3) Where exceeding the limitation referred to in paragraph 1 of this Article is a result of the circumstances which could not have been foreseen by the AIFM or a result of subscription rights referred to in paragraph 2 of this Article, the AIFM shall adjust the AIF's investment with a public offering in a reasonable period not longer than one year, and execute transactions with the AIF's assets primarily for the purpose of adjustment of investments of the AIF's assets, and take into consideration the interests of the unit-holders, making efforts to reduce the potential loss to the minimum.
- (4) Exceptionally, at the request of the AIFM, the Agency may extend the time limit referred to in paragraph 3 of this Article if it is in the interest of the investor.
- (5) Where exceeding the limitation referred to in paragraph 1 of this Article is a result of the circumstances which could not have been foreseen by the AIFM or a result of subscription rights referred to in paragraph 2 of this Article, the AIFM shall adjust the AIF's investment with a private offering in one of the following manners:
 1. as envisaged by the AIF rules or the prospectus of the AIF, where applicable,
 2. if not set out in the rules and/or prospectus of the AIF, and the procedure to obtain approvals from and adopt decisions on such issues by investors of the AIF is specified, then it shall obtain the approval from the investors in respect of the proposed procedure, taking account of the investors' best interests,
 3. if it is not possible to proceed in accordance with provisions of items 1 and 2 of this paragraph, adjust investments in accordance with the provision of paragraph 3 of this Article,
- (6) Where exceeding the limitations referred to in paragraph 1 of this Article is a result of the transactions arranged by AIFM, where at the time of their conclusion the said limitations were exceeded or additionally increased, the AIFM shall adjust AIF's investment when it learns about exceeding the limitations. The AIFM shall compensate the AIF for the damage suffered in this manner.
- (7) Limitations on investment referred to in paragraph 1 of this Article may be exceeded in the first six months from the establishment of the AIF, with due compliance with the principle of risk-distribution of and protection of the interests of unit-holders.

Part Thirteen

Changes in the status of AIFs

Article 259

- (1) Two or more established AIFs may be merged or consolidated.
- (2) Merger of AIFs shall be effected through the transfer of the entire assets, rights and obligations of one or several AIFs (transferor AIF) to the other, existing AIF (transferee AIF).
- (3) Consolidation of AIFs shall be effected by establishing a new AIF (transferee AIF), to which the entire assets, rights and obligations are transferred from two or several AIFs which are consolidated (transferor AIFs).
- (4) When changes in the status of the AIF take place, several transferor AIFs may take part in the process and only one transferee AIF.
- (5) Changes in the status of closed-ended AIFs shall be subject to the provisions of the act which regulates the establishment and business operations of companies, unless otherwise set out in this Act or the Agency's ordinance.
- (6) The Agency shall adopt an ordinance specifying in more detail changes in the status of AIFs.

Part Fourteen

Master and feeder AIF (Master-feeder structures)

Approval to establish feeder AIFs

Article 260

- (1) In order to establish a feeder AIF, the AIFM shall obtain the Agency's approval.
- (2) A feeder AIF is formed by establishing a new feeder AIF or restructuring of the existing AIF to become a feeder AIF.
- (3) The Agency shall set out in an ordinance the conditions, procedure and method for establishing master and feeder AIFs, their investments and manner of business operations.

Part Fifteen

Winding-up and termination of AIFs

Reasons for winding-up of AIFs

Article 261

- (1) Winding-up of an open-ended AIF shall be carried out in the following cases:
 1. voluntary termination of activities of the AIFM, if the AIF has not been transferred to another authorised AIFM
 2. if the depositary terminates its activity as depositary, and within two months, i.e. in the additional period of 30 days, the depositary agreement with another depositary is not concluded
 3. if the AIFM's authorisation was revoked or bankruptcy or winding up proceedings of the AIFM are opened, and management of the AIF is not transferred to the new AIFM, in accordance with the provisions of this Act
 4. where the Agency, as a special supervisory measure, orders the AIFM's management to wind-up the AIF,
 5. in other cases envisaged by this Act, legal provisions adopted on the basis of this Act, the AIF rules and prospectus where applicable.
- (2) Immediately after the reasons for winding-up take place, the liquidator shall pass a decision on the AIF's winding-up.
- (3) Winding-up of a closed-ended AIF shall be carried out in accordance with the provisions of the act which regulates the establishment and business operations of companies, unless otherwise stipulated by this Act or an ordinance adopted by the Agency.
- (4) Liquidator of a closed-ended AIF shall, on the next working day following the decision on the AIF's winding-up, i.e. as of the day it was appointed liquidator of a closed-ended AIF, notify the Agency thereof.

Article 262

- (1) Winding-up of an open-ended AIF shall be carried out by a liquidator:
 1. the AIFM, unless the AIFM is undergoing bankruptcy proceedings or the Agency, or the competent authority, has withdrawn its authorisation,
 2. the depositary of the AIF in the case where winding-up of an open-ended AIF cannot be carried out by the AIFM on account of reasons indicated in item 1 of this paragraph,
 3. the liquidator of the AIF, appointed by the Agency, in the case where the AIFM or depositary of the AIF is undergoing bankruptcy proceedings or if the Croatian National Bank, the Agency or another competent authority has temporarily or permanently withdrawn their authorisation .
- (2) The Agency shall appoint the liquidator of the AIF referred to in paragraph 1, item 3, of this Article without delay, and in doing so act with increased due care making sure that it takes account of the rights and interests of unit-holders in the AIF.

Notifying unit-holders and the Agency about the winding-up procedure

Article 263

- (1) The liquidator of an open-ended AIF shall, on the next working day following the decision on winding-up or following the day of its appointment as AIF's liquidator, inform the Agency thereof, and enclose with this notification the text for publication and the notification referred to in paragraph 2 of this Article.
- (2) The liquidator of an open-ended AIF shall, within three working days following the decision on winding-up, to every unit-holder of an open-ended AIF deliver notification of the start of winding up procedure of the AIF and, in the case of an open-ended AIF with a public offering, publish the information on the start of the winding-up procedure.
- (3) Where the AIFM as liquidator of an open-ended AIF fails to fulfil its obligation referred to in paragraphs 1 and 2 of this Article, this obligation shall be fulfilled by the depositary of the AIF within the time limits referred to in paragraphs 1 and 2 of this Article, which shall start running on the day when the depositary learned or should have learned about the failure of the AIFM as liquidator of the AIF.
- (4) The depositary of the AIFM as liquidator of an open-ended AIF shall be entitled to the compensation of costs incurred in relation to fulfilling the obligations referred to in paragraph 3 of this Article.
- (5) The Agency may lay down in an ordinance the content of the notice and notification to unit-holders referred to in paragraph 2 of this Article, the method of disclosure and method of submitting the notification to unit-holders in an open-ended AIF.

Legal consequences of winding-up of AIFs

Article 264

- (1) Following the adoption of the decision on winding-up, any further issue or redemption of units of open-ended AIF shall be prohibited.
- (2) From the day of the adoption of the decision on winding-up, no fees nor costs shall be charged to an open-ended AIF except fees to the depositary, costs associated with the winding-up procedure and its audit.
- (3) The liquidator shall be obliged to submit to the Agency the final winding-up reports and a report on completed winding-up of the AIF, and shall be responsible for preparing these reports.

Article 265

- (1) In the winding-up procedure of an AIF, the liquidator shall act in the best interests of unit-holders and ensure that winding up procedure is carried out in reasonable period of time and that liabilities of the AIF's falling due until the day of the adoption of the decision on winding-up are settled first, including requests for the redemption of shares submitted by the day of the adoption of the decision on winding-up, followed by the settlement of all other liabilities of the AIF not due

- by the day of the adoption of the decision on winding-up resulting from the transactions associated with asset management.
- (2) The remaining net asset value of the AIF, after the settlement of the AIF's liabilities referred to in paragraph 1 of this Article, shall be distributed to unit-holders in proportion with their holdings in the AIF.

Article 266

The Agency may adopt an ordinance regulating the following:

1. procedure, costs and time limits for winding-up of AIFs,
2. reporting in the course of the winding-up procedure, and
3. the method, procedure and conditions for appointment of liquidator referred to in Article 262, paragraph 1, item 3, of this Act.

Termination of AIFs established for a fixed term

Article 267

- (1) When an AIF is established for a fixed term, its rules and prospectus, where applicable, shall specify the date of termination of the AIF.
- (2) When an open-ended AIF is established for a fixed term, the AIFM shall, one day before the termination of the AIF, calculate the unit price of that AIF and at that price redeem all units and pay the investors in full.
- (3) Payment of funds to the investors' accounts shall be effected no later than within 7 days from the termination of the AIF, unless stipulated otherwise in the AIF rules and prospectus when applicable.
- (4) The AIFM or general meeting or general meeting of closed-ended AIF may, where applicable, adopt a decision on termination of the AIF established for a fixed term even before the date of termination set in its rules and the prospectus, if the purpose of such AIF has been achieved or such decision is in the interest of the investor of that AIF, and if this option is envisaged by the AIF rules and prospectus, where applicable.
- (5) In the case of termination of an AIF established for a fixed term before the date of termination set in its rules and prospectus, where applicable, the AIFM shall inform the Agency and the investors about its decision without delay, and it must not charge the exit fee to the investors.
- (6) The Agency may specify in an ordinance the conditions and method for termination of AIFs.

Extension of operation of AIFs established for a fixed term

Article 268

- (1) If an AIF is established for a fixed term, the AIFM or general meeting or general meeting of closed-ended AIF may adopt a decision on extension of its operation if such option is envisaged by the AIF rules and prospectus, where applicable.

- (2) The AIFM shall immediately inform the Agency and the investors about this decision.
- (3) From investors that wish to exit the AIF on account of extension of its operation, the AIFM shall be obliged to redeem their units on the day of envisaged termination of the AIF in the case of:
 - a. an AIF with a public offering
 - b. an AIF with a private offering, unless provided for in the AIF rules that the AIFM is not obliged to redeem the units.
- (4) The Agency may specify in an ordinance the conditions and method for the extension of operation of an AIF established for a fixed term.

Part Sixteen

Supervision of business operations of the AIFMs, AIFs, depository and other entities

Title 1

Section 1

General provisions

Supervision

Article 269

- (1) For the purposes of this Act, supervision means control whether the supervised entity operates in accordance with the provisions of this Act, regulations adopted pursuant to this Act, in accordance with other regulations, regulations governing risk management, and in accordance with own rules and professional standards and in the manner allowing regular functioning of the supervised entity, and implementation of measures and activities aimed at eliminating the established violations and irregularities.
- (2) The goals of supervision include control of legality, assessment of security and stability of operation of the supervised entity, for the purpose of protection of the interests of investors and public interest, operation stability, of contribution to the stability of the financial system, and promotion and maintenance of confidence in the capital market.

Subject-matter of supervision

Article 270

- (1) In the course of supervision, the Agency shall in particular:

1. control the organisational conditions, strategies, policies and procedure which the supervised entity has put in place for the purpose of adjustment of its operations with the provisions of this Act and regulations adopted pursuant to this Act,
 2. control and assess the financial stability and standing of the supervised entity and the risks to which the supervised entity is exposed or could be exposed in its business operations.
- (2) In the process of control and assessment of the financial stability and standing, and the assessment of risks to which the supervised entity is exposed or could be exposed, the Agency shall take into account the type, scope and complexity of operations of the supervised entity.
 - (3) Based on the supervision, control and assessment referred to in paragraph 1 of this Article, the Agency shall establish whether the supervised entity runs its operations in accordance with the laws, whether the supervised entity has in place an adequate organisational structure and a stable system of management in the company, and whether the supervised entity appropriately manages the risks it is exposed to or could be exposed in its operations.
 - (4) When establishing the frequency and intensity of supervision, for each respective AIFM the Agency shall be guided by the size, influence and importance of the AIFM and AIFs it manages, as well as the nature, type, scope and complexity of their operations.

Supervised entities

Article 271

- (1) The Agency shall conduct supervision of the supervised entities in accordance with the Act on the Croatian Financial Services Supervisory Agency, this Act, regulations adopted pursuant to this Act, and other laws and regulations adopted pursuant to them.
- (2) The procedures employed by the Agency within the scope of its competence shall be subject to the provisions from this Part of the Act, unless otherwise stipulated.
- (3) The procedures referred to in paragraph 1 of this Article shall be subject to the provisions of the General Administrative Procedure Act, unless otherwise stipulated.
- (4) In the procedures conducted by the Agency, it decides without verbal discussion.
- (5) The Agency shall have the right of access to all information and documentation kept by the supervised entities.
- (6) Entities supervised by the Agency pursuant to the provisions of this Act include:
 1. AIFMs with a registered office in the Republic of Croatia and their branch offices outside the Republic of Croatia,
 2. AIFs managed by the AIFMs referred to in item 1 of this Article,
 3. AIFs whose units are marketed in the Republic of Croatia,
 4. AIFMs from Member States in the part of operations carried out by direct provision of services in the territory of the Republic of Croatia,
 5. branch offices of EU AIFMs operating in the Republic of Croatia,

6. non-EU AIFMs in the part of operations carried out by direct provision of services in the territory of the Republic of Croatia,
7. branch offices of non-EU AIFMs operating in the Republic of Croatia,
8. the depositaries in part of business operations which they carry out in accordance with Section Eleven of this Act,
9. legal persons which market units of the AIFs managed by AIFMs referred to in item 1 of this paragraphs,
10. legal persons which market units of AIFs managed by AIFMs referred to in items 4 and 6 of this paragraph, i.e. by the branch office of AIFMs referred to in items 5 and 7 of this paragraph.

Supervision fee

Article 272

For the supervision functions the supervised entities referred to in Article 271, paragraph 1, of this Act shall pay the Agency a supervision fee whose amount, method of calculation and payment shall be prescribed the Agency by the virtue of an ordinance.

Section 2

Supervision procedure

Method of conducting supervision

Article 273

(1) The Agency shall conduct supervision *ex officio*:

1. through on-site supervision on the premises of the supervised entity or the legal persons with which the supervised entity connected is directly or indirectly, through business, management or by means of capital, by reviewing the original documents, control and assessment of the overall business operations, conducting interviews with management board members, supervisory board members and other relevant persons, and on the Agency's premises.
2. through off-site supervision, on the Agency's premises, based on an analysis of the reports which the supervised entities are obliged to submit to the Agency in the prescribed time limits, and by monitoring, collecting and review of documents, notifications and information obtained on special request by the Agency, and by monitoring, collecting and review of documents and information from other sources, and through control and assessment of business operations based on the supplied reports and collected information, conducting

- interviews with management board members, supervisory board members and other relevant persons.
- (2) On-site supervision referred to in paragraph 1, item 1, of this Article may be either regular or extraordinary.

Persons authorised for supervision

Article 274

- (1) Supervision referred to in Article 273 or this Act shall be conducted by the employees of the Agency (authorised persons of the Agency).
- (2) As an exception, for the performance of the tasks in relation to on-site supervision of business operations of the supervised entity, the Agency may authorise an auditor, auditing firm or other qualified persons.
- (3) While performing the tasks in relation to on-site supervision of operations of the supervised entity for which they were authorised by the Agency, the persons referred to in paragraph 2 of this Article shall have equal powers and responsibilities as the authorised persons of the Agency.

Submitting information at the request of the Agency

Article 275

- (1) At the request of the Agency, the supervised entity shall supply or make available the documentation, reports and information about all circumstances needed for the supervision or execution of other powers and measures which the Agency has pursuant to this Act, the act governing establishment and operation of the Agency and regulations adopted pursuant to these acts.
- (2) The documentation, reports and information referred to in paragraph 1 of this Article shall be submitted to the Agency by the members of the management board and other relevant persons in the supervised entity, members of the supervisory board and procurers.
- (3) The Agency shall have the authority to request the persons referred to in paragraph 2 of this Article a written statement concerning the circumstances in paragraph 1 of this Article or invite them to give an oral statement concerning the circumstances.
- (4) Authorised persons of the Agency may conduct interviews with the persons referred to in paragraph 2 of this Article for the purpose of obtaining the information needed for the supervision and fulfilling the objectives of supervision.

Notification of on-site supervision

Article 276

- (1) Before the commencement of on-site supervision, the supervised entity will be sent a written notification of on-site supervision, comprise at least the following:
 1. subject-matter of supervision,
 2. information about the persons authorised for supervision,
 3. indication of the location where supervision will be conducted,
 4. date of commencement of supervision,
 5. period which is supervised.
- (2) The notification referred to in paragraph 1 of this Article may also contain the information which the supervised entity is obliged to prepare for the authorised persons of the Agency for the purpose of conducting the on-site supervision.
- (3) In the course of supervision the Agency may supplement the notification of supervision. Supplement to the notification of supervision shall be subject, as appropriate, to the provision of paragraph 1 of this Article.
- (4) The notification of on-site supervision shall be delivered to the supervised entity within a period which cannot be less than three days before the commencement of supervision.
- (5) By way of derogation from the provision of paragraph 4 of this Article, an authorised person may deliver the notification of the respective on-site supervision if its purpose cannot be otherwise achieved.

On-site supervision of business operations

Article 277

- (1) The supervised entity shall be obliged to allow the authorised person of the Agency, following the receipt of the notification of supervision, to conduct on-site supervision at the head office of the supervised entity and other places where this entity or another person authorised by it pursue the activity and tasks which the Agency is supervising.
- (2) The supervised entity shall be obliged to allow the authorised person of the Agency, at his/her request, to control business books, business documents, administrative or operating records and supervision of the IT system and technologies enabling the running of the IT system, to the extent required to conduct supervision.
- (3) The supervised entity shall supply to the authorised person of the Agency, at his/her request, all requested business documents, computer printouts, copies of business books, records of telephone calls and recordings of telephone calls, fax records, administrative or operation records in hard copy or electronically recorded on the media and in the format required by the authorised person. The supervised entity shall ensure the authorised person the standard interface allowing access to the database management system it uses, for the purpose of conducting computer-aided conducting supervision.
- (4) Authorised persons of the Agency may temporarily seize from the supervised entity the documents, printouts, copies and recordings referred to in paragraph 3 of this Article, the financial instruments, cash or objects which can be used as evidence in the criminal or minor offence proceedings and issue a certificate

- confirming this, but only until the proceedings are instituted, when they shall be handed to the competent authority conducting these proceedings.
- (5) The relevant persons in the supervised authority shall be obliged to attend an interview with the authorised person of the Agency and give any information important for the supervision and fulfilling the objectives of supervision.

Conditions for on-site supervision

Article 278

- (1) The supervised entity shall provide to the authorised person of the Agency adequate rooms where (s)he can without interruption and in private conduct the supervision of business operations.
- (2) At the request of the authorised person of the Agency, the supervised entity shall provide professional and technical assistance, the necessary explanations and other conditions required for the supervision.
- (3) Supervision of business operations referred to in paragraphs 1 and 2 of this Article shall be conducted by the authorised person of the Agency during office hours of the supervised entity. If necessary, on account of the scope or nature of work, the supervised entity shall allow the authorised person of the agency to conduct supervision after office hours.

IT system control

Article 279

- (1) The supervised entity which in its operation uses an IT system shall, at the request of the authorised person of the Agency, provide the conditions for the control of the IT system and the possibility to check whether the data processed using the IT technology are processed in an appropriate manner.
- (2) The supervised entity shall, at the request of the authorised person of the Agency, supply the documents describing the overall functioning of the IT system. The documents shall clearly list the components of the IT system. The documentation shall allow the authorised person to examine:
1. the software,
 2. procedures for data processing using IT technology,
 3. controls ensuing correct data processing, and
 4. controls ensuing confidentiality, integrity and accessibility of data.

Conclusion of on-site supervision

Article 280

- (1) After the on-site supervision is completed, the record of the performed on-site supervision shall be drawn up, comprising a detailed description of established facts, and delivered to the supervised entity.

- (2) The supervised entity is entitled to file a complaint against the received record within a period which cannot be less than eight days from the day of receipt thereof.
- (3) Notwithstanding the provision of paragraph 2 of this Article, the Agency may set the time limit which is shorter than the period referred to in paragraph 2 of this Article, when is required in order to prevent potential significant adverse impact consequences for the AIFM, the AIF, the depositary, unit-holders or third parties.

Reasons for complaint

Article 281

Complaint against the record of the performed supervision is allowed on account of the following reasons:

1. if the record of the performed supervision was drawn up in the course of supervision of the entity for which the Agency is not competent to conduct supervision,
2. if the circumstances in the record were established inaccurately or incompletely.

Content of the complaint

Article 282

- (1) The complaint shall comprise:
 1. indication of the record against which the complaint is filed,
 2. a statement whether the claims in the record are contested fully or in the specific part,
 3. reasons for the complaint,
 4. other information which any submission must contain, in accordance with the General Administrative Procedure Act.
- (2) The supervised entity may state in the complaint the facts implying that the defects, violations and irregularities listed in the record do not exist and present evidence to this end. If the supervised entity invokes documents in its statement, it shall enclose them with the complaint as evidence.
- (3) After the expiry of the time limit to file a complaint, the supervised entity shall not be entitled to list new facts and present new evidence.
- (4) The submitted complaint against the record shall comprise an integral part of the record.

Off-site supervision of business operations

Article 283

- (1) In the course of off-site supervision the authorised person of the Agency shall:

1. establish whether the prescribed reports and other information is submitted in the set out period and set out format,
 2. establish whether the information in the reports or other requested documents are authentic, accurate and correct,
 3. establish whether the supervised entity operates in accordance with the regulations on risk management, in accordance with other regulations stipulated by this Act and regulations adopted pursuant to this Act, and other laws governing business operations of supervised entities and regulations adopted pursuant thereto,
 4. control and assess the financial soundness and standing of the supervised entity and the risks to which the supervised entity is exposed or could be exposed in its business operation.
- (2) In the course of control and assessment of the financial soundness and standing and risk assessment to which the supervised entity is exposed or may be exposed, the Agency take into account the type, scope and complexity of operations of the supervised entity.

Record of off-site supervision

Article 284

- (1) In the case of defects, violations and irregularities in the operations of the supervised entity established in off-site supervision, the authorised person of the Agency shall draw up the record.
- (2) The record of the performed supervision shall be delivered to the supervised entity, with a detailed description of the facts established in the supervision process.
- (3) The record of off-site supervision shall be subject to the provisions of Articles 280 through 282 of this Act, as appropriate.
- (4) Based on the findings in the record referred to in this Article, the Agency shall have the authority to take all supervisory measures as in the case of off-site supervision.

Supervisory measures

Article 285

- (1) Based on the completed off-site or on-site supervision, the Agency may impose on the supervised entities supervisory measures laid down in this Act for the purpose of legal and regular business operation of the supervised entities, protection of interests of investors and protection of the public interest, and in the case of established violations and irregularities, report it to the competent authority.
- (2) For the purposes of this Act, violations are circumstances and practices that are not in line with this Act, regulations adopted pursuant to this Act, other laws and by-laws and international acts and regulations.

- (3) For the purposes of this Act, irregularities are circumstances and activities that are not in line with own business policies, rules adopted by supervised entities and standards and professional standards, or circumstances where they are not consistently applied, thus jeopardising business operations, especially in relation to organisational requirements and risk management.
- (4) When the Agency establishes there is reasonable doubt of committed crime or offence, it shall report it to the competent authority.

Section 3

Supervision of AIFMs with a registered office in the Republic of Croatia and AIFs established in the Republic of Croatia

Competence of the supervisory Agency

Article 286

- (1) The Agency shall be responsible for the supervision of business operations of AIFMs and AIFs established in the Republic of Croatia with the authorisation of the Agency in relation to the operations they perform outside the Republic of Croatia.
- (2) When the Agency believes it necessary in order to conduct the supervision referred to in paragraph 1 of this Article, it shall have the authority, in accordance with this Act and other regulations, to require the from following entity reports and information, and to review part of the operations, control of business books and business documents with:
 1. the entity that is closely associated to the AIFM and the AIF,
 2. qualified unit-holder in the AIFM.
- (3) When the Agency finds it necessary for the purposes of supervision referred to in paragraph 1 of this Article, it shall have the authority, in accordance with this Act and other regulations, to require reports and information from the entity to which the AIFM delegated certain functions and to review part of operations, check business books and business documentation as well as other documentation, printouts, copies and recordings referred to in paragraph 3, Article 277 of this Act in part related to delegated part of business operations, and temporarily seize them in accordance with paragraph 4, Article 277 of this Act.
- (4) If another supervisory authority is competent for the supervision of the person referred to in paragraph 2 of this Article, the Agency shall in cooperation with this authority examine the business books and business documents of that entity, in accordance with the provisions of Part Seventeen of this Act.

Types of supervisory measures

Article 287

The Agency may impose on the AIFM the following supervisory measures on conditions set out in this Act:

1. recommendations to the AIFM's management board,
2. a warning,
3. elimination of violations and irregularities,
4. special supervisory measures,
5. revoking authorisation for all or certain activities and for the management of all or certain AIFs.

Recommendations to the management board of the AIFM

Article 288

- (1) When the Agency as part of the supervision, control and assessment of the financial soundness and standing of the AIFM or AIF it manages, and control and assessment of the risks to which the AIFM is exposed or could be exposed in its operations, established faults, defects, shortcomings and irregularities which do not constitute an infringement of this Act or regulations adopted pursuant to this Act and other laws and regulations adopted pursuant to them, or if the Agency deems necessary that the AIFM should take actions and activities aimed at improving business operations, financial soundness and standing, and to reduce the risks it is exposed to or could be exposed to in its business operations or the operation of the AIF it manages, the Agency shall issue recommendations to the AIFM's management board.
- (2) The recommendations shall contain the established and assessed significant risks and problems to which the AIFM is exposed or could be exposed, i.e. the established faults, defects, shortcomings and irregularities which do not constitute an infringement of this Act, including the guidelines to the AIFM's management board aimed at eliminating them and at improving business operation, financial soundness and standing, and to reduce the risks the AIFM is exposed to or could be exposed to in its business operations.
- (3) The management board of the AIFM shall submit to the Agency the plan, time limits and dynamics of compliance with the recommendations of the Agency.
- (4) In order to establish improvement in business operation, financial soundness and standing, and to reduce the risks the AIFM is exposed to or could be exposed to in its business operations and operation of the AIF it manages, the Agency may carry out supervision of the AIFM again.

Warning

Article 289

- (1) Where the Agency in the supervision identifies violations and irregularities, and the nature and scope of identified violations and irregularities do not have a material impact and consequences on business operations of the AIFM, AIF, market and/or investors, the Agency may issue a warning to the AIFM.

- (2) The Agency may disclose the warning publicly.
- (3) The Agency's warning may contain an order to the AIFM to eliminate the established violations and irregularities, the time limits within which the AIFM is obliged to comply, and the dynamics of reporting to the Agency on the actions and activities carried out.
- (4) If the AIFM fails to comply with the Agency's order referred to in paragraph 2 of this Article within the set time limit, the Agency shall issue a decision to eliminate the established violations and irregularities.
- (5) The Agency shall have the authority to repeat the supervision of the AIFM to the extend and in the scope necessary to establish whether the AIFM has complied with Agency's order referred to in paragraph 2 of this Article, and whether the established violations and irregularities have been eliminated in an appropriate manner and scope.

Eliminating the established violations and irregularities

Article 290

- (1) Where the Agency in the supervision identifies violations and irregularities which represent an infringement of the provisions of this Act or regulations adopted pursuant to this Act, it shall issue a decision ordering the AIFM measures to eliminate the established violations and irregularities or to terminate the activities representing an infringement of this Act or regulations adopted pursuant to this Act and other laws governing business operations or supervised entities and regulations adopted pursuant to them.
- (2) The Agency shall state in the decision referred to in paragraph 1 of this Article the time limits in which the AIFM is obliged to eliminate the established violations and irregularities.

Certified auditor's report on the elimination of violations

Article 291

Where, in the course of supervision, the Agency finds violations and irregularities in relation to the keeping of business books and other business documents that the AIFM is obliged to keep in accordance with the provisions of this Act, regulations adopted pursuant to this Act or other acts governing the operations of AIFMs and regulations adopted pursuant to them, or where it finds other major violations, it may order the AIFM to submit a report on elimination of such violations and irregularities, to which it shall enclose the auditor's opinion clearly indicating whether the violations and irregularities have been eliminated.

Report on elimination of violations and irregularities

Article 292

- (1) AIFMs shall eliminate the established violations and irregularities and submit to the Agency a report on the measures taken for the purpose of their elimination, within the time limit set by the Agency.
- (2) The AIFM shall enclose with the report referred to in paragraph 1 of this Article the documents and other evidence clearly indicating that the established violations and irregularities have been eliminated.
- (3) Where the report referred to in paragraph 1 of this Article is not complete or the enclosed documents do not indicate that the violations have been eliminated, the Agency shall order the report to be supplemented and the time limit in which the report must be supplemented.
- (4) When the Agency orders a supplement to the report referred to in paragraph 3 of this Article, within a period of 60 days from the report referred to in paragraph 1 of this Article, it shall be considered that the violations and irregularities have been eliminated.

Decision on elimination of violations and irregularities

Article 293

- (1) Where the Agency comes to a conclusion based on the report referred to in Article 292 of this Act, the enclosed documents and other supplied evidence that the established violations and irregularities have been eliminated, it shall adopt a decision on elimination of violations and irregularities.
- (2) Before adoption of the decision referred to in paragraph 1 of this Article, the Agency may carry out supervision of AIFM again to the extent and in the scope necessary to confirm whether the established violations and irregularities have been eliminated in the appropriate manner and scope.
- (3) Where the AIFM eliminates the violations and irregularities before the Agency completes the supervision procedure, the Agency shall adopt a decision referred to in paragraph 1 of this Article without the prior decision ordering the measures for elimination of violations and irregularities.

Special supervisory measures

Article 294

- (1) The Agency shall be authorised to impose special supervisory measures referred to in paragraph 2 of this Article on AIFMs, if:
 1. the AIFM has failed to act in accordance with the decision whereby the Agency ordered the measures to eliminate violations and irregularities referred to in Article 290 of this Act,
 2. has not set up, is not implementing or is not holding regular organisational, technical, personnel or other conditions for business operations laid down in Articles 47 through 62 of this Act or an ordinance governing those conditions in more detail,

3. if the AIFM's own funds are below the minimum stipulated in Article 20 of this Act,
 4. if it fails to comply with the provisions on the limitations on investment of AIFs it manages or other limitations set out in the AIF rules or the prospectus, where applicable, and the provisions of this Act or regulations adopted pursuant to this Act,
 5. in other cases the Agency deems necessary.
- (2) In the case of circumstances referred to in paragraph 1 of this Article, the Agency may impose the following special supervisory measures:
1. order the AIFM to increase own capital to the level envisaged by Article 20 of this Act,
 2. order the management board of the AIFM to discharge a member or members of the board and appoint a new member or members to the board,
 3. order the AIFM to convene the general assembly or meeting and propose the relevant solutions, such as increase of own funds, discharge of a member or members of the supervisory or management board and appointment of a new member or new members of the supervisory or management board,
 4. temporarily ban the AIFM:
 - payments from reserves and profit of the AIFM to AIFM members, members of the board of directors, supervisory board, management board, procurator and employees of AIFM,
 - to arrange transactions with individual shareholders or members, members of the board of directors, supervisory board, management board, procurers and the companies closely associated with the AIFM,
 - issue and redemption of units in the AIF and marketing of units,
 - disposition of the AIF's assets,
 - carrying out particular or all activities of a certain type or prohibit the development of the network of entities authorised to market the units of AIFs or introducing new products, or it may restrict the introduction of new products,
 5. order the AIFM to set up, implement or improve the organisational, technical, personnel or other conditions for business activities laid down in Articles 47 through 62 of this Act or ordinances governing these conditions in more detail,
 6. order the AIFM to wind up the AIF or merger to another AIF,
 7. order the AIFM, in the time limit set by the Agency, to transfer the management of the AIF to another AIFM, in accordance with the procedure laid out in Articles 77 through 81 of this Act,
 8. order the AIFM to improve the strategies, policies and risk management process,
 9. order the AIFM to reduce in future operations the risk inherent to the activities of the AIFM or the AIF it manages,

10. order the AIFM to reduce operating expenses, including restrictions on salaries and other income of members of the board of directors, supervisory or management board and employees of the AIFM;
 11. order the supervisory board of the AIFM to appoint appropriate committees for specific areas of operation within the competence of the supervisory board,
 12. order the AIFM to change, reduce or stop performing a certain activity for which the Agency establishes that it has created significant losses or which poses a major risk for the AIFM and AIFs it manages,
 13. order the AIFM to suspend one or more persons with special rights or responsibilities,
 14. order the AIFM to take other corresponding measures necessary for the AIFM to operate in accordance with the provisions of this Act and regulations adopted pursuant to this Act or pursuant to other regulations governing the operation of AIFMs and regulations adopted pursuant to them.
- (3) The Agency shall specify in the decision referred to in paragraph 2 of this Article the time limit to implement the measures referred to in paragraph 2 of this Article.
- (4) The AIFM shall submit to the Agency a report on implementation of supervisory measures referred to in paragraph 2 of this Article, which shall be subject to the provisions of Article 292 and Article 293 of this Act, as appropriate.

Article 295

Where the adoption of the measures referred to in Article 294 of this Act is necessary to protect the interests of the investors and/or of the public interest, where those measures cannot be postponed, and providing that the facts on which the measure is based have been ascertained or at least made probable, the Agency may directly decide on their imposition in accordance with the General Administrative Procedure Act.

Withdrawal of the authorisation

Article 296

- (1) The Agency may withdraw the authorisation issued to an AIFM for all or certain activities:
1. if the authorisation was granted on the basis of false, inaccurate data or misleading information, or in some other irregular way,
 2. if the AIFM no longer meets the conditions under which authorisation was granted,
 3. if the Agency assesses the AIFM's operations are not performed with due professional care and in accordance with good business practices,
 4. if the AIFM has seriously and/or systematically infringed the provisions of this Act, regulations adopted pursuant to this Act or other regulations it must comply with,

5. if the AIFM fails to comply with the decision whereby the Agency orders measures to eliminate the violations and irregularities referred to in Article 290 of this Act or special supervisory measures in Article 294 of this Act,
 6. if the AIFM fails to comply with the decision referred to in Article 302, paragraph 5, of this Act,
 7. if the AIFM violates the provisions on timely and correct reporting to the Agency, more than two times in the period of 3 years, or in some other way prevents the Agency to supervise its operations,
 8. if the AIFM carries out its activities in the manner which could worsen or jeopardise its liquidity or solvency or liquidity of AIFs it manages,
 9. if the AIFM has not organised its operation or does not keep its business books or the business books of AIFs it manages, or administrative and other business documentation in a manner which makes it possible at all times to verify whether the AIFM operates in accordance with the provisions of this Act and regulations adopted pursuant to this Act and other regulations it must comply with,
 10. if the AIFM systematically and/or seriously infringes on the organisational, technical, personnel or other operating conditions laid down in Articles 47 through 62 of this Act or ordinances governing these conditions in more detail.
- (2) In the cases referred to in paragraph 1, items 3 through 10, of this Article, the Agency may withdraw the AIFM's authorisation to manage all or individual AIFs.
 - (3) The Agency shall immediately notify the depositary about the withdrawal of the authorisation.
 - (4) The competent administrative court shall adopt a decision on the lawsuits against the Agency's decisions referred to in paragraphs 1 and 2 of this Article promptly and not later than 6 months from the day the lawsuits were filed.

Section 4

Supervision of AIFMs with a registered office in the Republic of Croatia which operates in another Member State

Article 297

- (1) Without prejudice to the authorisation for supervision by the competent authority of the host Member State, the Agency shall be competent for the supervision of AIFMs with a registered office in the Republic of Croatia where the AIFM manages and/or markets AIFs in another Member State.
- (2) Where a AIFM with its registered office in the Republic of Croatia operates in the territory of another Member State, directly or through a branch, the Agency may carry out on-site supervision of activities after it sends a prior notice to the competent supervisory authority of the host Member State.
- (3) The Agency may request the competent authority of the host Member State where the AIFM provides services to conduct on-site supervision of the operations of the AIFM concerned.
- (4) The Agency may participate in on-site supervision of the branch of the AIFM in a Member State irrespectively of who is performing the on-site supervision.

Measures imposed on a branch in the host Member State

Article 298

If the AIFM with its registered office in the Republic of Croatia, which through a branch provides the services in another Member State, despite the warning from the competent authority of the host Member State, is in breach of the laws of the Member State concerned, the Agency shall order supervisory measures in accordance with the provisions of this Act.

Notifying the competent authorities of the host Member State

Article 299

If the Agency withdraws the authorisation to the AIFM with its registered office in the Republic of Croatia, or if it imposes a supervisory measure prohibiting certain activities, it shall communicate this without delay to the competent authority in the Member State where this AIFM provides services, directly or through a branch.

Section 5

Competence of the Agency for supervision of the depositary

Article 300

- (1) The Agency shall be competent for the supervision of the Depositary in Part Eleven of this Act.
- (2) For the purposes of paragraph 1 of this Article, supervision means control whether the depositary operates in accordance with the provisions of this Act regulations adopted pursuant to this Act, and in accordance with other regulations and internal acts, standards and professional rules.
- (3) As part of the supervision the Agency shall control and assess risks to which the depositary is exposed or might be exposed in the part of activities it performs in accordance with this Act, taking into account the opinions from other supervisory and regulatory authorities which are competent for the supervision of the depositary's operations.
- (4) Apart from the provisions of this Article, supervision referred to in paragraph 1 of this Article shall be subject to, as appropriate, the provisions of the act regulating capital markets on the supervision of the credit institution providing investment services and performing investment activities.
- (5) Supervision of the operation of a credit institution which is a depositary of the AIF, in the part of its operations concerning depositary functions, shall be conducted independently by the Agency or in cooperation with the Croatian National Bank.

- (6) The Agency is authorised to request the persons to whom depositary functions delegated to submit reports and information, and to inspect part of the operations, examine business books and business documentation as well as other documentations, printouts, copies and recordings referred to in paragraph 3, Article 277 of this Act in part related to delegated part of business operations and temporarily sized them in accordance with paragraph 4 Article 277 of this Act.

Supervisory measure the Agency may impose on the depositary

Article 301

- (1) The Agency may impose the following supervisory measures on the depositary, on conditions set out in this Act:
1. recommendations to the depositary's management,
 2. a warning,
 3. order elimination of violations and irregularities,
 4. withdraw the granted approval of the selected depositary in accordance with Article 229 and/or 250 of this Act.
- (2) Supervisory measures referred to in paragraph 1, items 1 through 3, of this Article which may be imposed on the depositary shall be subject to the provisions of Articles 288 through 293 of this Act, as appropriate.

Competence of the Agency for supervision of legal persons who market units of AIFs

Article 302

- (1) The Agency shall be competent for the supersession of legal persons who market the units of AIFs referred to in Part Eight, Section 4 of this Act, to the extent and in the scope valid for AIFMs.
- (2) Where the Agency conducts supervision of legal persons who market the units of AIFs, the AIFM which has concluded a contract referred to Article 188 of this Act with the said legal persons shall provide to the Agency all the information necessary for the supervision.
- (3) The supervision referred to in paragraph 1 of this Article shall be performed by the Agency through examination of the business documents as well as other documentation, printouts, copies and recordings referred to in paragraph 3, Article 277 of this Act in relation to the marketing of the units of AIFs, which may be temporarily sized by the Agency accordance with paragraph 4 Article 277 of this Act, and by taking statements from the members of the management and other relevant persons of the supervised entity, and from the members of the supervisory board and procurers, where appropriate.
- (4) The Agency may order the legal person who markets the units of AIFs to eliminate the established violations and irregularities, where the provisions of Articles 290, 292 and 293 of this Act shall be applied, as appropriate.

- (5) The Agency may order the AIFM to terminate the cooperation agreement with the legal person who market the units of AIFs.
- (6) The Agency shall be competent for the supervision of legal persons who market the units of AIFs managed by the AIFM referred to in Article 271, paragraph 6, items 4 and 6, of this Act, that is the branch of the AIFM in Article 271, paragraph 6, items 5 and 7 of this Act, to the extent and in the scope as for the AIFM and in accordance with paragraphs 2 through 5 of this Article

Competence of the Agency for the supervision of another person

Article 303

The Agency shall have the authorisation to conduct supervision of another person which, contrary to the provisions of Article 6, paragraph 1, of this Act, performs activities of the AIFM in the Republic of Croatia.

Section 6

Supervision of AIFMs in the Member States providing services
in the Republic of Croatia through a branch or directly

Competence of the Agency for the supervision of operations of an AIFM with its registered office in the Member State and its branch in the Republic of Croatia

Article 304

The Agency shall be competent for the supervision of AIFMs from another Member State which in the Republic of Croatia manages and/or trades with AIFs through a branch, in the part pertaining to the compliance with the conditions referred to in Article 46 and Articles 48 through 50 of this Act.

Powers of the competent authority in the home Member State in the supervision of operation of the branch of an AIFM with a registered office in the home Member State

Article 305

- (1) If the AIFM with a registered office in the Member State operates through a branch in the Republic of Croatia, the competent authority of the home Member State may do the following in the territory of the Republic of Croatia:
 1. conduct on-site supervision independently or through a person it has authorised, following a prior notification of the Agency, or
 2. request the Agency to conduct on-site supervision in the territory of the Republic of Croatia of the branch of the AIFM which has its registered office in a Member State.
- (2) By way of derogation from paragraph 1 of this Article, the Agency shall have the authorisation to carry out on-site supervision of the branch of the AIFM from

- another Member State for the purpose of protection of the interests of investors and other persons using the AIFM's services or for the protection of public interest.
- (3) The competent authority from the home Member State shall have the powers to participate in the on-site supervision referred to in paragraphs 1 and 2 of this Article, irrespective of who is conducting on-site supervision of the operation of the branch.

Powers of the Agency in conducting supervision of an AIFM from the Member State

Article 306

- (1) The AIFM from another Member State which in the territory Republic of Croatia operates directly or through a branch shall, at the request of the Agency, supply all documentation or information necessary for the Agency's supervision of compliance of the AIFM with the provisions of this Act which are subject to the Agency's supervision.
- (2) If the Agency finds that the AIFM from another Member State, which in the territory of the Republic of Croatia manages and/or markets the units of AIFs directly or through a branch, is in breach of the provisions of this Act subject to the Agency's supervision, it shall adopt a decision ordering termination of activities which represent an infringement of the provisions of this Act, and it shall immediately notify the competent authority of the home Member State of the AIFM.
- (3) If the AIFM from another Member State which in the territory of the Republic of Croatia operates directly or through a branch, contrary to paragraph 1 of this Article refuses to supply to the Agency the requested documentation and information or if the AIFM fails to comply with the decision referred to in paragraph 2 of this Article, the Agency shall notify thereof the competent authority of the home Member State of the AIFM.
- (4) Following the receipt of the notification referred to in paragraph 3 of this Article, the competent authority of the home Member State of the AIFM shall, at the earliest opportunity:
- a) take all appropriate measures to ensure that the AIFM concerned provides the information requested by the Agency in accordance with paragraph 1 of this Article of the Act or to comply with the decisions of the Agency referred to in paragraph 2 of this Article,
 - b) request the necessary information from the relevant competent authorities in third countries.
- (5) The competent authority from the home Member State of the AIFM shall notify the Agency about the measures referred to in paragraph 4, item a), of this Article.
- (6) If, despite the measures taken by the competent authority of the home Member State of the AIFM pursuant to paragraph 4 of this Article or because such measures prove to be inadequate, the AIFM continues to refuse to provide the requested documentation and information to the Agency, or persists in breaching the provisions of this Act, the Agency may, after informing the competent

- authority of the home Member State of the AIFM, order supervisory measures within the scope of its competence.
- (7) Where the Agency has clear and demonstrable grounds for believing that the AIFM is in breach of the regulations in relation to which the Agency is not responsible for supervising compliance, it shall notify thereof the competent authority of the Home Member state of the AIFM which shall take appropriate measures, including, if necessary, request additional information from the relevant competent authorities in third countries.
 - (8) If the home Member State of the AIFM within 60 days from the receipt of the notification in the previous paragraph fails to take any measures or if such measures prove to be inadequate or if, despite the measures taken by the competent authority of the home Member State of the AIFM, the AIFM persists in breaching the regulations, the Agency may, for the purpose of protection of investors of the AIF and protection of financial stability and market integrity, after informing the competent authority of the home Member State of the AIFM; order supervisory measures within the scope of its competence.
 - (9) The Agency shall act in accordance with the provisions of paragraphs 7 and 8 of this Article when it has clear and demonstrable grounds for disagreement with the authorisation of a non-EU AIFM by another Member State.
 - (10) When it disagrees on any of the measures taken by the competent authority of the home Member State of the AIFM pursuant to paragraphs 4, 5 and 7 of this Article, the Agency may bring the matter to the attention of ESMA.

Article 307

- (1) In the cases of withdrawal of the authorisation, in full or in relation to certain activities, the AIFM which the Agency knows manages an AIF with a registered office in another Member State, the Agency shall submit a notification to the competent authority of the Member State informing it about such withdrawal of the authorisation.
- (2) Where the Agency receives a notification from the competent authority of the home Member State of the AIFM managing the AIF in the territory of the Republic of Croatia, in respect of withdrawal of the authorisation to that AIFM, in full or in respect of certain activities, the Agency may take appropriate measures to protect the interests of the unit-holders including, among other things, prohibit the execution of transaction or prohibit the issue or redemption of units in the territory of the Republic of Croatia.

Section 7

Supervision of AIFMs from third countries in the Republic of Croatia

Competence of the Agency for the supervision of operations of AIFMs with a registered office in third countries

Article 308

- a. Supervision of the operations of AIFMs from third countries, where the Agency is established as the Member State of reference of the AIFM, the Agency shall conduct in the manner and to the extent of supervision of AIFMs with a registered office in the Republic of Croatia.
- b. Where the Agency is not determined as the Member State of reference of the AIFM, the Agency shall conduct supervision of the operations of the AIFM from a third country in the manner and scope of supervision for EU AIFMs.

Part Seventeen

Cooperation with other supervisory authorities in the Republic of Croatia and European Union authorities

Article 309

Cooperation arrangements of the Agency with the competent authorities of the Member States and the European Union shall be subject to the provisions of the act regulating open-ended investment funds with a public offering, as appropriate, until the relevant regulations by the European Union are adopted.

Cooperation of supervisory authorities in the Republic of Croatia

Article 310

- (1) The Agency and other supervisory authorities in the Republic of Croatia which are responsible for the supervision and examination of the same or other institutions shall, at the request of the respective supervisory authorities, supply to these authorities any information about the said supervised entities which are necessary for the supervision and examination procedure in the supervised entities, in the procedure for granting authorisation or other procedures.
- (2) Supervisory authorities shall be obliged to exchange the information about any irregularities or circumstances they established, if such finding are important for the work of other supervisory authorities.

Gathering and processing of information

Article 311

- (1) The Agency shall be authorised and responsible to gather and process the information concerning the facts and circumstances which are important for the

- performance of its obligations and duties specified in this Act and the Act on Croatian Financial Services Supervisory Agency.
- (2) Information referred to in paragraph 1 of this Article shall in particular include the information about:
1. authorisation to manage AIFs and other authorisations and approvals which the Agency grants pursuant to the provisions of this Act,
 2. members of the management and supervisory board of the AIFs , their organisation and work of the internal audit,
 3. branch offices, i.e. direct management of AIFs by the AIFMs in the Member States and branch offices, i.e. performance of direct functions by the AIFMs from the Member State in the Republic of Croatia ,
 4. branch offices of the AIFMs in third countries,
 5. branch offices i.e. performance of direct functions of AIFMs from third countries in the Republic of Croatia,
 6. financial standing and operation of the management company and other persons which the Agency is authorised to supervise,
 7. the persons possessing qualifying holdings,
 8. supervisory measures which the Agency imposed pursuant to the provisions of this Act,
 9. information it learned, as part of information exchange, from other supervisory authorities in the Republic of Croatia, Member States or third countries.
- (3) The Agency shall be exempt from payment of the fees and charges to obtain the information from the registers and records kept by the courts and other state authorities and bodies.

Confidentiality requirement

Article 312

The obligation to keep confidential information secret, its use and the persons not subject to the confidentiality requirement, shall be subject to the relevant provisions of the act regulating capital markets and other regulations governing the protection of personal data.

Part Seventeen

Penal provisions

Serious offences of AIFs

Article 313

- (1) A fine in the amount of HRK 200,000.00 to HRK 500,000.00 shall be imposed for an offence on the AIFM in the following cases:

1. if, relative to the category of assets in which the AIF assets may be invested, limitations on investment or conditions on which certain types of AIFs may be marketed to retail investors, it acts contrary to the provision of Article 7, paragraph 8, of this Act,
2. if it carries out its activities in a manner different from that prescribed in Article 12 of this Act
3. if it carries out the activities referred to in Article 13 of this Act for which it has not been granted authorisation by the Agency or has not subscribed them as activity in the court register, in accordance with the provisions of Article 15, paragraphs 1 and 2, of this Act,
4. if it manages AIFs contrary to the provisions of Article 15, paragraph 3, of this Act,
5. if it carries out its activity contrary to the conditions in Article 15, paragraph 5, of this Act of this Act,
6. if it fails to insure additional amount of own funds of AIFM in accordance with the provision of Article 18 of this Act,
7. if it invests own funds contrary to the provision of Article 19 of this Act,
8. if own funds of AIFM are not at any time higher than or equal to the higher of the the amounts referred to in Article 20 of this Act,
9. if it fails to submit to the Agency a report on compliance with capital requirements within the time limits set out in the provisions of Article 21 of this Act,
10. if, contrary to the provisions of Article 30, paragraph 1, of this Article, it owns or acquires the control or qualifying holdings of an investment fund, credit institution which provides investment services and performs out investment activities in accordance with provisions of the act regulating capital markets or performs appropriate services in accordance with act regulating the establishment and business operation of credit institutions, insurance companies, reinsurance companies, pension companies for management of voluntary or mandatory pension funds, pension insurance companies, factoring companies or leasing companies,
11. if it owns or acquires shares or units in the depositary, or the activities of the depositary and the AIFM are organisationally linked contrary to the provisions of Article 30, paragraph 2, of this Act,
12. if it owns or acquires shares or units in the entity to which the depositary has delegated the tasks referred to in Article 232 of this Act, contrary to the provisions of Article 30, paragraph 3 of this Act,
13. if it is included in the changes of status of the AIFM contrary to the provisions of Article 33 of this Act,
14. if the function of the member of the management of the AIFM, contrary to the provisions of Article 39, paragraph 1, of this Act, is performed by the person who is not authorised by the Agency to perform the function of the member of the AIFM's management,
15. if the AIFM, i.e. members of its management and/or procurators and/or employees act contrary to the provisions of Article 46, paragraphs 1, of this Act,

16. if AIFM, i.e. members of its management and/or procurators act contrary to the provisions of Article 46, paragraphs 2, of this Act,
17. acts contrary to the provisions of Article 53 of this Act,
18. if fails to establish, for the AIF which he manages, the liquidity management system in accordance to the provisions of paragraph 1, Article 55 of this Act,
19. if it fails to establish, implement and regularly update, assess and monitor, taking into account the nature, scale and complexity of their business, effective and appropriate policies, procedures, measures referred to in paragraph 2, Article 55 of this Act,
20. if it fails to act, as regards liquidity management, in accordance with the provisions of paragraphs 3 and 4, Article 55 of this Act,
21. it fails to prepare and submit to the Agency the AIFM reports in accordance with the provisions of Article 63 of this Act,
22. it fails to prepare and submit to the Agency the audited annual financial reports referred to in Article 63, paragraph 2, of this Act in the time limits set out in the provision of Article 64, paragraph 2, of this Act,
23. it fails to notify in advance the Agency about the tasks delegated to a third party in accordance with the provision of Article 65, paragraph 1, of this Act,
24. it fails to obtain approval of the Agency in relation to the tasks delegated to a third party in accordance with the provisions of Article 65, paragraph 2, of this Act,
25. if tasks are delegated to third parties contrary to the provision of Article 65, paragraph 3, of this Act,
26. if the delegation of tasks to third parties is not effected in accordance with the provision of Article 66 of this Act,
27. when delegating tasks to third parties it fails to comply with the provision of Article 67 of this Act,
28. if, contrary to the provisions of Article 77, paragraph 2, of this Act, it takes on the management function of AIFs without the approval of the Agency,
29. if as the transferor fails to disclose the information and/or fails to notify all investors about the transfer of management in accordance with the provision of Article 80, paragraph 1, of this Act,
30. if, as the transferee, it fails to disclose this information and/or notify all investors about the transfer of management in accordance with Article 80, paragraph 1, of this Act,
31. if it fails to transfer the management of an AIF to another AIFM in accordance with the provision of Article 88, paragraph 1 of this Act,
32. if it fails to initiate the winding-up procedure of an AIF in accordance with the provision of Article 88, paragraph 2, of this Act,
33. when managing an AIF which acquires, disposes of or holds shares of a non-listed company, it fails to notify the Agency of the proportion of voting rights of the non-listed company any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50%

- and 75%, in the set time limit in accordance with the provisions of Article 92, paragraphs 1 and 5 of this Act,
34. it fails to submit to the Agency the notification of the acquisition of control of the non-listed company in accordance with the provisions of Article 92, paragraphs 2 and 5 of this Act,
 35. if it invests the financial resources for the issue of units contrary to the provisions of Article 98, paragraph 5, of this Act,
 36. it fails to settle the claims for the expenses and remuneration for managing AIFs exclusively from the assets of the AIFs, in accordance with the provision of Article 104, paragraph 4, of this Act,
 37. it fails to comply with the provisions of Article 106 of this Act,
 38. it acts contrary to the provisions of Article 107 of this Act,
 39. it acts contrary to the provisions of Article 110 of this Act,
 40. in keeping the register of units of an open-ended AIFs fails to communicate the information on the investors, balance of units, payments and pay-offs i.e. it acts contrary to the provision of Article 132, of this Act,
 41. it fails to submit to the investors statement of balance and turnover in units of an open-ended AIF which they hold, in accordance with the provision of Article 133, paragraphs 3 and 4, of this Act,
 42. it manages an AIF in the host Member State directly or through a branch contrary to the provisions of Article 143 of this Act,
 43. it markets the units of the EU AIF in the Republic of Croatia contrary to the provisions of Article 145 of this Act,
 44. as an AIFM from another Member State pursuing an activity in the territory of the Republic of Croatia contrary to the provisions of Article 146, paragraph 1, or Article 147, paragraph 1, of this Act,
 45. as an AIFM from another Member State, it starts marketing the units of AIFs to professional investors in the Republic of Croatia contrary to the provisions of Article 146, paragraph 2, or Article 147, paragraph 2, of this Act,
 46. as an AIFM from another Member State in the Republic of Croatia, contrary to the provision of Article 146, paragraph 3, or Article 147, paragraph 3, of this Act, it establishes and manages the types of AIFs for which it is not authorised by the competent authority of the home Member State of the AIFM,
 47. contrary to the provision of Article 149, paragraph 1, of this Act, as an AIFM from another Member State in the Republic of Croatia it markets units of the AIF to retail investors without the prior approval of the Agency,
 48. as an AIFM from the Republic of Croatia in a third country it manages a non-EU AIF, where the conditions set out in the provisions of Article 151 of this Act are not met,
 49. as an AIFM from the Republic of Croatia it markets the units of non-EU AIFs in the territory of the Republic of Croatia, where the conditions set out in the provisions of Article 152 of this Act are not met,

50. as an AIFM from the Republic of Croatia it markets the units of non-EU AIFs to professional investors in the Republic of Croatia contrary to the provisions of Article 153 of this Act,
51. as an AIFM from the Republic of Croatia it markets the units of non-EU AIFs in another Member State contrary to the provisions of Article 154 of this Act,
52. as a non-EU AIFM in the Republic of Croatia it manages an AIF from the Republic of Croatia or markets the units of the AIF it manages contrary to the provisions of Article 156 of this Act,
53. as a non-EU AIFM, to which the Republic of Croatia is the Member State of reference, acts contrary to the provision of Article 160 of this Act,
54. as a non-EU AIFM, before modifying the marketing strategy, it fails to notify the Agency in accordance with the provisions of Article 165 of this Act,
55. as a non-EU AIFM it fails to act in accordance with the Agency's order referred to in Article 166, paragraph 1, of this Act,
56. as a non-EU AIFM it markets the units of an AIF from another Member State in the Republic of Croatia as the Member State of reference contrary to the provisions of Article 170 of this Act,
57. as a non-EU AIFM in another Member State it markets the units of AIFs from Republic of Croatia, from another Member State or a third country contrary to the provisions of Article 171 of this Act,
58. as a non-EU AIFM to which the Republic of Croatia is the Member State of reference, it manages an AIF established in another Member State contrary to the provisions of Article 172 of this Act,
59. as a non-EU AIFM performs its activity in the Republic of Croatia through a branch contrary to the provisions of Article 174 of this Act,
60. as a non-EU AIFM performs its activity directly in the territory of the Republic of Croatia contrary to the provisions of Article 175 of this Act,
61. as a non-EU AIFM which markets in the Republic of Croatia the units of AIFs to retail investors contrary to the provisions of Article 177 of this Act,
62. as an AIFM from another Member State or a non-EU AIFM for the marketing of units of the AIF established in another Member State or a third country fails to provide the conditions in the Republic of Croatia in accordance with the provision of Article 179 of this Act,
63. contrary to the provisions of Article 183 of this Act, markets in the Republic of Croatia the units of AIFs established in the Republic of Croatia without authorisation,
64. when establishing the value of the assets, liabilities and net asset value of the AIF, it acts contrary to the provisions of Article 192 of this Act,
65. it fails to provide that the valuation function is performed by the persons in a manner referred to in Article 193, paragraph 1, of this Act,
66. it fails to adopt accounting policies and valuation methods for each AIF it manages and/or fails to submit them to the depositary of the AIF or the

- external valuer in accordance with the provision of Article 193, paragraph 2, of this Act,
67. it appoints the depository of an AIF as an external valuer of the AIF contrary to the provisions of Article 193, paragraph 3, of this Act,
 68. it fails to inform the Agency about the appointment of an external valuer in accordance with the provision of Article 193, paragraph 6, of this Act,
 69. it fails to provide that for each AIF that it manages, appropriate procedures are established for the valuation of the assets of the AIF and calculation of the net asset value per unit of the AIF in accordance with the provisions of Article 195 of this Act,
 70. it acts contrary to the provisions of Article 197, paragraph 2, of this Act in relation to the issue and redemption of units in an open-ended AIF,
 71. effects the “in specie” redemption contrary to the provisions of Article 199 of this Act,
 72. in relation to the suspension of the issue and redemption of units of an open-ended AIF, fails to act in accordance with the provisions of Article 201 and/or 202 of this Act,
 73. if it fails to disclose unit prices and net asset value in accordance with the provisions of Article 206 of this Act,
 74. it fails to draw up the documents, notifications and other statements in accordance with the provisions of Article 207 of this Act,
 75. it fails to prepare, submit and publish the annual financial reports and/or additional reports of AIFs in accordance with the provision of Article 215 of this Act,
 76. it fails to submit in the prescribed time limits the audited annual reports of AIFs in accordance with the provision of Article 217 of this Act,
 77. contrary to the provision of Article 229, paragraphs 1 and 2, of this Act it selects a depository without the approval of the Agency,
 78. in relation to the collection of funds of an open-ended AIF, it fails to comply with the provisions of Article 254 of this Act,
 79. charges and collects the fees and/or costs contrary to the provisions of Article 256 or 257 of this Act,
 80. in relation to the limitations on investment and derogation from the limitations on investment of the assets of AIFs, fails to act in accordance with the provisions of Article 258 of this Act,
 81. it fails to obtain the approval of the Agency for the establishment of a feeder AIF in accordance with the provision of Article 260 of this Act.
 82. It fails to act in accordance with the provisions of Article 267 or 268 of this Act (AIF established for a fixed term),
 83. It fails to submit the information at the request of the in accordance with the provisions of Article 275 of this Act.
- (2) A fine in the amount from HRK 20,000.00 to HRK 50,000.00 also shall be imposed on the responsible person of the AIFM for an offence referred to in paragraph 1 of this Article.

Minor offences of AIFMs

Article 314

(1) A fine in the amount from HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence of AIFM if:

1. if fails to inform the Agency in due time about any substantial change to the data in the application for authorisation, in accordance with the provisions of Article 29, paragraph 2, of this Act,
2. if no records are kept of the held meetings or conferences of the bodies of the alternative investment funds manager, in accordance with the provisions of Article 34, paragraph 3, of this Act,
3. it has not set up, does not implement or does not regularly update, assess and supervise effective and appropriate general organisational requirements, and it has not set up, does not implement or does not regularly update, assess and supervise policies, measures and procedures referred to in Article 47 of this Act or the ordinance referred to in Article 62 of this Act,
4. within the framework of the internal control mechanisms, it has failed to organise the functions in accordance with the provision of Article 47, paragraph 2, of this Act,
5. in relation to the management of the conflicts of interest, it fails to act in accordance with the provisions of Articles 48 and 49 of this Act,
6. it has not set up or does not implement or does not regularly update the policies for personal transactions with the financial instruments in accordance with the provision of Article 50 of this Act,
7. fails to act in accordance with the provisions of Article 51 of this Act
8. fails to act in accordance with the provisions of Article 52 of this Act,
9. fails to meet the duties laid down in the provisions of Article 54 of this Act,
10. does not take the measures for ongoing operation in accordance with the provisions of Article 56 of this Act,
11. in relation to the remuneration policy fails to act in accordance with the provisions of Article 57 of this Act,
12. in relation to the procedure, records and business documentation, fails to act in accordance with the provision of Article 58 of this Act,
13. in relation to the procedure for resolving investors' complaints fails to act in accordance with the provisions of Article 59 of this Act,
14. in relation to dispute settlement between the AIFM and investors fails to act in accordance with the provisions of Article 60 of this Act,
15. does not have or does not update regularly or does not maintain its website in accordance with the provisions of Article 61 of this Act,
16. the audit of the reports of AIFMs is carried out by the auditing firm contrary to the provision of Article 64, paragraph 3, of this Act,
17. it fails to act in accordance with the provision of Article 65, paragraph 5, of this Act,

18. it learns about the acquisition or sale of the qualifying holdings of the AIFM which exceeds or drops below the prescribed thresholds and fails to inform the Agency thereof in accordance with the provision of Article 74, paragraph 6, of this Act,
19. it fails to submit to the Agency in the prescribed time limit the lists of all shareholders and persons possessing business stakes or persons possessing qualifying holdings with the proportion of business stakes in accordance with the provision of Article 74, paragraph 7, of this Act,
20. as the transferor fails to act in accordance with the provisions of Article 81, paragraph 2, of this Act,
21. as the transferee entity fails to act in accordance with the provisions of Article 81, paragraph 2, of this Act,
22. it stops performing its registered activity contrary to the provisions of Article 87 of this Act,
23. it fails to inform the Agency about the markets where it trades and the instruments it trades on behalf of the AIF it manages, in accordance with the provisions of Article 89, paragraphs 1 – 4 of this Act,
24. while managing an AIF which employs leverage on a substantial basis, it fails to submit to the Agency the information laid down in the provisions of Article 89, paragraph 5, of this Act,
25. it fails to act in accordance with the provisions of Article 93 of this Act in relation to the disclosure in case of acquisition of control,
26. it fails to act in accordance with the provisions of Article 94 of this Act,
27. it fails to act in accordance with the provisions of Article 95 of this Act (distribution of assets),
28. it fails to inform the Agency about any modification of the management contract, in accordance with the provision of Article 124, paragraph 4, of this Act,
29. it fails to inform the Agency within due time limit about any substantial change to the data in the application for the establishment and for authorisation for a closed-ended AIF, in accordance with the provision of Article 129, paragraph 2, of this Act,
30. if fails to keep the documentation on the disposition of units of an open-ended AIF in accordance with the provision of Article 134, paragraph 5, of this Act,
31. in the host Member State markets the units of an AIF it manages to professional investors contrary to the provisions of Article 140 of this Act,
32. it acts contrary to the provision of Article 142, paragraph 1, of this Act,
33. if it fails to promote an AIF in accordance with the provisions of Article 184 and/or 185 of this Act related to unclear and ambiguous information and/or if the information is in contradiction with the contents of the rules and/or prospectus,
34. it publicly promotes an AIF with a private offering contrary to the provisions of Article 186, paragraph 2, of this Act,
35. it acts contrary to the provisions of Article 187 of this Act,

36. it fails to notify the Agency about the contract concluded with the person referred to in Article 188 of this Act, in accordance with the provision of Article 189, paragraph 2, of this Act,
 37. it fails to supply to the investor the documents and reports in accordance with the provision of Article 219 of this Act,
 38. does not make available the rules, prospectus and audited annual report in accordance with the provisions of Article 221 of this Act,
 39. it fails to disclose the information in accordance with the provisions of Article 223 of this Act,
 40. it fails to act in accordance with the provisions of Article 224 of this Act (publication or legal and business transactions),
 41. at the request of the investor, fails to submit additional information in accordance with the provision of Article 225 of this Act,
 42. as an EU AIFM, it fails to supply information to the investors in the Republic of Croatia in accordance with the provisions of Article 226 of this Act,
 43. as a non-EU AIFM it fails to supply information to the investors in the Republic of Croatia in accordance with the provisions of Article 226 of this Act,
 44. it acts contrary to the provisions of the ordinance referred to in Article 259, paragraph 6, or Article 260, paragraph 3, of this Act.
- (2) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed on responsible person of the AIFM for the offence referred to in paragraph 1 of this Article.

Offences of certain natural persons in relation to the AIFM or the depositary

Article 315

A fine in the amount from HRK 20,000.00 to HRK 50,000.00 shall be imposed for an offense on the following:

1. a member of the management of the AIFM acting contrary to the provision of Article 35, paragraph 3, of this Act,
2. a member of the AIFM or qualified unit-holder that does not meet the conditions referred to in Article 27 of this Act,
3. a member of the management of the AIFM who does not run the AIFM's operations in accordance with the provision of Article 36, paragraph 4, of this Act,
4. a member of the management and/or procurer and/or employee of the AIFM if they act contrary to the provisions of Article 37 of this Act,
5. a member of the supervisory board of the AIFM if (s)he fails to act in accordance with the provisions of Article 42, paragraph 4, of this Act,
6. a member of the supervisory board of the AIFM who performs the tasks contrary to the provision of Article 43, paragraph 4, of this Act,
7. a member of the supervisory board who fails to act in accordance with the provisions of Article 45 of this Act,

8. a member of the supervisory board of a closed-ended IAF fails to perform management functions which cannot be postponed in accordance with the provisions of Article 83, paragraph 2, of this Act,
9. when selecting another AIFM and the transfer of management function, a member of the supervisory board of a closed-ended AIF fails to act in accordance with the provisions of Article 84 of this Act,
10. a member of the supervisory board of a closed-ended AIF if (s)he fails to act in accordance with the provisions of Article 84, paragraph 3, of this Act,
11. a member of the supervisory board of a closed-ended AIF who, contrary to the provisions of Article 120 of this Act, receives a remuneration from the issuer of the financial instruments,
12. a member of the supervisory board of a closed-ended AIF fails to report to the Agency any oversight on the part of a closed-ended AIF and the depositary in accordance with the provision of Article 121, paragraph 2, item 5, of this Act,
13. the manager and/or other employees or the depositary and/or its procurers and/or proxies if they act contrary to the provisions of Article 234, paragraph 4, of this Act,
14. the manager and/or other employees or the depositary and/or its procurers and/or proxies if they act contrary to the provisions of Article 234, paragraph 5, of this Act,
15. a member of the management and/or member of the supervisory board and/or procurer fails to act in accordance with the provision of Article 275, paragraph 2, of this Act.

Offences by the liquidator of an AIF

Article 316

- (1) A fine in the amount from HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence on the liquidator of an AIF as a legal person if:
 1. as liquidator of an AIF it fails to act in accordance with the provisions of Article 261 of this Act,
 2. as liquidator of an open-ended AIF it fails to notify the unit-holders and the Agency about the winding-up procedure in accordance with the provisions of Article 263 of this Act,
 3. it fails to act in accordance with the provisions of Article 264, paragraph 3, of this Act, relative to the submission of the report to the Agency,
 4. it fails to distribute the assets to unit holders in accordance with the provision of Article 265, paragraph 3, of this Act.
- (2) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed for an offence on the responsible person of the liquidator legal person.
- (3) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed for an offence on the liquidator as a natural person.

Offences by auditors and the auditing firm

Article 317

- (1) A fine in the amount from HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence on the auditing firm:
 1. which fails to audit the AIFM's financial reports in accordance with the provision of Article 64, paragraph 1, of this Act,
 2. which does not audit the AIF's annual report referred to in Article 215 of this Act in the manner and on conditions specified in Article 216, paragraph 1, of this Act,
 3. which fails to supply to the Agency the auditor's report in accordance with the provisions of Article 236, paragraph 6, of this Act,
 4. which does not audit the performance of the depository's obligations in accordance with the provisions of the ordinance referred to in Article 236, paragraph 7, of this Act.
- (2) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed for an offence referred to in paragraph 1 of this Article on the auditor and the responsible person in the auditing firm which is a legal person referred to in paragraph 1 of this Article.
- (3) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed on the independent auditor for an offence referred to in paragraph 1 of this Article.

Offences by other persons

Article 318

- (1) A fine in the amount from HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence on a legal person:
 1. acting contrary to the provisions of Article 6 of this Act,
 2. using the phrase "company for alternative investment funds management" for the purposes of the company, part of the company or advertising, and it has not been granted authorisation by the Agency or the competent authority, pursuant to the provisions of Article 12, paragraph 3, of this Act,
 3. using the phrase "company for investment funds management" for the purposes of the company, part of the company or advertising, and it has not been granted authorisation by the Agency or the competent authority, pursuant to the provisions of Article 12, paragraph 4, of this Act,
 4. which performs management functions in the Republic of Croatia contrary to the provisions of Article 14 of this Act,
 5. if as a third party which further sub-delegates the delegated functions contrary to the provisions of Article 66, paragraph 2, of this Act,
 6. if as a third party does not review the performance of sub-delegates tasks in accordance with the provisions of Article 66, paragraph 3, of this Act,
 7. intending to acquire or increase directly or indirectly their share in the AIFM, and have not submitted in advance to the Agency a written request

- for approval, in accordance with and pursuant to the conditions laid down in the provisions of Article 68 of this Act,
8. intending to directly or indirectly divest or reduce the qualifying holdings in the AIFM, and fails to inform the Agency thereof in writing, in accordance with the provisions of Article 69 of this Act,
 9. if, in keeping the register of units of an open-ended AIFs, it fails to communicate the information on the investors, balance of units, payments and pay-offs i.e. it acts contrary to the provision of Article 132, of this Act,,
 10. if as the head of the register acts contrary to the provisions of Article 133, paragraphs 3 and 4, of this Act,
 11. if as the head of the register does not keep the documentation on disposition of units of an open-ended AIF in accordance with the provisions of Article 134, paragraph 5, of this Act,
 12. is not specified in Article 183 of this Act and which market in the Republic of Croatia the units of an AIF established in the Republic of Croatia ,
 13. if as the person referred to in Article 188 of this Act promotes the AIF contrary to the provisions of Article 184 and/or 185 of this Act related to unclear and ambiguous information and/or if the information is in contradiction with the contents of the rules and/or prospectus,
 14. if as the person referred to in Article 188 of this Act, contrary to the provisions of Article 190, paragraph 1, of this Act, engages in the tasks of marketing the units of AIFs in the period in which the Agency, the Croatian National Bank or some other competent authority, revoked its authorisation,
 15. if as the person referred to in Article 188 of this Act acts contrary to the provision of Article 190, paragraph 2, of this Act,
 16. if as the person referred to in Article 188 of this Act authorised to market the units of the AIF with a public offering acts contrary to the provisions of Article 191 of this Act,
 17. if as an external valuer, contrary to the provisions of Article 193, paragraph 6, of this Act, delegates the valuation function to third parties.
- (2) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed from an offence referred to in paragraph 1 of this Article on the responsible person in the entity which is a legal person referred to in paragraph 1 of this Article.
 - (3) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed for an offence on a natural person:
 1. if he acts contrary to the provisions of Article 6 of this Act,
 2. who sub-delegates delegating functions contrary to the provisions of paragraph 2, Article 66 of this Act,
 3. who fails to supervise sub-delegated functions in accordance with the provisions of paragraph 3, Article 66 of this Act,
 4. who intends to acquire or increase, directly or indirectly, a qualifying holding in an AIFM and fails to submit prior application to the

Agency for issuance of approval in writing in accordance with conditions prescribed in the provisions of Article 68 of this Act,

5. who intends to dispose of, directly or indirectly, a qualifying holding in an AIFM and fails to notify the Agency in writing in accordance with the provisions of Article 69 of this Act,

6. if as an external valuer, contrary to the provisions of paragraph 5, Article 193 of this Act, delegates valuation functions on third persons.

Serious offences by the depositary

Article 319

- (1) A fine in the amount from HRK 200,000.00 to HRK 500,000.00 shall be imposed for an offence on the depositary if it:
1. fails to perform the tasks of management of an AIF which cannot be postponed in accordance with the provisions of Article 83, paragraph 1 of this Act,
 2. fails to suspend the issue and redemption of units of an AIF, in accordance with the provisions of Article 83, paragraph 4, of this Act,
 3. when selecting another AIFM and transfer of management functions it fails to act in accordance with the provisions of Article 84 of this Act,
 4. does not start and/or complete the winding-up of an AIF, in accordance with the provisions of Article 85 of this Act,
 5. fails to perform the tasks in accordance with the provisions of Article 86 of this Act,
 6. fails to provide an opinion in accordance with the provisions of Article 125, paragraph 3 of this Act,
 7. acts contrary to the provisions of Article 193, paragraphs 3 and 4 of this Act,
 8. in relation to the suspension of the issue and redemption of units of an open-ended AIF, it fails to act in accordance with the provisions of Article 201 and/or 202 of this Act,
 9. ne fails to meet the conditions prescribed in the provisions of Article 228 of this Act,
 10. fails to perform the tasks in accordance with the provisions of Article 230 of this Act,
 11. fails to act in accordance with the provisions of Article 231 of this Act,
 12. fails to safe-keep the assets the AIF in accordance with the provisions of Article 232 of this Act,
 13. tasks of safe keeping and administration and other tasks carries out contrary to the provisions of Article 233 of this Act,
 14. in the execution of its tasks and duties it fails to act in accordance with the provisions of Article 234 of this Act,
 15. in case of loss of the financial instruments held in custody, it fails to act accordance with the provision of Article 235, paragraph 2, of this Act,

16. it fails to act in accordance with the provisions of Article 239, paragraphs 1 and 2, of this Act,
 17. effects payment contrary to the provisions of Article 240 of this Act,
 18. contrary to the provisions of Article 241 of this Act it delegates the tasks and duties to third parties,
 19. in the case of termination of the depositary agreement it fails to act in accordance with the provision of Article 247 of this Act,
 20. fails to act in accordance with the provision of Article 263, paragraph 3, or this Act.
- (2) A fine in the amount from HRK 20,000.00 to HRK 50,000.00 shall be imposed for an offence referred to in paragraph 1 of this Article on the responsible person in the depositary.

Minor offences by the depositary

Article 320

- (1) A fine in the amount from HRK 50,000.00 to HRK 100,000.00 shall be imposed for an offence on the depositary if it:
1. fails to appoint an auditing firm and/or fails to inform the Agency about such firm in accordance with the provisions of Article 236, paragraphs 3 and 4, of this Act,
 2. fail to supply to the Agency the contracts concluded with third persons and/or a list of third persons in accordance with the provisions or Article 242, paragraph 1, of this Act and/or fails to supply to the AIFM the list of third parties in accordance with the provision of Article 242, paragraph 2, of this Act,
 3. fails to act in accordance with the provisions of Article 243 and/or 244 of this Act,
 4. fails to act in accordance with the provisions of Article 245 of this Act,
 5. fails to inform the Agency in accordance with the provision of Article 246, paragraph 2, of this Act,
 6. fails to act in accordance with the provisions of Article 248 of this Act.
- (2) A fine in the amount from HRK 10,000.00 to HRK 30,000.00 shall be imposed for an offence referred to in paragraph 1 of this Article on the responsible person in the depositary.

Statute of limitations for misdemeanour proceedings

Article 321

- (1) Misdemeanour proceedings cannot be instituted after the lapse of three years from the committed offence.
- (2) The statute of limitations shall be interrupted by any procedural activity taken for the purpose of instituting misdemeanour proceedings against the perpetrator for the offence committed.

- (3) The statute of limitations shall restart after each interruption.
- (4) The statute of limitations for misdemeanour proceedings shall start in all cases after the lapse of twice the period of the statute of limitations.

Part Nineteen

Transitional and final provisions

Adjustment of AIFMs

Article 322

- (1) Management companies which on the day of entry into force of this Act hold the approval to perform the functions of managing investment funds and open-ended risk capital investment funds and that manage:
 1. closed-ended investment funds with a public offering and/or,
 2. open-ended investment funds with a private offering and/or,
 3. open-ended risk capital investment funds with a private offering,and the approval has been recorded in the court register and issued by the Agency pursuant to the Investment Funds Act (Official Gazette 150/2005), shall continue to operate as alternative investment funds managers (AIFMs) pursuant to this Act based on the existing.
- (2) It shall be deemed that the managers referred to in paragraph 1 of this Article have been granted the approval to manage AIFs these companies were managing before the entry into force of this Act.

Article 323

- (1) The AIFMs referred to Article 322 of this Act shall within a period of 12 months from the day of entry into force of this Act adjust their operations with the provisions of this Act and implementing regulations adopted pursuant to this Act, and submit to the Agency applications for authorisation of the AIFM and the AIFs it manages in accordance with the provisions of this Act.
- (2) The Agency shall adopt a decision on the applications referred to in paragraph 1 of this Article within a period of 6 months following the receipt of the complete application.
- (3) If the AIFM fails to act in accordance with the provision of paragraph 1 of this Act, the Agency shall withdraw the authorisation referred to in Article 322 of this Act issued to the AIFM and the AIFs it manages. In that case, the AIFM shall cease to perform the activity for which the authorisation was granted and shall delete that activity from the court registers. The AIFM may not submit a new application for authorisation in accordance with the provisions of this Act prior to expiration of one year following the withdrawal of the authorisation.
- (4) The AIFMs managing AIFs of the closed-ended type which after the entry into force of this Act do not make any additional investments, shall not be obliged to

to submit to the Agency the application for authorisation referred to in paragraph 1 of this Article.

Members of the management of an AIFM

Article 324

- (1) The person that was granted approval from the Agency to perform the functions of a member of the management board of the management company pursuant to the provisions of the Investment Funds Act (Official Gazette 150/2005), shall be deemed to have the approval to perform the function of a member of the management of an AIFM issued pursuant to the provisions of Article 39 of this Act until the expiration of the time limit referred to in the provision of Article 323 paragraph 1 of this Act,
- (2) Where no member of the management of an AIFM have passed the exam for investment advisor, one member of the management must take and pass the exam within a period of 12 months from the day of entry into force of this Act.
- (3) The person referred to in paragraph 1 of this Article shall within a period of six months from the day of entry into force of this Act meet all conditions referred to in Articles 35, 36 and Article 37 of this Act.

Article 325

Investment funds established in the form of closed-ended investment funds with a public offering pursuant to the provisions of the Investment Funds Act (Official Gazette 150/2005) which are undergoing the winding-up procedure on the day of the adoption of this Act, and the winding-up procedure is not completed by the entry into force of this Act, shall no longer be investment funds within the meaning of the provisions of this Act.

Adoption of implementing regulations

Article 326

- (1) The Agency shall within a period of 12 months from the day of entry into force of this Act adopt the regulations prescribed under this Act.
- (2) The Agency may adopt ordinances governing all the areas covered in this Act which are not regulated by the European Commission.

Agency proceedings

Article 327

The proceedings instituted before the Agency until the entry into force of this Act shall be concluded under the provisions of the Investment Funds Act (Official Gazette 150/205).

Article 328

On the day of entry into force of this Act, the Investment Funds Act (Official Gazette 150/2005) shall cease to have effect, except for the part relating to open-ended investment funds with a public offering.

Entry into force

Article 329

This Act shall be published in the Official Gazette and it shall enter into force on the day of the accession of the Republic of Croatia to the European Union.

Class: 402-09/12-01/01

Zagreb, 25 January 2013

The Croatian Parliament
Speaker of Parliament
Josip Leko, m. p.