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Investment Funds Act¹

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Amended by the following acts

Passed	Published	Entry into force
07.06.2017	RT I, 26.06.2017, 1	06.07.2017
19.06.2017	RT I, 03.07.2017, 2	13.07.2017, partially 01.01.2018
13.12.2017	RT I, 30.12.2017, 3	03.01.2018; the words “ancillary investment service” are replaced throughout the text by the words “ancillary service” in the appropriate number and case form.
12.12.2018	RT I, 28.12.2018, 1	13.01.2019, partially 01.01.2019
19.12.2018	RT I, 10.01.2019, 1	20.01.2019

Part 1 GENERAL PART

Chapter 1 General Provisions

§ 1. Scope of regulation

(1) This Act regulates establishment, foundation and management of investment funds and offer of their units, shares and other similar rights representing a holding.

(2) The provisions of the Administrative Procedure Act apply to administrative proceedings provided for in this Act, taking account of the specifications provided for in this Act and the Financial Supervision Authority Act.

§ 2. Investment funds

(1) An investment fund (hereinafter *fund*) is a legal entity or pool of assets which involves the capital of a number of investors with the view of investing it in accordance with a defined investment policy for the benefit of the investors in question and in their common interests.

(2) A fund can be established pursuant to this Act as a common fund (hereinafter *common fund*) or founded as a public limited company (hereinafter *public limited fund*), a limited partnership (hereinafter *limited partnership fund*) or a defined-benefit occupational pension fund.

(3) A fund must have a fund manager, unless otherwise provided for in this Act. A fund may only have one fund manager at a time.

§ 3. Fund managers

(1) A fund manager is a company which main and permanent activity is the management of one or more funds. A fund manager may manage a fund established or founded pursuant to this Act or another fund, including a fund established or founded pursuant to foreign law.

(2) In order to operate as a fund manager, the person must hold an activity licence or register its activities with the Financial Supervision Authority in accordance with the provisions of Part 5 of this Act.

(3) The fund manager of a UCITS (hereinafter *UCITS manager*) is a fund manager which holds an activity licence pursuant to the requirements provided for in Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, pp. 32-96).

(4) The fund manager of a pension fund (hereinafter *pension fund manager*) is a fund manager which holds an activity licence in accordance with this Act for management of a mandatory or voluntary pension fund.

(5) The fund manager of an alternative fund (hereinafter *alternative fund manager*) is a fund manager which holds an activity licence pursuant to the requirements provided for in Directive 2011/61/EU of the European Parliament and of the Council 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 (OJ L 174, 01.07.2011, pp. 1-73), and Commission Delegated Regulation (EU) No 231/2013, supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.03.2013, pp. 1-95).

(6) A manager of small alternative funds (hereinafter *small fund manager*) is a fund manager which manages, either directly or indirectly through a company linked thereto by common management or control or qualifying direct or indirect holding, alternative funds which:

- 1) volume of assets, including all the assets of the funds acquired by use of leverage, in total does not exceed 100 million EUR; or
- 2) volume of assets in total does not exceed 500 million EUR provided that the portfolio of the alternative funds consists of unleveraged alternative funds and the right to redeem the units or shares cannot be exercised within five years after the date of making investments in each alternative fund.

(7) The provisions of this Act concerning a fund manager shall not apply to the following persons and pools of assets:

- 1) holding companies;
- 2) *Eesti Pank* and central banks of foreign states;
- 3) the state, and local authorities;
- 4) employee participation or issue schemes;
- 5) securitisation special purpose vehicle for the purposes of Article 1(2) of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (ECB/2008/30) (OJ L 15, 20.01.2009, pp. 1-13);
- 6) persons who manage one or more funds which only investors are such persons themselves or the parent companies or subsidiaries of such persons or other subsidiaries of the parent company of such persons, provided that none of the specified investors is a fund.

(8) In this Act, persons and pools of assets which are founded or established for management of family assets or other equivalent pools of assets shall not be regarded as fund managers.

9) For the purposes of this Act, a holding company is a person which has a holding in one or more other persons and which business objective is to implement its business strategy through its subsidiaries or affiliated undertakings or holdings for increasing their value in the long term, and:

- 1) which acts on its own account and which shares or other equivalent securities have been admitted to trading on a regulated securities market of a State which is a contracting party to the EEA Agreement (hereinafter *EEA Member State*); or
- 2) which main objective in accordance with such person's annual report or other documents is not to generate revenue to investors through transfer of holdings.

§ 4. Common fund

(1) A common fund is a pool of assets which is established from the money collected pursuant to this Act through the issue of units or other assets and assets acquired through investment of money and which is jointly owned by unit-holders. A common fund may be managed by a fund manager which has received an activity licence pursuant to this Act or which has been issued an activity licence of a UCITS or alternative fund manager in another EEA Member State. A fund manager conducts transactions with the assets of a common fund in its own name and for the common account of all the unit-holders.

(2) The assets of a common fund may be divided into separate investment vehicles to which different investment policies apply and which are regarded as sub-funds (hereinafter *sub-fund*) for the purposes of this Act. In the case provided for in this Act, the provisions concerning funds also apply to sub-funds.

§ 5. Mandatory and voluntary pension funds

(1) A mandatory pension fund or a voluntary pension fund is a common fund which main objective is to provide unit-holders of the pension fund with a funded pension under the terms and conditions and pursuant to the procedure provided for in the Funded Pensions Act and this Act (hereinafter *pension fund*).

(2) A voluntary pension fund may *inter aliabe* an occupational pension fund.

- (3) The provisions concerning public funds apply to pensions funds, unless otherwise provided for in this Act.
- (4) The rate of return of a mandatory pension fund and occupational pension fund shall not be guaranteed and such pension funds shall not have defined benefits or cover mortality, survival and incapacity for work risks.
- (5) A voluntary pension fund which is not an occupational pension fund shall not have defined benefits or cover mortality, survival and incapacity for work risks.
- (6) A voluntary pension fund which is not an occupational pension fund may be a guaranteed fund. The guarantor of a guaranteed voluntary pension fund may only be an insurer or credit institution which is not the depositary of the fund.
- (7) The assets of a pension fund may not be divided into sub-funds.

§ 6. Public limited funds

- (1) A public limited fund is a fund founded pursuant to this Act as a public limited company and the provisions of the Commercial Code apply to the foundation, operation and dissolution thereof, unless otherwise provided for in this Act.
- (2) In order to operate, a public limited fund shall enter into a management contract with a fund manager which has been issued an activity licence pursuant to this Act or which has been issued an activity licence of a UCITS or alternative fund manager in another EEA Member State.
- (3) The assets of a public limited fund may not be divided into sub-funds.

§ 7. Defined-benefit Occupational Pension Funds

- (1) A defined-benefit occupational pension fund is a fund which manages its own assets and which has been founded in the form of a public limited company and which main objective is to provide an occupational pension agreed upon between an employer which residence or seat is in another EEA Member State (hereinafter *employer of EEA Member State*) and the employees, public servants or members of managing and controlling bodies thereof.
- (2) A defined-benefit occupational pension fund may be an occupational pension fund which guarantees investment performance, covers mortality, survival and incapacity for work risks or provides benefits in agreed amounts on other bases.
- (3) The assets of a defined-benefit occupational pension fund may not be divided into sub-funds.
- (4) A defined-benefit occupational pension fund is not a public limited fund or a pension fund for the purposes of this Act or the Funded Pensions Act.

§ 8. Limited partnership funds

- (1) A limited partnership fund is a fund founded as a limited partnership pursuant to this Act and the provisions of the Commercial Code apply to the foundation, operation and dissolution thereof, unless otherwise provided for in this Act.
- (2) A limited partnership fund may manage its own assets or enter into a management contract with a fund manager. Only a fund manager which has received an activity licence pursuant to this Act or which has been issued an activity licence of a UCITS or alternative fund manager in another EEA Member State or which has registered its operation with the Financial Supervision Authority may act as a limited partnership fund manager or a general partner of a limited partnership fund which manages its own assets. A limited partnership fund which manages its own assets shall not be regarded as a self-managed fund for the purposes of Directive 2011/61/EU of the European Parliament and of the Council.
- (3) The assets of a limited partnership fund may not be divided into sub-funds.

§ 9. Other types and classes of funds

- (1) A UCITS is a fund established or founded in an EEA Member State which complies with the requirements provided for in Directive 2009/65/EC of the European Parliament and of the Council and the units or shares of which may be publicly offered in all EEA Member States and they shall be redeemed at the request of unit-holders or shareholders.
- (2) An alternative fund is any fund which is not a UCITS, pension fund or defined-benefit occupational pension fund.

(3) A European venture capital fund manager is a manager of an alternative fund which is recognised in a Contracting Party, which meets the requirements provided for in Regulation (EL) No 345/2013 of the European Parliament and of the Council on European venture capital funds (OJ L 115, 25.04.2013, pp. 1-17), and the units or shares of funds managed by which may be publicly offered in all Contracting Parties.

(4) A European social entrepreneurship fund manager is a manager of an alternative fund which is recognised in a Contracting Party, which meets the requirements provided for in Regulation (EL) No 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds (OJ L 115, 25.04.2013, pp. 18-38), and the units or shares of funds managed by which may be publicly offered in all Contracting Parties.

(5) A closed-ended fund is an alternative fund which units or shares are not redeemed at the request of unit-holders, shareholders or partners before dissolution of the fund.

(6) A feeder fund is a fund which assets are invested to the extent of at least 85 per cent in the units or shares of a master fund specified in subsection (7) of this section or placed in the master fund in any other manner.

(7) A master fund is a fund which fulfils the following conditions:

- 1) it has at least one feeder fund among its unit-holders or shareholders;
- 2) it is not a feeder fund;
- 3) it does not hold any units or shares of a feeder fund.

(8) A European long-term investment fund is an alternative fund which is recognised in a Contracting Party, meets the requirements provided for in Regulation (EL) No 2015/760 on European long-term investment funds (OJ L 123, 29.04.2015, pp. 98-121) and the units or shares of which may be offered in all Contracting Parties.

(9) A foreign fund is a fund which has been established or founded pursuant to foreign law. For the purposes of this Act, the right representing any holding in a foreign fund shall be deemed to be a unit or share of the foreign fund.

(10) Funds may be a guaranteed fund. The guarantor of a guaranteed fund may only be an insurer or credit institution which is not the depositary of the fund.

§ 10. Offers of fund units and shares

(1) An offers of units or shares of a fund (hereinafter *fund offer*) is deemed to be an offer of securities for the purposes of § 11 of the Securities Market Act.

(2) A fund which units or shares are publicly offered for the purposes of § 12 of the Securities Market Act is a public fund (hereinafter *public fund*).

(3) Units of a limited partnership fund may not be publicly offered.

(4) In addition to the provisions of subsection 12 (2) of the Securities Market Act, an offer shall not be deemed to be public if the offer is submitted by a fund manager, investment firm or credit institution upon management of a securities portfolio or guaranteeing of an offer or issue of securities for the purposes of clause 43 (1) 4) or clause 44 6) of the Securities Market Act to a respective person only.

(5) The provisions of Parts 2 and 4 of the Securities Market Act concerning public offer of securities and admission thereof to trading on a regulated market of an EEA Member State (hereinafter *regulated market*) apply to public offer of securities of a closed-ended public fund which is not a pension fund.

§ 11. Basic documents, prospectuses and key information of funds

(1) For the purposes of this Act, a basic document is the articles of association of a public limited fund, partnership agreement of a limited partnership fund or fund rules of a common fund which are required for foundation or establishment of the fund.

(2) Fund rules of a common fund (hereinafter *fund rules*) are a document approved pursuant to the procedure provided by law and disclosed to investors which prescribes the bases for the activities of the common fund and the relations of unit-holders with the fund manager.

(3) For the purposes of this Act, a prospectus is a document prepared for public offer of a fund which states the information relating to the fund at least to the extent provided by legislation and other information which is required or useful in the opinion of the fund manager in making an investment decision.

(4) For the purposes of this Act, key information is a brief document prepared for public offer of a fund which only states the basic information relating to the fund to the extent provided by legislation.

§ 12. Other terms used in Act

(1) In this Act, terms are used in the following meaning:

1) initial capital is the capital and reserves specified in Article 26(1)(a)-(e) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176/1, 27.06.2013), having regard to the provisions of Article 26(2);

2) depositary is a credit institution or investment firm or another legal entity which has been granted the right on the basis of this Act to carry out depositary functions and which holds the assets of the fund and performs other functions assigned thereto by legislation and the depositary contract;

3) parent company and subsidiary are the persons provided for in subsections 27 (1) and (2) of the Accounting Act;

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

4) leverage is a method by which the risk position of a fund is increased either through borrowing of cash or securities, derivative positions or by other means;

5) net asset value of a fund is the value of the securities and other things and rights among to the assets of the fund from which claims against the fund are deducted;

6) investor is a unit-holder, shareholder or partner of a fund or a person who has an obligation to acquire a unit or share of the fund, and professional investor is the person specified in subsection 6 (2) of the Securities Market Act;

7) manager is a member of the management board or supervisory board of a fund manager or a public limited fund, managing partner of a limited partnership fund and member of the management board or supervisory board of a general partner, if the general partner is a legal entity;

8) third country is a non-EEA Member State;

9) close links are a situation where at least two persons are linked for the purposes of subsections 8²(2) and (3) of the Securities Market Act;

10) prime broker is a credit institution, investment firm or other financial institution subject to financial supervision which provides, chiefly to professional investors, the service of granting a credit or loan to conduct securities transactions and may also provide the services of holding assets, transfer and settlement services, investment services or ancillary investment services for the purposes of the Securities Market Act (hereinafter *ancillary services*), such as receipt and transmission of orders related to securities and execution of orders in the name of or for the account of clients, and borrowing of securities, or provides the technical resources required to manage the fund;

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11) home country is the country under which law the fund or fund manager was established or founded;

12) durable medium is any instrument which allows reproduction of information for the purposes of § 11¹ of the Law of Obligations Act;

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

13) country of destination is the country in which the person wishes to offer or manage a fund or provide investment services or ancillary services;

14) management contract is a contract which is entered into between a fund and fund manager and pursuant to which the fund manager undertakes to provide asset investment services to the fund in accordance with the articles of association of the fund with the objective of generating income for the fund and the fund undertakes to transfer the assets required for this purpose to the disposal of the fund manager;

15) security is the security specified in § 2 of the Securities Market Act, unless otherwise provided for in this Act.

(2) For the purposes of this Act, a relevant person is:

1) manager, employee of a fund manager or another person who performs an equivalent function;

2) employee of a fund manager or another natural person not specified in clause 1) of this subsection who is under the control of the fund manager and is related to the provision of the fund management service;

3) another natural person who provides management services or fund management services to a fund manager subject to a contract for outsourcing of the functions related to the management of the fund, including management services or fund management services to an investment company managed by the fund manager and founded in another EEA Member State.

(3) The provisions of §§ 9, 10 and 72¹ of the Securities Market Act apply to determination of qualifying holdings and controlled companies.

Chapter 2

Common Funds, Units and Shares of Unit-holders in Assets of Funds

§ 13. General provisions on common funds

(1) By making a declaration of intent for acquisition of units of a common fund, the unit-holder consents to the fund rules and the prospectus.

(2) The rights attached to a unit shall belong to the unit-holder after the registration of the unit-holder in the register of unit-holders.

(3) Assets collected through issue of units of a common fund and acquired through investment of the assets of the common fund are jointly owned by the unit-holders (hereinafter *community of unit-holders*).

(4) The provisions of §§ 72-79 of the Law of Property Act do not apply to relationships between unit-holders. No unit-holder is entitled to demand termination of a community of unit-holders. In addition to this, such right cannot be exercised by a pledgee or creditor of a unit-holder in execution proceedings or by a trustee in bankruptcy in bankruptcy proceedings of a unit-holder.

(5) A common fund may not be transformed into a public limited fund or limited partnership fund.

(6) If the assets of a common fund may be divided into sub-funds, which have been separated from the rest of the assets of the fund, in accordance with the provisions of the fund rules, the provisions of this Chapter concerning funds also apply to sub-funds of the fund.

§ 14. Unit-holder's share in assets of common fund

(1) A unit represents a unit-holder's share in the assets of a common fund.

(2) Units of the same class grant equal rights to unit-holders on equal bases.

(3) A unit-holder has *inter alia* the right to:

- 1) demand that the fund manager redeem units in the cases and pursuant to the procedure provided for in the fund rules;
- 2) exchange the units held by the unit-holder for the units of a different class of the same common fund or for the units or shares of another fund managed by the same fund manager pursuant to the procedure provided for in the fund rules or the prospectus, unless the fund rules or the prospectus provide a prohibition on exchange of units;
- 3) transfer or encumber the units held by the unit-holder to third parties, taking account of the restrictions provided for in the fund rules of the non-public fund;
- 4) receive, when payments are made from the assets of a common fund pursuant to the fund rules, a share of the income of the common fund or the assets of the fund based on the number of units, class of units and other circumstances provided by legislation or the fund rules;
- 5) receive, pursuant to the fund rules, a share of the assets remaining after dissolution of the common fund based on the number of units, class of units and other circumstances provided by legislation or the fund rules;
- 6) call the general meeting of unit-holders in the cases and pursuant to the procedure prescribed by law or the fund rules;
- 7) participate in and vote at the general meeting in accordance with the provisions of the common fund rules;
- 8) obtain information concerning the activities of the common fund pursuant to the provisions of the fund rules and this Act.

(4) A unit-holder's share in the assets of a common fund is determined by the ratio of the number of units held by the unit-holder and the total number of units held by all unit-holders. Upon a change in such ratio, the unit-holder's share changes accordingly. Upon transfer of a unit or delivery of the ownership of a unit in any other manner, the share of the unit-holder in the assets of the common fund and the rights and obligations relating thereto shall transfer to the acquirer thereof.

(5) If a common fund has several classes of units, a unit-holder's share in the assets of the common fund is determined by the ratio of the number of units held by the unit-holder and the total number of all units of the same class and the total of the net asset values of all units of the same class, respectively, to the net asset value of the common fund. If a unit-holder owns units of several classes, the unit-holder's share in the assets of the fund is determined as the total of the units corresponding to the units of several classes.

(6) No payment shall be made to unit-holders upon exchange of units of a common fund. Upon exchange of units, the units shall be redeemed and issued on the basis of the net asset value of the units.

§ 15. Liability of unit-holders

(1) A unit-holder shall not be personally liable for the obligations of a fund assumed by the fund manager for the account of the fund and for the obligations which performance the fund manager has the right to demand for the account of the fund in accordance with the fund rules. The liability of a unit-holder for performance of such obligations is limited to the unit-holder's share in the assets of the fund.

(2) A fund manager shall not assume obligations in the name of a unit-holder.

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

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

§ 16. Units and principles of distinguishing between classes thereof

(1) Units may have a nominal value or no nominal value. One and the same fund may not have units with nominal value and with no nominal value.

(2) A unit is divisible. The rules for rounding of parts of units created as a result of division of units (hereinafter *fractional unit*) shall be provided for in the fund rules.

(3) A holder of a fractional unit shall participate in the payments made from a common fund and upon distribution of assets in the case of dissolution the common fund. The rights attached to fractional units shall be specified in the fund rules.

(4) In accordance with the provisions of the fund rules, a common fund may have units of several classes and the rights association therewith may differ. Units of a common fund may differ *inter alia* as regards the following conditions:

- 1) minimum number of units or minimum investment amount;
- 2) currency of the class of units;
- 3) conditions of issue and redemption;
- 4) amount of fees related to the unit;
- 5) permissibility of exchange of units or procedure for their exchange;
- 6) conditions prescribed to investors based on the knowledge, legal form or other identifiers of the investor;
- 7) voting right associated with the unit;
- 8) right of a unit-holder to receive disbursements from the common fund or participate in the distribution of the assets remaining upon dissolution of the common fund;
- 9) amount of the nominal value, if applicable;
- 10) registrars.

(5) In fund rules and other documents of a fund, the fund units of different classes must be named differently.

(6) In the cases provided for in the fund rules, the issue or redemption fees of the units of the same class may differ depending on the number, volume of the units issued or redeemed or circumstances relating to the organisation of issue and redemption of units.

Chapter 3 Public Limited Funds, Shares and Share Capital of Public Limited Funds

§ 17. General provisions on public limited funds

(1) A public limited fund may only engage in the management of the own assets of the public limited fund.

(2) A public limited fund may not be transformed into a company of a different type or a public limited company which is not a fund.

§ 18. Specifications for shares of public limited funds

(1) The provisions of § 223 of the Commercial Code do not apply to public limited funds. The provisions of clause 2 (1) 3) of the Securities Register Maintenance Act do not apply to registration of shares of public limited funds.

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(2) The share register of a public limited fund shall be maintained by the management board of the public limited fund, unless the public limited fund has entered into a contract for outsourcing the function of maintaining the share register to a third party in respect of which an entry has been made in the commercial register.

(3) A public limited fund may not issue preferred shares.

(4) A public limited fund shall not issue convertible bonds and other securities which grant the owner thereof rights which are similar to the rights associated with convertible bonds.

(5) A shareholder of a public limited fund has the right to:

- 1) request redemption of shares by the public limited fund in the cases and pursuant to the procedure provided for in the articles of association of the public limited fund;

2) exchange the shares held by the shareholder for the shares of a different type of the same public limited fund or shares or units of another fund managed by the same fund manager, unless the articles of association or prospectus of the public limited fund provide for a prohibition on the exchange of shares;

3) obtain information concerning the activities of the public limited fund in accordance with the provisions of this Act and the articles of association of the public limited fund.

(6) The provisions of subsection 229 (2) of the Commercial Code do not apply to transfer of shares of public public limited funds.

(7) A share of a public limited fund is divisible. The rules for rounding of the fractions of shares (hereinafter *fractional share*) created as a result of the division of shares shall be provided for in the articles of association of the public limited fund.

(8) A holder of a fractional share participates in making of payments from a public limited fund and in distribution of assets in the case of dissolution of the fund. The rights associated with a fractional share shall be specified in the articles of association of the public limited fund.

(9) In accordance with the provisions of the articles of association of a public limited fund, the public limited fund may have several classes of shares which give rise to different rights. The shares of the public limited fund may differ from one another for example in terms of the following conditions:

- 1) minimum number of shares or minimum investment amount;
- 2) currency of the class of shares;
- 3) issue and redemption principles;
- 4) amount of fees related to the share;
- 5) permissibility of exchange of shares or procedure for exchange thereof;
- 6) conditions prescribed to investors based on the knowledge, legal form or other identifiers of the investor;
- 7) right to vote attached to the share;
- 8) shareholder's right to receive payments from the public limited fund or participate in the distribution of assets remaining upon dissolution of the public limited fund;
- 9) amount of the nominal value, if applicable;
- 10) person maintaining the share register.

(10) The shares of different classes of a public limited fund must be named differently in the articles of association of the public limited fund and other documents of the public limited fund.

(11) In the case provided for in the articles of association of a public limited fund, the issue and redemption fees of the shares of the same class may differ depending on the number of shares to be issued or redeemed.

(12) Redemption of the shares of a public limited fund shall be treated as redemption of shares for the purposes of this Act.

(13) No payments shall be made to shareholders upon exchange of shares of a public limited fund. Upon exchange of shares, shares shall be redeemed and issued pursuant to the net asset value of the shares.

§ 19. Specifications for share capital of public limited funds

(1) To the extent of the minimum and maximum capital provided for in the articles of association of a public limited fund, the public limited fund may issue and redeem shares at any time. The provisions of clause 244 (1) 2) of the Commercial Code do not apply to the amount of the minimum and maximum capital of a public limited fund.

(2) Upon issue, shares shall be paid for in full in accordance with the settlement cycle determined in the articles of association or prospectus of the public limited fund.

(3) The amount of the share capital of a public limited fund corresponds to the amount of the net asset value of the public limited fund.

(4) The amount of the share capital and the number of shares are not entered in the commercial register. The amount of the share capital paid upon foundation of a public limited fund shall be entered in the commercial register and a notation shall be made stating that the public limited fund is a fund founded pursuant to this Act and the amount of the share capital thereof corresponds to the amount of the net asset value of the fund.

(5) The obligation to form a legal reserve provided for in § 336 of the Commercial Code does not apply to public limited funds.

(6) The provisions concerning increase or reduction of the share capital or takeover of shares provided for in §§ 338-363¹⁰ of the Commercial Code do not apply to public limited funds.

(7) The share capital of a public limited fund shall be deemed to be increased or reduced after changing the net asset value of the fund.

(8) If the net asset value of a public limited fund is less than the minimum amount of the share capital provided for in this Act or if the claims of creditors cannot be satisfied for the account of the public limited fund, the management board of the public limited fund must promptly notify the Financial Supervision Authority in writing thereof.

Chapter 4

Limited Partnership Funds, Units and Partners of Limited Partnership Funds

§ 20. General provisions on limited partnership funds

(1) A limited partnership fund may only engage in the management of its own assets. The specified requirement does not limit any other activities of the general partner of a limited partnership fund.

(2) If a limited partnership fund does not manage its own assets, it shall enter into a management contract with a fund manager. The fund manager may represent the limited partnership fund in all transactions within the competence granted to the fund manager by the management contract, unless otherwise provided for in the partnership agreement or the management contract. Entry into and termination of the management contract shall be decided by the managing general partners of the limited partnership fund by at least a two-thirds majority of the votes, unless otherwise prescribed in the partnership agreement.

(3) A limited partnership fund shall not be transformed into a company of a different type or into a limited partnership which is not a fund.

§ 21. Units and partners of limited partnership funds

(1) For the purposes of this Act, a unit of a limited partnership fund is a set of the rights and obligations of a partner which are associated with the legal relations between the limited partnership fund and its partners. Upon application of the investment restrictions and conditions provided by legislation, acquisition of a unit of a limited partnership fund shall be deemed to be equal to acquisition of a unit or share of a fund.

(2) A unit of a limited partnership fund may be freely transferred, unless otherwise provided for in the partnership agreement. The partnership agreement may provide for restrictions on transfer and encumbrance of the units of the limited partnership fund and other conditions and procedures. Transfer and encumbrance of a unit is deemed to be effected with respect to the limited partnership fund after notification of the limited partnership fund of the transfer or encumbrance.

(3) Partners of a limited partnership fund must make their contributions under the conditions and pursuant to the procedure provided for in the partnership agreement.

(4) A certificate may be issued for a unit of a limited partnership fund. If the partnership agreement provides for an opportunity to issue securities of different classes and with different rights and obligations for the units of a limited partnership fund, the securities of different classes must be named differently in the partnership agreement.

(5) A new partner may be admitted into a limited partnership fund under the conditions and pursuant to the procedure provided for in the partnership agreement.

§ 22. Rights and obligations associated with units of limited partnership funds

(1) Unless otherwise provided for in a partnership agreement, partners of a limited partnership fund decide on the amount and payment of the profit share subject to distribution after the end of the financial year on the basis of the approved annual report or on the basis of the consolidated report of the consolidation group, if the limited partnership fund belongs to a consolidation group.

(2) Disbursement of profit is prohibited if, as a result thereof, the limited partnership fund would not be able to fulfil its obligations once they fall due.

(3) A partner has the right to withdraw from a limited partnership fund and request redemption of the unit only under the conditions and pursuant to the procedure provided for in the partnership agreement. This does not exclude or restrict the right of a partner to transfer the partner's unit in accordance with the partnership agreement.

(4) The provisions of §§ 108 and 109 of the Commercial Code do not apply to limited partnership funds. Pursuant to the procedure established in the partnership agreement, a general partner or limited partner may be excluded from a limited partnership fund or a partner's unit may be expropriated to another limited partner,

general partner or third party, provided the acquirer of the unit assumes all the rights and obligations associated with the specified unit. The unit of a general partner may be expropriated only to a person who complies with the requirements provided for in subsection 8 (2) of this Act.

(5) A contribution of a partner of a limited partnership fund may be increased only with the consent of the partner. The contribution may be reduced with the consent of the partner or in any other cases provided for in the partnership agreement.

(6) In the case a partner leaves or is excluded from a limited partnership fund, the partner shall be paid a compensation in the cases, under the conditions and pursuant to the procedure prescribed in the partnership agreement.

(7) The provisions of §§ 95, 96 and 129 of the Commercial Code apply to partners of limited partnership funds, unless otherwise prescribed in the partnership agreement.

Chapter 5

Assets of Funds and Business names or Names of Funds

§ 23. Assets of funds and liability of fund managers upon management of assets

(1) The assets of a fund include securities and other things, rights and obligations, including immovable property acquired for the account of the fund but in the name of the fund manager or the fund.

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

(3) A fund manager shall manage the assets of a fund separately from the assets of the fund manager, the assets of other funds managed by the fund manager and other pools of assets.

(4) Disposal of the assets of a fund shall not be restricted and no compulsory enforcement shall be imposed on the assets of the fund for fulfilment of any other obligations besides the obligations assumed for the account of the respective fund or in order to ensure fulfilment thereof. When immovable property is acquired for the account of a fund, a notation must be made in the land register or, as appropriate, a similar register of a foreign state on restriction of disposal of the assets which includes the name of the fund for the account of which the assets were acquired.

(5) The obligation to keep assets of a fund separate shall also apply in the case of dissolution of the fund and insolvency of the fund manager or the fund.

(6) The assets of a fund do not form a part of the bankruptcy estate of the fund manager and only the claims of the unit-holders, shareholders or partners of the fund and of the creditors related to the assets of the fund against the fund shall be satisfied out of such assets. Investors of the fund are not required to submit the application specified in subsection 123 (3) of the Bankruptcy Act for exclusion of the assets of the fund from the bankruptcy estate of the fund manager.

(7) A fund manager shall be liable for the damage caused to a fund if the fund manager has violated the obligations arising for the fund manager from the legislation, the articles of association of the fund manager, the basic documents of the fund, the management contract or documents established on the basis thereof.

(8) The provisions of this section concerning the assets of a fund also apply to sub-funds of a common fund, including the rights and obligations arising from the establishment, investment of the assets, merger of sub-funds and dissolution of sub-funds thereof and satisfaction of claims related to the assets of sub-funds in insolvency proceedings.

§ 24. Business names or names of funds

(1) Other persons, agencies or associations, which are not investment funds, shall not use in their names, designations or business names the words or abbreviations “investment fund”, “common fund”, “pension fund”, “public limited fund”, “limited partnership fund”, “UCITS”, “European venture capital fund”, “EuVECA”, “European social entrepreneurship fund”, “EuSEF”, “European long-term investment fund”, “ELTIF” or other words or abbreviations with the same meaning in the Estonian or any other language.

(2) Only the name or business name of a UCITS, European venture capital fund, European social entrepreneurship fund and European long-term investment fund established or founded in Estonia pursuant to this Act or the law of another EEA Member State may respectively include the words “UCITS”, “European venture capital fund”, “European social entrepreneurship fund” and “European long-term investment fund”. Only the name or business name of a European venture capital fund, European social entrepreneurship fund and European long-term investment fund may include the respective abbreviations “EuVECA”, “EuSEF” and “ELTIF”.

- (3) The provisions of subsections (1) and (2) of this section do not apply to business names of fund managers.
- (4) The words “pension fund” must be used in the name of a pension fund.
- (5) The business name of a public limited fund must include the attribute “public limited fund with variable capital” or instead of this the abbreviation “MASF”.
- (6) The business name of a limited partnership fund must include the attribute “limited partnership fund”.
- (7) The name or business name of a fund must be clearly distinguishable from the names and business names of other funds established or founded in Estonia or funds offered in Estonia.
- (8) The requirements for business names provided for in § 12 of the Commercial Code apply to common funds and the business names thereof.
- (9) The name or business name of a fund must not be misleading with regard to the investment policy of the fund or other conditions prescribed in the fund rules or articles of association of a public limited fund or a defined-benefit occupational pension fund or the partnership agreement of a limited partnership fund.

Part 2 PUBLIC FUND

Chapter 6 General Provisions

§ 25. Application of Part

- (1) This Part of the Act applies to any UCITS, pension funds and other public funds which have been established or founded in Estonia, unless otherwise provided for in this Part. Only the provisions of §§ 216-239 of this Act apply to defined-benefit occupational pension funds.
- (2) The provisions of §§ 80-82, 408, 413, 419, 420, 422, 423, 430, 432 and 436 of this Act apply to public offers in Estonia of funds established or founded in foreign states and to information disclosed. The public offer prospectus and key information of a fund established or founded in a foreign state and which is not a UCITS must comply with the requirements provided for in §§ 73-75 of this Act, and the information disclosed concerning the fund to the requirements provided for in § 90 of this Act.
- (3) The provisions of this Part concerning a fund, including establishment and foundation of the fund, apply to transformation of a non-public fund established or founded pursuant to this Act into a public fund.

Chapter 7 Establishment and Foundation of Funds

Division 1 General Conditions of Establishment and Foundation of Funds

§ 26. Establishment of common funds

- (1) The establishment of a common fund is decided and the fund rules are approved by the management board of the fund manager.
- (2) A decision on the establishment of a common fund must set out the following:
- 1) the name of the fund;
 - 2) the business name, registry code and seat of the fund manager;
 - 3) the business name, registry code and seat of the depositary.
- (3) Fund rules enter into force and a common fund is deemed to be established after approval of the fund rules by the Financial Supervision Authority, unless the fund rules prescribe a later date for entry into force.

§ 27. Foundation of public limited funds

(1) Upon entry into a memorandum of association of a public limited fund, the founders of the fund also approve the management contract and depositary contract.

(2) Before registration of a public limited fund in the commercial register, the articles of association of the public limited fund shall be approved by the Financial Supervision Authority.

[RT I, 31.12.2016, 3 - entry into force 01.01.2017]

§ 28. Transformation of public limited companies into public limited funds

A public limited company may be transformed into a public limited fund if all the shareholders of the public limited company are in favour of the respective amendment to the articles of association. The future fund manager of the public limited fund must be designated at the general meeting where the transformation into a public limited fund is decided. Upon transformation of a public limited company into a public limited fund, the general meeting of the public limited company shall approve the management contract and depositary contract.

§ 29. Requirements for fund rules and articles of association

(1) Fund rules shall set out at least the following information:

- 1) the name of the fund and a reference to that the fund was established as a common fund;
- 2) the date of establishment of the fund and the host country of the fund;
- 3) in the case of a fixed-term fund the closing date of the fund;
- 4) a notation if the fund is a UCITS, feeder fund or master fund;
- 5) a notation that the fund is a public fund;
- 6) the business name, registry code and seat of the fund manager;
- 7) a notation if the assets of a common are divided into sub-funds;
- 8) the general characteristics of the strategy and policy of investment of the assets of the fund (hereinafter *investment policy*), including in which assets and in which regions the assets of the fund are invested;
- 9) a list and procedure of calculation of all the fees, charges and expenses paid for the account of the fund;
- 10) the total limit of all the fees, charges and expenses paid for the account of the pension fund and UCITS;
- 11) the classes of units if the fund has different classes of units;
- 12) the rights and obligations attached to units, including voting rights attached to units, rules for rounding fractional units and procedure for distribution of the income of the fund;
- 13) the frequency of issue and redemption of units;
- 14) the guarantee conditions and the business name and seat of the guarantor and the registry code of the guarantor, if any, if the rate of return of the fund is guaranteed;
- 15) a notation on the right of the unit-holders of a common fund, if any, to participate in the general meeting and the conditions relating to acquisition of this right, competence of the general meeting of unit-holders, procedure for calling the general meeting and adoption of decisions, including the venue of the general meeting and the conditions for covering the costs of holding a general meeting;
- 16) the procedure for amendment of the fund rules;
- 17) the bases and procedure for dissolution and liquidation of the fund.

(2) The articles of association of a public limited fund must set out the following information:

- 1) a notation that the fund was founded pursuant to this Act as a public limited fund and the amount of the share capital thereof corresponds to the amount of the net asset value of the fund;
- 2) the amount of the share capital paid upon foundation of the fund or to be paid in total during one year and the amount of the minimum and maximum capital, and a notation that, to the extent of the minimum and maximum capital, the public limited fund may issue and redeem shares at any time;
- 3) the date of foundation of the fund;
- 4) in the case of a fixed-term fund the closing date of the fund;
- 5) a notation if the fund is a UCITS, feeder fund or master fund;
- 6) a notation that the fund is a public fund;
- 7) the business name, registry code and host country of the fund manager;
- 8) the general characteristics of the investment policy of the fund, including in which assets and in which regions the assets of the fund are invested;
- 9) a list and procedure of calculation of all the fees, charges and expenses paid for the account of the fund or shareholders;
- 10) the total limit of all the fees, charges and expenses paid for the account of the UCITS;
- 11) the procedure for distribution of the income of the fund;
- 12) the frequency of issue and redemption of shares;
- 13) the guarantee conditions and the business name and seat of the guarantor and the registry code of the guarantor (who may be an insurer or a credit institution which is not the depositary of the fund), if any, if the rate of return of the fund is guaranteed;
- 14) the specifications for the competences of the managing bodies of the fund compared to the provisions of the Commercial Code and this Act;
- 15) the obligations of the fund manager provided for in the management contract;
- 16) the procedure for amendment of the articles of association;
- 17) the bases and procedure for dissolution and liquidation of the fund.

(3) The information specified clause 244 (1) 3¹) of the Commercial Code shall not be set out in the articles of association of a public limited fund.

(4) The fund rules or articles of association of a fund may prescribe other conditions which are not contrary to legislation.

§ 30. Seats of common funds

(1) The seat of a common fund shall be the seat of its fund manager or the seat of its Estonia branch. If a common fund established pursuant to this Act is managed by a foreign fund manager by means of providing cross-border services, the seat of the common fund shall be the seat of this credit institution, investment firm, fund manager or branch with which the fund manager has entered into a contact for organisation of purchase and sale of units of funds in Estonia and which is set out as the seat of the fund in the fund rules.

(2) If a common fund established on the basis of this Chapter and which is a UCITS or alternative fund is managed by a fund manager of an EEA Member State by means of providing cross-border services, the seat of the fund is the seat of the Estonian branch of the depositary or fund manager of the fund.

Division 2

Approval of Fund Rules and Articles of Association

§ 31. Data submitted for approval of fund rules and articles of association

(1) In order to obtain an approval to the fund rules or articles of association of a public limited fund, the fund manager of the public limited fund or the public limited fund (hereinafter in this Division *applicant*) shall submit a written application to the Financial Supervision Authority and the following data and documents (application, data and documents hereinafter jointly in this Division *application*):

- 1) the decision on establishment of the common fund or, in the case a public limited fund is founded, the memorandum of association or foundation resolution;
- 2) the fund rules or articles of association of the fund;
- 3) the prospectus of the fund and in the case of an alternative fund the information attached to the prospectus and specified in subsections 90 (1) and (2) of this Act;
- 4) the key information of the fund or sub-funds, if any;
- 5) the procedure for establishment of the net asset value of the fund;
- 6) the data of the audit firm of the fund which include its business name, seat and registry code, unless these data are included in the prospectus;
- 7) the depositary contract.

(2) In order to obtain an approval for the articles of association of a public limited fund, the following must be submitted in addition to a specified in subsection (1) of this section:

- 1) a document certifying payment of the share capital;
- 2) the data of the members of the management board and supervisory board of the applicant, including each member's given names and surname, personal identification code or date of birth in the absence of personal identification code, place of residence, educational background, complete list of places of employment and positions held and, in the case of members of the management board, a description of their duties;
- 3) the management contract;
- 4) in the case of an operating public limited company, the decisions of the general meeting specified in § 28 of this Act.

§ 32. Processing of applications for and decisions on approval of fund rules and articles of association

(1) If an application is not in compliance with the requirements provided for in § 31 of this Act, the Financial Supervision Authority shall demand elimination of the deficiencies therein by the applicant.

(2) The Financial Supervision Authority may demand submission of additional data and documents if it is not convinced on the basis of the data and documents specified in § 31 of this Act as to whether the fund rules or articles of association comply with the requirements established for funds by legislation or if other circumstances relating to the fund need to be verified.

(3) In order to verify the data and documents submitted by an applicant, the Financial Supervision Authority may require that more specific data and documents be submitted, perform on-site inspections, order expert assessments and special audits and consult state databases, request oral explanations from the managers of the fund manager or public limited fund, auditor firms, their representatives and third parties concerning the contents of the data or documents submitted and the facts which are relevant in making a decision on approval of the fund rules or articles of association.

(4) The data and documents specified in subsections (1)-(3) of this section shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the applicant fails to eliminate the deficiencies specified in subsections (1) and (2) of this section within the prescribed term, or fails to submit the data or documents requested by the Financial Supervision Authority by the due date. Upon refusal to review an application, the Supervision Authority shall return the submitted documents without making a decision on refusal to approve the fund rules or the articles of association.

(6) The Financial Supervision Authority shall make a decision to approve or refuse to approve the fund rules or articles of association of a fund within two months after receipt of all the necessary data and documents but not later than within six months after receipt of the application.

(7) The Financial Supervision Authority shall promptly communicate a decision to approve the fund rules or articles of association of a fund to the applicant and the depositary of the fund.

(8) If, during the proceeding of an application for approval of the fund rules or the articles of association, amendments are made in the data or documents, the applicant shall promptly submit the respective updated data and documents to the Financial Supervision Authority. If the amendment is an important one, the Financial Supervision Authority may deem the moment of receipt of this important amendment to be the beginning of the term for processing of the application. In this case, the Financial Supervision Authority must notify the applicant of a new term.

§ 33. Bases for refusal to approve fund rules and articles of association

The Financial Supervision Authority may refuse to approve the fund rules or articles of association of a fund if:

- 1) the fund rules, articles of association, prospectus or key information do not comply with the requirements provided by legislation;

- 2) the fund rules, articles of association or application do not reflect all the material conditions of the operation of the fund in full, clearly and unambiguously or contain provisions which are misleading, contradictory or hinder the public offer of the fund;

- 3) the fund manager is unable to perform the obligations assumed for the management of the fund or the fund manager does not have adequate knowledge, experience or rights for the management of the fund or the management of a public limited fund does not comply with the requirements provided by law;

- 4) the public offer of the fund does not comply with the requirements provided by legislation;

- 5) the procedure for disclosure of information concerning the fund is insufficient;

- 6) the depositary does not comply with the requirements provided by legislation or the depositary is unable to ensure sufficient protection of the interests of the unit-holders or shareholders of the fund for any other reasons;

- 7) the management or depositary contract contains provisions which are in conflict, ambiguous or which prevent the depositary or fund manager, if any, from performing their functions in full, or which do not allow pursuing of the best interests of the unit-holders or shareholders of the fund for any other reason;

- 8) the person maintaining the register of the units or shares or the share register of the fund does not comply with the requirements provided by legislation and the fund rules or the articles of association;

- 9) the composition of the assets, conditions for redemption of units or shares or the risk management rules provided for in the fund rules, articles of association or prospectus are inconsistent with the investment policy or do not ensure sufficient liquidity of the fund due to which the organisation of redemption of units or shares may be impractical to a significant extent;

- 10) the conditions of guaranteeing a rate of return provided for in the fund rules or articles of association do not ensure protection of the interests of the unit-holders or shareholders of the fund or the guarantee has been issued by the depositary of the fund or a person who does not comply with the requirements provided by law;

- 11) the full payment of the share capital of a public limited company being founded is not proved.

§ 34. Entry of public limited funds in commercial register

(1) The following must be additionally included in an application for entry of a public limited fund in the commercial register and entered in the commercial register concerning the public limited fund:

- 1) a notation that the public limited fund is a fund founded pursuant to this Act and the amount of the share capital thereof corresponds to the amount of the net asset value of the fund;

- 2) the amount of share capital paid up upon foundation of the fund;

- 3) a notation concerning the business name, registry code and address of the fund manager;

- 4) the business name, registry code and address of the person maintaining the share register of the public limited fund.

(2) The following must be appended to the application for entry of a public limited fund in the commercial register:

- 1) a bank statement concerning the payment of the share capital;

- 2) the decision of the Financial Supervision Authority on approval of the articles of association of the public limited fund.

[RT I, 31.12.2016, 3 - entry into force 01.01.2017]

§ 35. Notification of entry into force of fund rules and making of entry in commercial register

(1) A fund manager shall publish, promptly after the entry into force of the fund rules or entry of the foundation of a public limited fund in the commercial register, a notice concerning entry into force of the fund rules or foundation of the public limited fund (hereinafter in this section *notice*) and the fund rules or articles of association on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund.

(2) A notice must set out at least the following:

- 1) information concerning availability of the fund rules or articles of association and other information disclosed concerning the fund;
- 2) information concerning entry into force of the fund rules or articles of association;
- 3) the date of publishing of the notice.

Division 3

Amendment of Fund Rules and Articles of Association and Approval of Amendments

§ 36. General provisions on amendment of fund rules and articles of association

(1) Amendment of fund rules shall be decided by the management board of the fund manager, unless making of the decision to amend has been placed within the competence of the general meeting of the unit-holders by the fund rules.

(2) Amendment of the articles of association of a public limited fund shall be decided by the general meeting, unless otherwise provided in the articles of association of the public limited fund.

(3) The fund rules or articles of association of a public fund shall not be amended in such a manner that the fund becomes a non-public fund.

(4) The fund rules or articles of association of a UCITS shall not be amended in such a manner that the fund no longer is a UCITS.

(5) The fund rules or articles of association of a fund may be amended in such a manner that the fund becomes a closed-end fund provided that the amendments of the fund rules or articles of association do not enter into force before one year has passed from disclosure of the amendments to the fund rules or articles of association on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund.

(6) The fund manager of a common fund, or a public limited fund shall promptly notify the depositary of the fund of a decision to amend the fund rules or articles of association.

(7) The expenses related to amendment of the fund rules or articles of association of a fund shall be covered by the fund manager, unless otherwise provided for in the fund rules or articles of association.

§ 37. Approval of amendments of fund rules and articles of association

(1) Amendments to the fund rules or articles of association of a fund shall be approved by the Financial Supervision Authority, unless otherwise provided for in this Division.

(2) In order to obtain an approval for the amendment of the fund rules or articles of association, the fund manager of a common fund or a public limited fund shall submit a written application to the Financial Supervision Authority and the following data and documents (application, data and documents jointly hereinafter in this Division *application*):

- 1) the decision to amend the fund rules or the articles of association;
- 2) the amended text of the fund rules or the articles of association;
- 3) the prospectus or key information of the fund if amendment of the fund rules or articles of association results in amendment of the prospectus or the key information;
- 4) the amended text of the depositary contract or management contract if amendment of the fund rules or articles of association results in amendment of the depositary contract or management contract;
- 5) a justification for amendment of the fund rules or articles of association and an assessment of the materiality of the amendments specified in subsection 38 (1) of this Act.

(3) Amendments to the fund rules or articles of association of a fund shall not be approved by the Financial Supervision Authority, if:

- 1) only such provisions are amended which the fund is required to amend due to any amendments made to legislation or which make such corrections or amendments to the fund rules or articles of association which have no impact on the rights and obligations of unit-holders or shareholders or which are of favourable nature for unit-holders or shareholders, such as reduction of the limit paid for the account of unit-holders or shareholders; and
- 2) the amended fund rules or articles of association shall be promptly submitted to the Financial Supervision Authority.

§ 38. Material amendments to fund rules and articles of association

(1) The fund manager of a common fund, or a public limited fund shall prepare an assessment of the materiality of the amendments to the fund rules or articles of association based on the impact of the amendments on the reasonable interests of unit-holders or shareholders.

(2) Materiality of the amendments to the fund rules or articles of association of a fund is presumed if the investment policy or rights attached to units or shares are amended in the fund rules or articles of association, including when the following conditions are amended:

- 1) the closing date of a fixed-term fund;
- 2) the general characteristics of the investment policy of the fund;
- 3) a list of the fees, charges and expenses paid for the account of the fund and the procedure for calculation and total limit thereof;
- 4) the frequency of redemption of units or shares;
- 5) the procedure for making of payments for the account of the fund;
- 6) the conditions of the offer of the fund;
- 7) the rights and obligations attached to the units or shares of the fund.

(3) Amendments to the fund rules or articles of association of a fund in the conditions specified in subsection (2) of this section shall not be deemed material if these reduce the classes of the fees, charges or expenses paid for the account of the fund, unit-holders or shareholders, make other changes which are of favourable nature for unit-holders or shareholders, or amend investment restrictions to an extent which does not materially change the general investment policy of the fund or the main investment objectives thereof.

(4) In the case of material amendments to the fund rules or articles of association of a fund, at least one of the following conditions has to be met:

- 1) at the request of unit-holders or shareholders, a unit or share is redeemed without any redemption fee within at least one month before the amendments to the fund rules or articles of association enter into force;
 - 2) the fund manager shall ensure the opportunity to the unit-holders or shareholders to transfer a unit or share of the fund within at least one month before the amendments to the fund rules or articles of association enter into force at the price which shall not be less than the net asset value of the unit or share;
 - 3) at the general meeting of unit-holders of the fund, at least 90% of the votes represented at the general meeting are in favour of material amendments to the fund rules or articles of association of the fund.
- [RT I, 30.12.2017, 3 - entry into force 03.01.2018; clause 38 (4) 3) shall apply to decisions made at the general meetings of funds after 10 January 2018.]

(4¹) The fund rules or articles of association of a fund may prescribe a greater majority requirement in the case provided for in clause (4) 3) of this section.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

(5) The fund manager of a common fund, or a public limited fund shall communicate the conditions provided for in subsection (4) of this section in the notice specified in subsection 40 (1) of this Act.

(6) The provisions of this section do not apply if the fund rules or articles of association of a fund are amended under the circumstances specified in clause 37 (3) 1) of this Act.

§ 39. Processing of applications for and decision on approval of amendments of fund rules and articles of association

(1) The provisions of §§ 32 and 33 of this Act apply to review of applications for approval of amendments to the fund rules or articles of association, making of the decision on approval of amendments and refusal to make the decision, unless otherwise provide for in this section. Upon approval of amendments to the fund rules or articles of association, compliance of applications with the provisions of §§ 37 and 38 of this Act is assessed.

(2) In addition to the provisions of § 33 of this Act, the Financial Supervision Authority may refuse to approve amendments to the fund rules or articles of association of a fund or a public limited fund if material amendments to the fund rules or articles of association have been made in violation of the requirements provided for in this Act.

§ 40. Disclosure of amendments to fund rules and articles of association

(1) A fund manager shall publish, promptly after approval of amendments to the fund rules or articles of association of a fund by the Financial Supervision Authority, a notice concerning amendment of the fund rules of the fund or articles of association of the public limited fund (hereinafter in this Division *notice*) and the

amended fund rules or articles of association on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund.

(2) A notice must set out at least the following:

- 1) data concerning approval of the amendments by the Financial Supervision Authority;
- 2) information concerning amendments of the fund rules or articles of association;
- 3) data concerning availability of the amended text of the fund rules or articles of association and the prospectus of the fund, unless amendment of the fund rules or articles of association results in amendment of the prospectus;
- 4) assessment of materiality of amendments to the fund rules or articles of association and possible measures applicable in the case of material amendments to the fund rules or articles of association;
- 5) date of entry into force of amendments to the fund rules;
- 6) the date of publishing of the notice.

(3) The fund manager of a common fund or a public limited fund shall promptly notify the Financial Supervision Authority of publication of the notice and the contents thereof.

(4) If amendments to the fund rules or articles of association of a fund or a public limited fund need not be approved by the Financial Supervision Authority pursuant to this Act, the fund manager of a common fund or a public limited fund shall publish, after submission of the amendments to the fund rules or articles of association to the Financial Supervision Authority, on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund:

- 1) the amended fund rules or articles of association of the fund;
- 2) a reference to the amendments made to the fund rules or articles of association of the fund and the time of entry into force thereof.

§ 41. Entry into force of amendments to fund rules

Amendments to fund rules enter into force one month after publication of the notice specified in subsection 40 (1) of this Act, unless the notice prescribes a later date or unless otherwise provided for in this Act.

§ 42. Submission of applications for amendment of articles of association of public limited funds to commercial register and offer of public limited funds based on amended articles of association

(1) The decision of the Financial Supervision Authority on approval of the amendments to the articles of association of a public limited fund shall be appended to the application for entry of the amendments to the articles of association of the fund in the commercial register, unless the amendments to the articles of association need not be approved by the Financial Supervision Authority pursuant to this Act.

(2) If the supervisory board of a public limited fund has the competence to decide on amendment of the articles of association of the public limited fund pursuant to this Act, the decision of the supervisory board or the minutes of the meeting of the supervisory board of the public limited fund shall be appended to the application for entry of the amendments to the articles of association in the commercial register.

(3) An application for entry of the amendments to the articles of association of a public limited fund in the commercial register may be submitted one month after publication of the notice specified in subsection 40 (1) of this Act or, in the case a fund is transformed into a closed-end fund, upon expiry of the term specified in subsection 36 (5) of this Act. The provisions of the first sentence do not apply in the case the amendments to the articles of association of a public limited fund shall not be submitted to the Financial Supervision Authority in accordance with subsection 37 (3) of this Act.

(4) The shares of a public limited fund may be offered on the basis of the amended articles of association when the amendment to the articles of association of the public limited fund has been entered in the commercial register, unless the notice prescribes a later date.

(5) A public limited fund shall promptly notify the Financial Supervision Authority of making of an entry in the commercial register.

Division 4

Specifications for Establishment of Pension Funds and Approval of Fund Rules

§ 43. Pension fund rules

(1) The fund rules of a pension fund must include the following in addition to the provisions of clauses 29 (1) 1), 2), 5), 6), 8)-12) of this Act:

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

1) a notation on whether the fund is a mandatory or voluntary pension fund, including an occupational pension fund;

2) in the case of units with a nominal value, the nominal value of the unit;

3) the procedure for making payments from the pension fund;

4) the procedure for succession of units of the pension fund and making payments;

5) the business name, seat and registry code, if any, of the employer making contributions to the occupational pension fund for its employees, servants, and members of its managing and controlling bodies for the purposes of § 9 of the Income Tax Act (hereinafter *members of managing and controlling bodies*).

(2) For the purposes of this Act, servants also mean officials or persons specified in subsection 2 (3) of the Public Service Act.

(3) In order to agree upon establishment of an occupational pension fund and the fund rules and the financing thereof, the fund manager and the employer who commences making of contributions to such fund may enter into a contract.

§ 44. Approval of pension fund rules

(1) The fund manager of a mandatory pension fund and an occupational pension fund shall submit for approval of the pension fund rules the following data and documents in addition to the application specified in subsection 31 (1) of this Act:

- 1) the description of hitherto operation of the depositary of the mandatory pension fund which provides an overview of how long and with which funds and with the funds of which size the depositary has operated;
- 2) the contracts specified in subsections 22 (1) and 52⁵(3) of the Funded Pensions Act;
- 3) the consent of an employer commencing contributions to an occupational pension fund to the fund rules.

(2) The Financial Supervision Authority shall promptly also communicate a decision on approval of the fund rules of a mandatory pension fund to the registrar of the Securities Register Maintenance Act.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) In addition to the provisions of § 33 of this Act, the Financial Supervision Authority may refuse to approve the fund rules of a mandatory pension for the following reasons:

- 1) the investment policy prescribed in the fund rules of a mandatory pension fund does not materially differ from the investment policy of the mandatory pension funds which are already managed by the fund manager which submitted the application or the approval of which rules the fund manager has already applied at the same time;
- 2) the contract specified in subsections 22 (1) or 52⁵(3) of the Funded Pensions Act contains provisions which contradict each other or legislation or which fail to designate, unambiguously and with sufficient accuracy, the rights and obligations of the registrar of the pension register, depositary and fund manager of the pension fund upon organisation of issue and redemption of units of the mandatory pension fund.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

§ 45. Amendment of pension fund rules

(1) The fund rules of a mandatory pension fund, occupational pension fund or other voluntary pension fund shall not be amended in such a manner that the fund is no longer respectively a mandatory pension fund, occupational pension fund or other voluntary pension fund.

(2) Where the rate of return of a voluntary pension fund is guaranteed, the fund rules shall not be amended in such a manner that the fund is no longer a guaranteed voluntary pension fund.

(3) The regulations concerning material amendments to the fund rules provided for in § 38 of this Act apply to pension funds, taking account of the specifications provided for in the Funded Pensions Act for exchange and redemption of units; the provisions of subsections 38 (4) and (5) of this Act do not apply to significant amendment of the rules of mandatory pension funds.

(4) Upon amendment of the fund rules of a mandatory pension fund, the amendments to the contracts provided for in subsection 22 (1) and subsection 52⁵(3) of the Funded Pensions Act and the amended text thereof must be submitted to the Financial Supervision Authority in addition to the provisions of subsection 37 (2) of this Act, if amendment of the pension fund rules results in amendment of the contracts.

(5) A fund manager shall have the amendment of the fund rules of an occupational pension rules approved by the employer making contributions to such fund.

(6) Upon amendment of the fund rules of an occupational pension fund, the consent of the employer who makes contributions to the occupational pension fund to amendment of the fund rules must be submitted to the Financial Supervision Authority in addition to the provisions of subsection 37 (2) of this Act.

§ 46. Entry into force of amendments to pension fund rules

(1) Amendments to the fund rules of a mandatory pension fund which have to be approved by the Financial Supervision Authority enter into force on the working day of exchange of units provided for in subsection 24 (3) of the Funded Pensions Act but not earlier than 100 calendar days after publication of the relevant notice.

(2) Upon amendment of the fund rules of an occupational pension fund, the fund manager shall disclose the amended text of the fund rules to the unit-holders promptly after the approval of the amendments and inform the Financial Supervision Authority of the date of disclosure of the amendments to unit-holders.

(3) Amendments to the fund rules of an occupational pension fund which have to be approved by the Financial Supervision Authority enter into force one month after the day when the Financial Supervision Authority receives the relevant notice from the fund manager, unless the notice prescribes a later date for entry into force.

Chapter 8 Management of Funds

Division 1 Management of Common Funds

§ 47. General meetings of unit-holders

(1) If the fund rules prescribe a general meeting of unit-holders, the fund rules shall set out the competence of the general meeting, the procedure for calling and conducting thereof and the procedure for making decisions at the general meeting.

(2) Unless otherwise provided for in the fund rules, the general meeting is competent to:

- 1) amend the fund rules;
- 2) decide on dissolution of the fund.

Division 2 Management of Public Limited Funds

§ 48. Competence of general meetings and procedures for calling thereof

(1) By a decision of a general meeting, the supervisory board may be granted the right to make decisions which are in the competence of the general meeting, if so prescribed by the articles of association of the fund. In this case, the general meeting shall have the right to decide on amendment of the articles of association in such a manner that the right to make decisions which are in the competence of the general meeting shall be reclaimed into the competence of the general meeting.

(2) The management board of a public limited fund shall call a special general meeting, if so also requested by the Financial Supervision Authority, manager or depositary of the public limited fund.

(3) If the management board of a public limited fund fails to call a special general meeting within one month after receipt of a request of the Financial Supervision Authority, fund manager or depositary or the management board fails to call the general meeting with the requested agenda, the Financial Supervision Authority, fund manager or depositary have the right to call the general meeting themselves and determine the agenda of the general meeting.

(4) If a general meeting is called by the persons specified in subsection (3) of this section, the provisions of §§ 293 and 293¹ of the Commercial Code with respect to filing of requests by auditors to call special general meetings or to calling of general meetings apply to the agenda of the general meeting and drafts of decisions.

§ 49. Specifications for competence of supervisory boards

(1) Unless otherwise specified in the articles of association of a public limited fund, the supervisory board of the public limited fund is competent to:

- 1) approve amendments to the management contract of the public limited fund;
- 2) approve the terms and conditions of the depositary contract of the public limited fund;
- 3) approve the person maintaining the share register if the function of maintaining the share register is outsourced to a third party.

(2) The right to make the decisions specified in subsection (1) of this section may be granted by the articles of association of a public limited fund to the management board of the public limited fund.

§ 50. Competence of management boards

(1) The management board of a public limited fund exercises supervision, to the extent and pursuant to the procedure prescribed in the management contract, over the activities of the fund manager related to the fund, and to the extent and pursuant to the procedure prescribed in the depositary contract over the activities of the depositary, and over performance by third parties of other functions which are related to the management of the fund and have been outsourced.

(2) The management board of a public limited fund is competent to issue and redeem shares of the public limited fund.

(3) The management board of a public limited fund may outsource the functions related to the administration of the fund or offer of the shares thereof on the basis of a written contract to a third party, if this is in conformity with the requirements specified in subsections 364 (1) and (5) of this Act. The provisions of § 364 of this Act concerning fund managers apply to the management boards of public limited funds upon outsourcing of functions. Maintaining of a share register may be outsourced taking account of the requirements provided for in §§ 60 and 61 of this Act.

§ 51. Requirements for managers

(1) The requirements provided for in § 310 of this Act to management and managers of fund managers shall apply to managers of public limited funds.

(2) Managers of a public limited fund or members of the management board or supervisory board of the depositary thereof shall constitute not more than one-half of the members of the supervisory board of the fund.

§ 52. Competence of fund managers and liability upon management of public limited funds

(1) Investment of assets in accordance with the provisions of § 305 of this Act is in the competence of the fund manager of a public limited fund. The assets of a fund are disposed of by a fund manager to the extent prescribed by law and the management contract.

(2) A fund manager shall be liable for the damage caused to a public limited fund or the shareholders thereof by violation of the functions of the fund manager.

Chapter 9 Units and Shares

Division 1 Issue and Redemption of Units and Shares

§ 53. Application of Chapter

The provisions of this Chapter concerning funds also apply to sub-funds of common funds.

§ 54. Nominal value and net asset value of assets and units or shares of funds. Registration and storage of applications for issue and redemption of units or shares of UCITS and reporting on execution of applications

(1) The nominal value of a unit shall be expressed at least to the accuracy of one cent; in the case the nominal value is expressed in foreign currency, at least to the accuracy of two decimal places.

(2) An equal share of the assets of a fund conform to all the units without nominal value. The share of the assets of a fund corresponding to one unit with no nominal value (book value of the unit) shall be established by dividing the value of the assets of the fund by the number of units.

(3) The net asset value of a unit and share is established by dividing the net asset value of the fund by the number of all the units or shares issued and not redeemed by the moment of establishment of the net asset value.

(4) If a fund has several classes of units or shares, the net asset value of the units or shares of different classes may differ pursuant to the bases provided for in the fund rules or articles of association.

(5) The net asset value of a unit and share is established and disclosed on each day of issue or redemption of units or shares but at least once every two weeks. Together with the net asset value of a share, a public limited fund shall also disclose the net asset value of the fund.

(6) The net asset value of a unit and share of a closed-end fund is established and disclosed on each day of issue or redemption of units or shares but at least once per year.

(7) Units and shares are issued and redeemed on the basis of the net asset value of the unit or share which is established in accordance with the basic documents of the fund either:

- 1) on the basis of the latest net asset value established by the time of receipt of the respective application; or
- 2) on the basis of the net asset value established first after receipt of the respective application.

(8) Units or shares of a closed-end fund may be issued at an issue price which differs from the net asset value on the basis provided for in subsection 55 (9) of this Act.

(9) The net asset value of a unit or share is disclosed pursuant to the provisions of the prospectus of the fund on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund.

(10) The establishment of the net asset value of a unit or share and issue and redemption of the unit or share shall be based on the fair value of the assets of the fund. A fund manager is required to apply relevant and required measures in order to prevent issue or redemption of fund units or shares not on the basis of their fairly evaluated net asset value or the basis provided for in subsection 55 (9) of this Act or which allow conduct of transactions in another manner with the units or shares of the fund on the basis of unfair value which would have a direct impact on the proprietary interests of other unit-holders or shareholders.

(11) The procedure for establishment of the net asset value of a fund shall be established by a regulation of the minister responsible for the area.

(12) The fund manager of a UCITS shall register each application submitted to the fund manager for issue and redemption of a unit or share of a UCITS in a relevant electronic data processing system (hereinafter *data processing system*) promptly after receipt of the application.

(13) The data of all the applications for issue and redemption of units or shares of a UCITS must be stored in a data processing system and kept there (hereinafter jointly *stored*).

(14) The fund manager of a UCITS shall submit a report to the unit-holders or shareholders which confirms execution of the applications for issue or redemption of units or shares of the UCITS on durable medium or make it available in another similar manner.

(15) More specific requirements for the data processing system specified in subsection (12) of this section, registration and storage of the data of the applications for issue or redemption of units or shares of a UCITS and reporting on execution of the applications shall be established by a regulation of the minister responsible for the area.

§ 55. Issue of units and shares and issue price

(1) Units and shares shall be issued at their issue price.

(2) The issue price of a unit and share is the net asset value of the unit or share of the respective class to which the issue fee may be added pursuant to the procedure provided for in the basic documents of the fund.

(3) The issue price of a unit and share shall be disclosed at the same time with disclosure of the net asset value of a unit or share of the fund in accordance with the requirements provided for in subsection 54 (9) of this Act.

(4) Payment for a unit or share of a fund shall be only made by monetary contribution. Units or shares are issued and entered in the register of shares or units only for the net asset value of a unit or share which corresponds to the number of units or shares to be issued upon payment of money into the assets of a fund. Upon issue of a fractional unit or share, the money which corresponds to that part of the net asset value of the unit or share must be paid into the assets of a fund.

(5) The provisions of subsection (4) of this section do not apply to distribution of income of a fund by issue of new units or shares, and to issue of units or shares of an acquiring fund upon merger of funds.

(6) Issue of units and shares shall not be limited in time and the volume of the issue thereof and the number of units and shares to be issued shall not be fixed, unless otherwise provided for in the fund rules or articles of association.

(7) Issue of a unit and share may be refused if this arises from the provisions of the fund rules, articles of association or prospectus.

(8) If a certain index is replicated upon investment of the assets of a fund in accordance with subsection 116 (1) of this Act, units or shares may be issued under the conditions prescribed in the fund rules or articles of association for the securities on the basis of which the replicated index is calculated.

(9) Units or shares of a closed-end fund may be issued at an issue price which differs from the net asset value under the following conditions:

- 1) the conditions for determination of the issue price shall be decided at the general meeting of unit-holders or shareholders and at least two-thirds of the votes represented at the general meeting are in favour thereof, unless the fund rules or articles of association prescribe a greater majority requirement; or
- 2) the units or shares of the fund are traded on a regulated market or, pursuant to the fund rules or articles of association, the units or shares of the fund must be admitted to trading on a regulated market within 12 months after adoption of the decision of the general meeting specified in clause 1) of this subsection.

(10) A fund manager may determine the final issue price of a closed-end fund within the range of the issue price determined under the conditions set out in the decision of the general meeting specified in clause (9) 1) of this section.

§ 56. Redemption of units and shares and redemption price

(1) Units and shares may be redeemed at their redemption price.

(2) The redemption price of a unit or share is the net asset value of the unit or share of the respective class from which the redemption fee may be deducted pursuant to the procedure provided for in the basic documents of the fund. The redemption price of a unit or share shall be disclosed at the same time with the disclosure of the net asset value of a unit or share of the fund in accordance with the provided requirements.

(3) Upon redemption of units or shares, a payment shall be made in money from the assets of the fund for the units or shares redeemed in accordance with the number of units or shares to be redeemed and the net asset value thereof. The rights and obligations attached to the redeemed unit or share terminate and the redeemed unit or share shall be deleted from the register of units or shares.

(4) Payments shall be made in the order the requests are submitted, unless the fund rules or articles of association provide for the bases for making differences in the order of payments.

(5) If a certain index is replicated upon investment of the assets of a fund in accordance with subsection 116 (1) of this Act, units or shares may be redeemed under the conditions prescribed in the fund rules or articles of association against the securities on the basis of which the replicated index is calculated.

(6) A fund manager or a public limited fund is not required to redeem the units or shares of a fund which units or shares are redeemed at the request of a unit-holder or shareholder if the units of the fund are trading on a regulated market and it is ensured that the value of the unit on the market does not differ materially from the redemption price of the unit.

(7) It is not permitted to redeem, at the request of a unit-holder or shareholder, the units or shares of a fund from the assets of which at least 60 per cent are invested in immovables pursuant to the fund rules or articles of association, or at least 80 per cent in immovables and securities relating to immovables, securities that are not traded on a regulated market or other non-liquid assets, earlier than six months after submission of the respective request of the unit-holder or shareholder.

§ 57. Suspension of issue and redemption of units and shares

(1) A fund manager or a public limited fund must suspend the issue or redemption of the units or shares of a fund if the issue or payment of money would have a material adverse effect upon the interests of unit-holders or shareholders or the regular management of the fund.

(2) A fund manager or a public limited fund may suspend redemption of the units or shares of a fund if at least one of the following circumstances has been proven:

- 1) the money in the bank accounts of the fund is insufficient for payment of the redemption price of the units or shares;
- 2) the securities or other assets of the fund cannot be promptly sold;
- 3) the establishment of the net asset value of the fund is hindered.

(3) A fund manager or a public limited fund must promptly notify the Financial Supervision Authority and the financial supervision authority in each foreign state where the units or shares of the fund are offered of suspension of issue or redemption of units or shares and the reasons therefor. The provisions of this subsection do not apply if the issue or redemption of units or shares is suspended in connection with suspension of trading on securities markets.

(4) The Financial Supervision Authority may, by its precept, require a fund manager or a public limited fund to suspend the issue or redemption of units or shares if there is a suspicion that:

- 1) the requirements provided for issue, redemption or public offer of units or shares are violated or there is a danger of such violation;

2) the guarantee granted by a guarantee contract is insufficient in order to guarantee the rate of return of the fund, if the rate of return of the fund is guaranteed; or
3) the suspension of the issue or redemption of units or shares is necessary for other reasons for the protection of the legitimate interests of the unit-holders or shareholders.

(5) Upon suspension of the issue or redemption of units or shares, the Financial Supervision Authority may require, by its precept, a fund manager or a public limited fund to eliminate the circumstances which are the basis for suspension of the issue or redemption of units or shares.

(6) A fund manager or a public limited fund must promptly publish a notice of suspension of the issue or redemption of units or shares on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund provided for in the prospectus of the fund.

(7) The issue or redemption of units or shares may be suspended for up to three months. The term of suspension of the issue or redemption of units or shares may be extended with the consent of the Financial Supervision Authority.

Division 2

Fees and Charges Paid and Expenses covered for Account of Unit-holders and Shareholders of Funds

§ 58. Fees and charges paid and expenses covered for account of fund

(1) Only the following fees and charges may be paid and expenses covered for the account of a fund:
1) the fee paid to the fund manager for the management of the fund or the fees, charges and expenses directly related to the management of a public limited fund (hereinafter *management fee*);
2) the fee paid to the depositary for the services provided (hereinafter *depositary's charge*);
3) the transfer fees and service charges directly related to transactions performed for the account of the fund and other fees and charges and expenses related to the management of the fund and specified in the basic documents of the fund;
4) the liquidation expenses of the fund to the extent provided for in this Act.

(2) The management fee and depositary's charge shall not be paid as an advance payment.

(3) The fees and charges and expenses specified in subsections (1) of this section in total shall not exceed the rates prescribed in the basic documents and the prospectus of the fund.

§ 59. Fees and charges paid for account of unit-holders and shareholders

(1) Fees for the issue and redemption of units or shares shall be paid from the account of the person acquiring or redeeming units or shares. Unit-holders or shareholders shall not be required to pay other fees and charges related to issue or redemption of units or shares, unless the unit-holders or shareholders may be required to pay, pursuant to the fund rules or articles of association, an additional fee due to the material impact of the transaction of issue or redemption of units or shares on the regular management of the fund. The above shall not exclude payment of the commission of a third party or other equivalent fees for the account of unit-holders or shareholders, if prescribed by the fund rules or articles of association and prospectus.

(2) Fees paid for the account of unit-holders or shareholders are determined as a set amount or percentage of the net asset value of a unit or share of the fund, unless otherwise provided for in the fund rules or articles of association.

(3) Issue and redemption fees of units or shares shall not exceed the rates prescribed by the fund rules, articles of association, prospectus or other information published. The rates of the issue and redemption fees of units or shares and other fees and charges, if any, may differ on the basis of the class or units or shares or other characteristic associated with unit-holders or shareholders.

(4) At the request of persons acquiring or redeeming units or shares, the persons shall be informed in a format which can be reproduced in writing of the amount of the issue or redemption fee paid for their account.

(5) In the cases provided for in the fund rules or articles of association, the issue or redemption fees of the units or shares of the same class may differ depending on the holding of the unit-holder or shareholder in the fund.

Division 3

Registration of Units and Shares and Maintenance of Registers of Units and Shares

§ 60. Registration of units and shares

(1) Units shall be registered in computerized form in the register of units (hereinafter in this Division *register*). The provisions of this Act concerning registers and maintenance thereof shall apply to the share register of a public limited fund and the maintenance thereof.

(2) The register shall be maintained by a fund manager or another person to whom the functions of maintenance of the register have been outsourced (hereinafter *registrar*).

(3) All units or shares of a fund which are of the same class must be registered with the same registrar. If a fund has several classes of units or shares, there may be different registrars for each class of units or shares.

(4) If the units or shares of a fund are registered with the Estonian register of securities, the provisions of §§ 61-63 of this Act do not apply to registration of units or shares.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

§ 61. Requirements for registrars

(1) In the case the functions of maintenance of a register specified in subsection 60 (2) of this Act are outsourced, a registrar may be a person founded in Estonia or a foreign state whose level of organisational and technical administration of activities, internal control measures implemented for mitigation of management and operational risks, financial situation, competence and experience of relevant employees and other capabilities are adequate to ensure the performance of the functions specified by law and an contract for maintenance of the register.

(2) If the function of maintenance of a register has been outsourced, the liability of the registrar has to be insured or guaranteed, unless the registrar is a credit institution or insurer.

(3) The registrar to whom the function of maintenance of a register has been outsourced must compensate for damage caused by violation of the obligations thereof in the maintenance of the register.

(4) The requirements for insuring or guaranteeing the liability of the registrar shall be established by a regulation of the minister responsible for the area.

§ 62. Data entered in register and processing thereof

(1) The following data are entered in the register:

- 1) the business name, seat and registry code of the fund manager or public limited fund;
- 2) the name of the fund;
- 3) the name, address and personal identification code or in the absence thereof the date of birth of the unit-holder or shareholder, or the registry code of the unit-holder or shareholder if the unit-holder or shareholder has a registry code;
- 4) if the unit-holder or shareholder is a fund, the name or business name of the fund and the seat and registry code thereof, if any, and the business name, seat and registry code of the fund manager, if any;
- 5) the number and currency of the units or shares held by unit-holders or shareholders, the class thereof, if any, and the nominal value thereof, if any;
- 6) the date of acquisition and issue price of units or shares and the issue price and date of redemption and redemption price of units or shares if the units or shares have been redeemed;
- 7) other rights attached to units or shares and the time of creation, changing and extinction of the rights, including time of acquisition or pledging of units or shares;
- 8) other data which the registrar deems necessary.

(2) Where the units or shares belonging to unit-holders or shareholders are held for them by a third party who has the right provided by law to hold the units or shares in its own name and for the account of another person, the data of the third party may be entered in the register as the data specified in clause (1) 3) or 4) of this section. If a third party holds units or shares in the name and for the account of another person, the data specified in clause (1) 7) of this section shall not be entered in the register. The third party specified in the first sentence of this section has the right to give information to fund managers concerning the investors whose units or shares are held by the specified third party.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(3) Processing of data in the register by the registrar shall be based on the requirements provided for in the Personal Data Protection Act and the data handling procedure established by the fund manager or public limited fund or agreed upon between the fund manager or public limited fund and the registrar. The data handling procedure shall ensure preservation of personal data in a permanently unaltered state and adequate protection thereof against unauthorized processing and destruction.

(4) The registrar may process the data in the register on its own initiative if the registrar discovers an error in the data and if the processing of the data does not violate anybody's interests. The registrar shall preserve data concerning all discovered data processing errors and corrections made by the registrar.

(5) The data and documents submitted to a registrar in a format which can be reproduced in writing for an entry to be made shall be preserved by the registrar for at least ten years after making the respective entry.

(6) The registrar shall make a register entry within one working day after the settlement of the transaction conducted with a unit or share of a fund. If the function of the registrar has been outsourced to a third party who does not arrange the settlement of the transactions of the units or shares of a fund, the register entry must be made within one working day after receipt of a relevant order from the fund manager.

(7) In respect of a fund, a unit or share shall be deemed to be transferred after entry of the acquirer thereof in the register.

(8) A registrar may refuse to execute an order concerning a register entry if:

- 1) the order or the data contained therein do not comply with the requirements established by legislation;
- 2) the order has been given by a person not specified in subsection (6) of this section or another person authorised to give orders.

(9) The procedure for maintenance of a register, making register entries and processing and storage of data entered in the register may be established by a regulation of the minister responsible for the area.

§ 63. Persons entitled to access register data

(1) unit-holders or shareholders of a fund or persons authorised by them, fund managers, depositaries, the Financial Supervision Authority and the following persons and agencies with legitimate interest have the right to access and obtain extracts from the data entered in the register:

- 1) courts during proceedings of matters;
- 2) pre-trial investigation authorities and prosecutor's office in criminal proceedings already initiated, relevant bodies upon adjudication of international applications for legal assistance or for performance of obligations provided by the European Union law for compliance with international conventions or other international agreements, or cooperation agreements of the police or other similar competent authorities;
- 3) security authorities for the performance of the functions provided for in the Security Authorities Act and carrying out the security checks specified in the State Secrets and Classified Information of Foreign States Act;
- 4) the Estonian Tax and Customs Board in accordance with the provisions of the Taxation Act, including in commenced misdemeanour proceedings on the basis of a reasoned ruling, or for exercising of state supervision for the performance of the functions provided for in the Gambling Act;
- 5) bailiffs for the performance of the functions provided for in the Code of Enforcement Procedure;
- 6) interim trustees and trustees in bankruptcy for the performance of the functions provided for in the Bankruptcy Act;
- 7) the State Audit Office for the performance of the functions provided for in the State Audit Office Act;
- 8) persons appointed by the Guarantee Fund pursuant to the Guarantee Fund Act;
- 9) persons entitled to succeed or persons authorised by the latter and notaries in connection with notarial acts, persons making the inventory of an estate at the appointment of a notary or court, administrators of an estate appointed by a court, and consular representations of foreign states in the course of succession proceedings upon submission of relevant written documents in connection with estates and data relating thereto;
- 10) persons who control the declarations of economic interests on the basis of the Anti-corruption Act in order to verify the data stated in the declaration;
- 11) the Financial Intelligence Unit and the Estonian Internal Security Service for the performance of the functions provided for in the Money Laundering and Terrorist Financing Prevention Act and International Sanctions Act;
- 12) credit institutions;
- 13) financial institutions holding the activity licence issued by the Financial Supervision Authority;
- 14) other persons who prove that the objective of obtaining the data is prevention of money laundering or terrorism.

(2) Unit-holders or shareholders or persons authorised by them have the right to access only the data which is entered in the register concerning the respective unit-holder or shareholder.

(3) A registrar is required to ensure preservation of the data entered in the register and enable reproduction thereof at the request of entitled persons and agencies at least within ten years after the entry of the data in the register.

Division 4

Specifications applicable to Units of Pension Funds

Subdivision 1

Specifications applicable to Units of Pension Funds and Fees Paid for Account of Pension Funds

§ 64. Specifications for units of pension fund

(1) Units of a pension fund shall not be limited in time and the volume of the issue of units and the number of units to be issued shall not be fixed.

(2) Units of pension funds may only be acquired or owned by natural persons and pension fund managers or persons who have operated as a pension fund manager under the conditions and pursuant to the procedure provided for in §§ 68-72 of this Act.

(2¹) An insurer may also acquire and hold units of mandatory pension funds as underlying assets of insurance contracts for unit-linked mandatory funded pensions provided for in Division 8 of Chapter 2 of the Funded Pensions Act.

[RT I, 03.07.2017, 2 - entry into force 01.01.2018]

(3) Units of a pension fund shall not be transferred or encumbered.

(4) A mandatory pension fund shall only have units of one class.

(5) Fractional units of a pension fund must be indicated to the accuracy of at least three decimal places.

(6) The net asset value of the units of a pension fund shall be established on each day of issue and redemption of units but at least every seven days. The net asset value of the units of a voluntary pension fund shall be established at the accuracy of at least four decimal places and in the case of the units of a mandatory pension fund at the accuracy at least of five decimal places.

(7) Units of a mandatory pension fund shall not be included in the joint property of spouses.

(8) Units of a pension fund are registered in accordance with the provisions of the Securities Register Maintenance Act.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(9) Persons appointed by the Guarantee Fund on the basis of subsection 92 (1) of the Guarantee Fund Act also have the right to access the data entered in the pension register and obtain extracts of the data.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(10) Exchange of units of pension funds and making of payments therefrom shall be based on the provisions of §§ 23-27, 30, 31, 40-52⁵ and 55-60 of the Funded Pensions Act.

(11) In the case of bankruptcy of the estate of a unit-holder of a mandatory pension fund, the trustee in bankruptcy has the right to request redemption of the units of the mandatory pension fund.

(12) In the case of bankruptcy of a unit-holder of a voluntary pension fund or a claim for payment being made on the assets of such unit-holder pursuant to enforcement procedure, the trustee in bankruptcy or the bailiff, as appropriate, has the right to request redemption of the units of the voluntary pension fund or, in the case of liquidation of a voluntary pension fund, making of payments.

(13) In the cases not specified in subsections (11) and (12) of this section, it is prohibited to make a claim for payment on units of a pension fund.

§ 65. Issue and redemption fees of units of mandatory pension funds and specifications for fees paid and charges and expenses covered for account of pension funds

(1) Acquirers of units of a mandatory pension fund shall not be charged any issue fee. The redemption fee of a unit of a mandatory pension fund is paid to the pension fund which units are redeemed.

(2) The rate of the redemption fee of a conservative pension fund shall not exceed 0.05 per cent and that of other mandatory pension funds 0.1 per cent of the net asset value of the unit.

(3) It is not permitted to charge redemption fees to unit-holders of mandatory pension funds who are in the pensionable age provided by the State Pension Insurance Act or who will reach such age in five years or less.

(3¹) The rate of the base management fee of a mandatory pension fund shall not exceed in total 1.2 per cent of the value of the assets of the pension fund calculated based on a year of 365 days.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(3²) Upon calculation of the management fee of a mandatory pension fund, reduced rates of base management fees shall be used taking into consideration the provisions of § 65¹ of this Act.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(3³) The fund manager of a mandatory pension fund may charge only the success fee provided for in § 65² of this Act as a part of the management fee in addition to the base management fee. It is prohibited to charge a success fee for management of conservative pension funds.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(4) The depositary's charge, contributions to the Pension Protection Sectoral Fund paid pursuant to the Guarantee Fund Act, supervisory fees paid pursuant to the Financial Supervision Authority Act and the registrar's fee paid to the registrar of the pension register and other fees related to management of a mandatory pension fund and not specified in clauses 58 (1) 1), 3) and 4) of this Act shall be paid and the expenses covered for the account of the fund manager.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(5) Only such fees, charges and expenses specified in clause 58 (1) 3) of this Act may be paid or covered for the account of a mandatory pension fund which do not exceed the standard commission or service fee for the respective service or which are strictly necessary for the management of the mandatory pension fund.

(6) The provisions of subsection (5) of this section do not apply to the fees, charges and expenses which, based on their nature, do not cause a conflict of interests between the unit-holder and the fund manager upon honest, professional provision of the fund management service based on the best interests of the unit-holder.

(7) [Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(8) [Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 65¹. Reduction of rate of base management fee of mandatory pension fund

(1) The rate of the base management fee of a mandatory pension fund shall be reduced depending on the total amount of the value of the total assets of all the mandatory pension funds which are managed by the fund manager and which base management fee exceeds, pursuant to the prospectus of the pension fund, 0.4 per cent of the asset value of this fund.

(2) If the total amount of the value of the assets of the mandatory pension funds of a pension fund manager provided for in subsection (1) of this section exceeds 100 million euros, the pension fund manager is required to use a coefficient which reduces the rate of the base management fee and thus reduce the rate of the base management fee of these pension funds for the asset value of each additional 100 million euros by at least 15 per cent compared to the rate of the base management fee applicable to the previous asset value of 100 million euros.

(3) The pension fund manager is not required to reduce the rate of the base management fee applicable to each subsequent 100 million euros of asset value of a mandatory pension fund calculated pursuant to subsection (2) of this section by more than to 0.4 per cent.

(4) The coefficient which reduces the rate of the base management fee shall be found once a calendar year based on the asset value of the mandatory pension funds as at the second working day after 1 January and it shall be determined accurate to at least two decimal places.

(5) The rates of all base management fees specified in the prospectuses of mandatory pension funds shall be reduced on 1 February of each calendar year, taking into consideration the coefficient reducing the base management fee found pursuant to this section.

(6) Pension fund managers are not required to implement the provisions of this section to their mandatory pension funds in the case of which the rate of the base management fee specified in the prospectus is 0.4 per cent or less of the asset value of the pension fund.

(7) The procedure for calculation of the reduction of the rate of the base management fee of mandatory pension funds may be specified by a regulation of the minister responsible for the area.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 65². Success fee of mandatory pension fund

(1) The fund manager of a mandatory pension fund has the right to charge a success fee if the cumulative increase in the net asset value of a unit of the mandatory pension fund managed by the fund manager exceeds the cumulative increase in receipt of the pension insurance part of social tax as of 31 December of the year of registration of the pension fund.

(2) The registrar of the pension register shall publish the receipt of the pension insurance part of social tax once a month on its website.

(3) In order to calculate the success fee, the pension fund manager shall prepare the index of changes of the net value of units of the mandatory pension fund (hereinafter in this section *net value index*) and the index of receipt of the pension insurance part of social tax (hereinafter in this section *reference index*), equalising the starting values of these indices as at 31 December of the year of registration of the pension fund.

(4) The success fee shall be calculated once a year. The accounting period is a year where 31 December is the start and end date. The success fee shall be taken into account when determining the net value of a unit of a mandatory pension fund of the first working day after 1 January.

(5) If the value of the net value index of the start date of the success fee accounting period is lower than the highest value of the net value index of this pension fund on 31 December of the last ten years, from which the success fee was paid, the value of the start date net value index shall be used upon calculation of the success fee.

(6) The rate of the success fee may not exceed 20 per cent of the positive difference of the relative change of the value of the net value index and the positive difference of the relative change of the value of the reference index, taking into consideration the provision of subsection (5) of this section, or two per cent of the asset value of this pension fund.

(7) If the success fee calculated based on the positive difference between the relative change of the value of the net value index and the relative change of the value of the reference index is higher than the two per cent limit established by subsection (6) of this section or the success fee limit prescribed in the prospectus of the pension fund, it is allowed, upon calculation of the success fee for the subsequent periods, to deduct from the respective value of the net value index the part on which no success fee was paid due to application of the limit.

(8) If the value of the net value index on the start date of the success fee accounting period is lower than the value of the reference index, the amount of the success fee shall be calculated based on the positive difference of the relative change of the value of the net value index on the end date and the value of the reference index on the start date and the relative change of the value of the reference index.

(9) The procedure for calculation of the success fee of mandatory pension funds may be specified by a regulation of the minister responsible for the area.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 66. Specifications for suspension of issue and redemption of units of mandatory pension funds

(1) If the issue of units of a mandatory pension fund is suspended, the registrar of the pension register shall keep the funds received for the acquisition of such units in the bank account specified in subsection 12 (1) of the Funded Pensions Act.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(2) In order to suspend redemption of units of a mandatory pension fund, the fund manager must apply to the Financial Supervision Authority for an authorisation (hereinafter in this Division *authorisation*).

(3) In order to apply for an authorisation, a fund manager shall submit to the Financial Supervision Authority a written application and the following data and documents (in general, application, data and documents hereinafter in this Subdivision *application*):

1) data specified in subsection 5¹(4) of the Securities Register Maintenance Act concerning the number of units of the pension fund which have been issued and the number which have been redeemed during the month preceding submission of the application, and data concerning the unit-holders who acquired or transferred the units;

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

2) data concerning the assets of the pension fund, the net asset value of units and changes in the redemption fee of units during the month preceding submission of the application;

3) explanation of the reasons for suspension of the redemption of units;

4) assessment of the impact of suspension of the redemption of units on the interests of the unit-holders of the pension fund.

(4) No authorisation is required if redemption of the units of a mandatory pension fund is suspended in connection with suspension of trading on securities markets or for a short term due to another urgency where, in the opinion of the fund manager, redemption of the units would harm the general interests of unit-holders.

(5) During the period of suspension of redemption of the units of a mandatory pension fund, units of this pension fund may be issued only to the fund manager and on the basis provided for in subsection 32 (2¹) of the Funded Pensions Act to unit-holders of the mandatory pension fund.

§ 67. Processing of and decision on application for authorisation and refusal to issue authorisation

(1) If an application is not in compliance with the requirements provided for in subsection 66 (3) of this Act, the Financial Supervision Authority shall request elimination of deficiencies by the applicant.

(2) The Financial Supervision Authority may request submission of additional data and documents if it is not convinced on the basis of the application as to whether the suspension of the units of a mandatory pension fund is in compliance with the requirements established by legislation or if other facts relating to the fund need to be verified.

(3) In order to verify the data submitted by a fund manager, the Financial Supervision Authority may request submission of more specific data and documents, perform on-site inspections, order expert assessments and special audits, consult state databases, request oral explanations from the managers of the fund manager, the auditor firms, their representatives and third parties concerning the contents of the documents submitted and the facts which are relevant in making a decision on suspension of redemption of the units of the fund.

(4) The data and documents specified in subsections (1)-(3) of this section shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the fund manager fails to eliminate the deficiencies specified in subsections (1) and (2) of this section within the prescribed term or fails to submit the data, documents or information requested by the Financial Supervision Authority by the due date.

(6) The Financial Supervision Authority shall make a decision on issue of or refusal to issue an authorisation within five working days after receipt of the application and communicate the decision promptly to the fund manager.

(7) The Financial Supervision Authority may refuse to issue an authorisation if:

- 1) arise of the circumstances specified in subsection 57 (2) of this Act has not been proven;
- 2) the interests of unit-holders are insufficiently protected if the redemption of units is suspended.

Subdivision 2

Specifications for Acquisition and Redemption of Own Units of Pension Fund Managers

§ 68. Own units of pension fund manager

(1) A pension fund manager may hold units of the pension funds managed by it.

(2) A pension fund manager must hold at least 0.5 per cent of the units of the mandatory pension funds managed by it. To the extent in which the market value of the mandatory pension funds managed by the pension fund manager exceeds the amount of one billion euros, the pension fund manager must hold at least 0.02 per cent of the units.

(3) A pension fund manager must hold units on a pro rata basis in each mandatory pension fund managed by it, taking account of the percentage of the market value of the assets of each pension fund in the market value of the assets of all the mandatory pension funds managed by it.

(4) During three years following the establishment of a mandatory pension fund, the pension fund manager must hold at least two per cent of the units of this pension fund.

(5) The provisions of subsections (2)-(4) of this section do not apply to:

- 1) mandatory pension funds within three months after the fund manager assumes the management of the pension fund;
- 2) under the conditions determined by the Financial Supervision Authority within six months after redemption of units in the case provided for in subsection 32 (2¹) of the Funded Pensions Act.

(6) The Financial Supervision Authority may extend the term provided for in clause (5) 1) of this section by up to 15 months under the conditions specified by the Financial Supervision Authority.

(7) In the cases provided by law, the number of the units of a mandatory pension fund held by a pension fund manager must exceed the number of the units determined in accordance with subsections (2) and (3) or subsection (4) of this section.

(8) Precepts concerning acquisition of additional units and the conditions thereof are issued to pension fund managers by the Financial Supervision Authority.

(9) For the purposes of this Subdivision and in order to determine the percentage of the units of a mandatory pension fund owned by a pension fund manager or person who has operated as a pension fund manager, the number of the units held by such person shall be divided by the number of the units in the fund as registered by the registrar of the pension register which may be adjusted on the basis of the units associated with received but unsettled purchase and sell orders.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(10) A fund manager may not hold units of any pension funds which the fund manager does not manage. A fund manager may acquire units of the mandatory pension fund which management the fund manager has transferred if not more than three months have passed from the transfer of its management.

§ 69. Acquisition and redemption of own units of pension fund managers

(1) A pension fund manager shall acquire own units of a pension fund and redeem units of a pension fund held by it under the conditions and pursuant to the procedure provided for in this Act and legislation established on the basis thereof.

(2) A pension fund manager shall inform the Financial Supervision Authority of its intention to acquire or redeem units at least ten days before the acquisition or redemption of the units and submit the following data to the Financial Supervision Authority:

- 1) the name of the pension fund;
- 2) the market value of the assets and the net asset value of the pension fund;
- 3) the number of units which have been issued but not redeemed;
- 4) the number of units held by the pension fund manager and the percentage thereof in the total number of units;
- 5) the number of units which are intended to be acquired or redeemed;
- 6) the planned day for the acquisition or redemption of units.

(3) Giving notification to the Financial Supervision Authority in accordance with subsection (2) of this section is not required in the case of a mandatory pension fund if units thereof are redeemed at the request of a unit-holder and in the case the units of a mandatory pension fund are acquired or redeemed on the basis of a precept of the Financial Supervision Authority pursuant to the provisions of subsection 68 (8) of this Act or §§ 32-35 of the Funded Pensions Act.

(4) The provisions of this Division concerning fund managers also apply, with regard to redemption of units, to persons who no longer manage the fund in the case of which they request the redemption of units.

§ 70. Bases for prohibition on acquisition or redemption of own units of pension fund managers

(1) The Financial Supervision Authority may, by a precept, prohibit the acquisition of own units by fund managers or determine the maximum number of the acquired units if:

- 1) the data or documents submitted upon notification do not comply with the requirements provided by legislation or are inaccurate or misleading;
- 2) after acquisition of the units, the pension fund manager would hold more than five per cent of the units of the pension fund;
- 3) acquisition of the units of a pension fund is contrary to the legitimate interests of other unit-holders.

(2) The Financial Supervision Authority may, by a precept, prohibit redemption of units by a pension fund manager or determine the maximum number of the redeemed units:

- 1) if the data or documents submitted upon notification do not comply with the requirements provided for in this Act or are inaccurate or misleading;
- 2) if the Financial Supervision Authority has issued a precept to the pension fund manager and it has not been complied with by the due date;
- 3) if the number of the units of a mandatory pension fund held by the pension fund manager after redemption of units would be less than the respective number of units provided for in subsection 68 (2), (3), (4) or (7) of this Act;
- 4) if 12 months have not passed since the approval of the fund rules of the mandatory pension fund;
- 5) if the pension fund manager has deferred payment of a quarterly contribution on the basis of subsection 67 (2) of the Guarantee Fund Act;
- 6) upon redemption of units held by a person whose authority to manage a mandatory pension fund managed by it is transferred to another fund manager and less than six months have passed since the transfer;
- 7) upon redemption of units held by a person whose authority to manage the mandatory pension fund managed by it is transferred to a depository of the pension fund until the authority to manage the pension fund is transferred to another fund manager or the pension fund is liquidated;

8) if redemption of units of the pension fund would not be in the best interests of other unit-holders for any other reasons.

§ 71. Acquisition or redemption of own units of pension fund managers at request of Financial Supervision Authority

(1) The Financial Supervision Authority may request, by a precept, redemption of the own units of a pension fund if the pension fund manager holds more than five per cent of the units of the fund.

(2) In addition to the provisions of subsection (1) of this Act, the Financial Supervision Authority may request, by a precept, that:

1) units of a mandatory pension fund be acquired if the number of units held by the pension fund manager in the mandatory pension fund managed by it does not comply with the provisions of subsections 68 (2) and (3) or subsection (4) of this Act;

2) units of the mandatory pension fund be acquired if this is necessary in order to guarantee compensation for the loss specified in subsection 32 (1) of the Funded Pensions Act or to protect the interests of the unit-holders for any other reasons;

3) units of a mandatory pension fund which are owned by a person who managed the mandatory pension fund be redeemed if more than nine months have passed since the management authority of the pension fund was transferred.

§ 72. Deletion of units held by mandatory pension fund managers upon liquidation of pension funds

(1) After termination of liquidation of a mandatory pension fund, the pension fund manager or a person who operated as a pension fund manager has the right to apply for the consent of the Financial Supervision Authority for payment of the amount which corresponds to the net asset value of the units held by the fund manager or person who operated as a fund manager and deletion of the units from the pension register.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(2) If the Financial Supervision Authority refuses to give consent, the bases provided for in § 70 of this Act apply. The Financial Supervision Authority shall promptly also communicate the grant of or refusal to grant consent to the registrar of the pension register.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) The Financial Supervision Authority shall refuse to delete any or part of the units held by a fund manager if any of the circumstances specified in subsection 32 (1) of the Funded Pensions Act arise.

(4) In the case provided for in subsection (3) of this section, the procedure for compensation for loss provided for in §§ 32-35 of the Funded Pensions Act shall be applied.

(5) A pension fund manager shall submit an application to the registrar of the pension register for payment of the amount which corresponds to the number and the net asset value of the units of the mandatory pension fund held by the fund manager and for deletion of the units from the pension register of units, and append the consent of the Financial Supervision Authority for deletion of the units. The registrar of the pension register shall transfer the money for the units deleted on the basis of the application to the fund manager.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

Chapter 10 Information to be Disclosed and Reporting

Division 1 Prospectus and Key Information

Subdivision 1 Requirements for Prospectuses and Key Information

§ 73. General requirements for prospectuses and key information

(1) For public offer of a fund, a prospectus is prepared which must provide the information to be disclosed pursuant to this Chapter and which must be prepared in a manner allowing users of the prospectus to find necessary information easily.

(2) The date as at which the data provided in the prospectuses derives must be stated therein.

(3) In addition to a prospectus, key information must be always prepared concerning public offer of a fund which must comply with the requirements provided for in this Chapter.

(4) The key information is prepared so that the contents thereof is easily understandable even without any reference to other documents by persons who are not professional investors.

(5) The data provided in the key information must be in accordance with the respective data in the prospectus.

(6) If the assets of a common fund are divided into sub-funds, the prospectus must provide data concerning each sub-fund of the fund, if these data differ from the general information about the fund. If the assets of a fund are divided into sub-funds or the fund has different classes of units or shares, key information must be prepared for each sub-fund of the fund and each class of units or shares. The data which is relevant in the case of different classes of units or shares of the same fund may be provided in a single document provided that this document complies with the requirements provided for key information.

(7) Key information and, as appropriate, the translation thereof shall be used without modifications and supplements in all EEA Member States where the units or shares of the fund are offered taking into consideration amendments to the key information which are permitted in accordance with Article 27 of Commission Regulation (EU) No 583/2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (OJ L 176, 10.07.2010, pp. 1-15).

(8) The prospectus and key information of a fund are approved by the management board of the fund manager.

(9) The fund rules or articles of association of a fund must be always appended to the prospectus of the fund, unless otherwise provided for in this Act. The fund rules or articles of association shall not be appended to a prospectus if the prospectus contains a requirement that the fund rules or articles of association shall be sent to an investor at the request of the investor or if the investor is informed of the places where the fund rules or articles of association are disclosed in all the states where the units or shares are traded.

(10) The provisions of this Division concerning public offer, prospectus and key information of a fund do not apply to closed-end funds. The provisions of the Securities Market Act concerning public offer of securities and admission thereof to trading on regulated markets shall apply to public offers of such funds.

§ 74. Data disclosed in prospectuses

(1) A prospectus must include the following update information concerning the fund and sub-funds, if any:

- 1) the general data of the fund;
- 2) the investment policy of the fund;
- 3) the conditions of issue and redemption of units or shares, the conditions of and procedure for exchange of units or shares if the exchange thereof is permitted;
- 4) the rate of return achieved by the fund in the past periods and the methods of calculation of the rate of return;
- 5) the description of the risks and typical investors of the fund;
- 6) the business name, registry code and seat of the depositary and fund manager and third parties to whom the functions related to the management of the fund or holding of the assets thereof have been outsourced;
- 7) the total limit of the fees, charges and expenses paid for the account of the fund or unit-holders or shareholders, with the exception of liquidation expenses, and the rates of the management fee, including success fee, if charged, and depositary's charge;

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- 8) the procedure for establishment and disclosure of the net asset value of the assets of the fund and unit or share and of the issue and redemption prices of units or shares and the frequency thereof;
- 9) the conditions of suspension of issue or redemption of units or shares;
- 10) the conditions of and procedure for making payments to unit-holders or shareholders for the account of the income of the fund;
- 11) the disclosure of information concerning the fund;
- 12) the conditions to which the registrar of the units or shares of the fund must comply with, and the procedure for registration of the units or shares of the fund and information concerning the registrar of the units or shares of the fund;
- 13) a full description of the principles of remuneration of the fund manager, including description of the bases for calculation of the fee and compensations, persons responsible for determination of the fee and compositions, composition of a remuneration committee, if any, or summary of the principles of remuneration and a notation that a full description of the principles of remuneration is presented on the website of the fund manager together with a reference to the address of the website and that, if requested by an investor, the full description of the principles of remuneration shall be made available on paper free of charge.

(2) A prospectus must provide the following information concerning the investment policy of a fund or sub-funds of a common fund, if any:

- 1) the assets in which the assets of the fund are invested and to what extent, including when a certain index is replicated upon investment of the assets of the fund, whether this is the basis for comparing the rate of return

of the fund or the investment policy of the fund comprises replicating of a specific index, and the methods of trading, if they have are material for the development of the investment policy;

- 2) to what extent the assets of the fund are invested in one person or the securities issued by such person or other financial assets;
- 3) the states or persons located in the states in which the assets of the fund are invested;
- 4) to what extent the assets of the fund are invested in securities that are not traded on a regulated market or other non-liquid assets;
- 5) the objectives of transactions with derivative instruments;
- 6) the extent and terms for assumption of obligations for the account of the fund, such as conduct of transactions for guarantee of an issue of securities, borrowing, repurchase and reverse repurchase agreements or borrowing of other securities.

(3) In addition to as specified in clause (1) 6) of this section, a prospectus must state, about the depositary of the fund, the general description of the depositary functions and conflicts of interests which may arise, including conflicts of interests which may arise upon outsourcing of the task of holding assets.

(4) The information specified in subsections (1)-(3) of this section shall not be specified in the prospectus of a fund, if this is set out in the fund rules or articles of association.

(5) Upon offer in Estonia of a fund which was founded or established in a foreign state, the requirements set of in the prospectus for information to be disclosed about funds and fund managers must be complied with.

(6) Requirements for a prospectus and the list of data contained therein and additional information concerning foreign funds shall be established by a regulation of the minister responsible for the area.

§ 75. Key information requirements

(1) The key information must include in a clear and unambiguous manner the following information needed to make an informed investment decision:

- 1) the name or business name of the fund and information concerning the supervision authority of the home country of the fund;
- 2) a short description of the investment policy of the fund;
- 3) the rate of return achieved by the fund in the past period, or if the rate of return of the fund is guaranteed, the rate of return in future periods;
- 4) the fees, charges and expenses paid for the account of the fund or unit-holders or shareholders and the rates thereof;
- 5) the risk and reward profile of the fund together with the instructions and warnings necessary for understanding the risks associated with investing in the fund;
- 6) a reference to the place, method of receipt of the prospectus free of charge, annual reports and semi-annual reports and other information concerning the fund and the language of the information;
- 7) a notation that a description of the principles of remuneration are available on the website of the fund manager, including a description of the bases for calculation of the fee and compensations, persons responsible for determination of the fee and compositions, composition of a remuneration committee, if any, reference to the address of the website and information that, if requested by an investor, the full description of the principles of remuneration shall be made available on paper free of charge.

(2) The requirements for the contents and format of the key information of a fund are provided for in Commission Regulation (EU) No 583/2010.

§ 76. Compensation for damage to unit-holders or shareholders

(1) If a prospectus or key information of a fund (prospectus and key information jointly hereinafter in this Division *prospectuses*) contain information which is relevant for the purpose of evaluating the value of the fund or the units or shares thereof and such information proves to be different from the actual circumstances, the fund manager or public limited fund shall compensate the unit-holders or shareholders for the damage caused due to the difference between the actual circumstances and the information provided in the prospectuses, provided that the fund manager or public limited fund was or should have been aware of such difference.

(2) The provisions of subsection (1) of this section also apply if prospectuses are incomplete, including omission of relevant facts, if the incompleteness of the prospectuses results from the fund manager or public limited fund hiding of the information.

(3) The fund manager or public limited fund shall have the right, with the consent of the unit-holder or shareholder, to compensate for the damage specified in subsections (1) and (2) of this section by redeeming the unit or share from the unit-holder or shareholder without any redemption fee at the price for which the unit-holder or shareholder acquired the unit from the fund manager or public limited fund. Upon redemption by the fund manager or public limited fund of a unit or share for the account of the fund manager or public limited

fund, the fund manager or public limited fund is released from the obligation to compensate the unit-holder or shareholder for any other damage.

(4) The obligation to compensate for the damage specified in subsections (1) and (2) of this section also rests with the fund manager or public limited fund if a third party is the source of the information provided in the prospectuses. The fund manager or public limited fund is released from liability only in the case the information referred to or published in the prospectuses is provided with a reference to a source of information independent of the fund manager or public limited fund and the fund manager or public limited fund did not know and need not have known that the information on the basis of which the reference was made was incorrect.

(5) A fund manager or public limited fund does not have the obligation to compensate for any damage on the basis of this section if the injured party was or should have been aware, at the moment of acquiring the unit or share, that the prospectuses were incomplete or contained inaccurate information. The same applies if a professional investor that sustained losses should have realised, at the moment of acquiring the unit or share and by exercising due diligence in its activities, that the information contained in the prospectuses was inaccurate or incomplete, unless the damage is caused intentionally.

(6) A fund manager or public limited fund must compensate for damage caused to a unit-holder or shareholder only on the bases of the key information or the translation thereof in the case the information contained therein is misleading or contradicting or inconsistent with the prospectus of the fund.

(7) The limitation period for a claim prescribed in this section is five years after disclosure of the prospectuses which contain inaccurate information or are incomplete.

(8) Any agreements which exclude, limit or reduce the compensation or limitation period prescribed in this section shall be void.

Subdivision 2

Amendments to Prospectuses

§ 77. Amendments to Prospectuses and Disclosure and Entry into Force of Amendments

(1) Amended prospectuses are disclosed promptly after submission thereof to the Financial Supervision Authority for the information thereof.

(2) Amendments of prospectuses enter into force and offer of a fund may be started on the basis of the prospectuses after disclosure of the prospectuses, unless otherwise provided for in the prospectuses or subsection 78 (4) of this Act.

(3) The Financial Supervision Authority may, by a precept, require that:

- 1) amendments to prospectuses and disclosure of the amendments in the prospectuses do not fulfil the conditions provided for in the fund rules, articles of association or legislation;
- 2) the requirements provided for in subsection 78 (4) of this Act are complied with due to the material impact of the amendments to the prospectuses to the funds or the interests of unit-holders or shareholders.

§ 78. Assessment of impact of amendments to prospectuses and requirements for making material amendments

(1) Unless otherwise provided for in this Act, the impact of amendments to reasonable interests of investors must be assessed upon making amendments to prospectuses. A justification of amendments and an assessment of the impact of the amendments to the fund and the interests of the investors shall be submitted to the Financial Supervision Authority together with amended prospectuses.

(2) Materiality of the amendments to prospectuses is presumed if the prospectuses:

- 1) amend the investment policy of the fund;
- 2) increase the management fee and depositary's charge to a significant extent.

(3) Amendments to prospectuses are not considered material if investment restrictions are changed to the extent which does not change the general investment policy or the main investment objectives of the fund to a significant extent. Amendments to prospectuses are not deemed material and materiality of amendments to prospectuses shall not be assessed if:

- 1) amendments to the prospectuses reduce the fees or charges and expenses paid for the account of the fund or unit-holders or shareholders or make other changes which are favourable for the unit-holders or shareholders;
- 2) corrections are made in the prospectuses in the rights and obligations of the unit-holders or shareholders which have no impact on their obligations; or
- 3) amendments are made to the prospectus only on the basis of the amendments made to legislation which implementation is mandatory.

(4) In the case of material amendments to prospectuses, at least one of the following conditions must be fulfilled:

- 1) at the request of unit-holders or shareholders, a unit or share is redeemed without any redemption fee within at least one month before the amendments to the prospectuses enter into force;
- 2) the fund manager shall ensure an opportunity to unit-holders or shareholders to transfer a unit or share of the fund within at least one month before the amendments to the prospectuses enter into force at the price which shall not be less than the net asset value of the unit or share.

(5) In order to notify of the opportunity provided for in subsection (4) of this section, a fund manager shall publish, promptly after deciding on amendment of the prospectuses, a notice on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund.

(6) In the case provided for in this section, amendments to prospectuses enter into force and offers of the fund may be commenced on the basis thereof after submission of the prospectuses to the Financial Supervision Authority and disclosure thereof and after expiry of the term specified in subsection (4) of this section, unless a later date for entry into force is provided for in the prospectuses. If material amendments to prospectuses arise from amendments to the fund rules or articles of association, the amendments to the prospectuses enter into force and the offer of the fund may be commenced at the same time with the entry into force of the amendments to the fund rules or articles of association.

§ 79. Amendments to prospectuses for establishment of new sub-funds

(1) If a sub-fund of a common fund is established by an amendment to prospectuses, the provisions of this Act concerning material amendments to prospectuses do not apply and the prospectuses must be submitted to the Financial Supervision Authority for approval. In order to obtain an approval to prospectuses, the fund manager of a common fund (hereinafter in this Division *applicant*) shall submit to the Financial Supervision Authority a written application and the following data and documents (application, data and documents jointly hereinafter in this Division *application*):

- 1) the prospectuses of the fund;
- 2) the key information of the new sub-fund and each class of unit, if any;
- 3) the amended depositary contract or depositary contract of the sub-fund.

(2) If an application is not in compliance with the requirements provided for in subsection (1) of this section, the Financial Supervision Authority shall request elimination of the deficiencies by the applicant.

(3) The Financial Supervision Authority may demand submission of additional data and documents if it is not convinced on the basis of the data and documents submitted whether the prospectus of the fund is in compliance with the requirements established for funds by legislation, or if other circumstances relating to the fund need to be verified.

(4) Deficiencies of an application must be eliminated or additional data and documents submitted during a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the applicant fails to eliminate deficiencies within the prescribed term or fails to submit the data or documents requested by the Financial Supervision Authority by the due date. Upon refusal to review an application, the Financial Supervision Authority shall return the submitted documents without making a decision.

(6) The Financial Supervision Authority may refuse to approve amendments to prospectuses if:

- 1) the sub-fund, including the investment policy thereof, does not comply with the provisions of the prospectuses, fund rules or legislation;
- 2) The prospectuses of a fund do not reflect in full, clearly and unambiguously all the material conditions of the operation of the sub-fund or contain provisions which are misleading or contradictory or hinder the public offer of the sub-fund, and if the information set out in the prospectuses about the sub-fund is insufficient.

(7) The Financial Supervision Authority shall make a decision to approve or refuse to approve the amendments to prospectuses within two months after receipt of all the necessary data and documents but not later than within six months after receipt of the application.

(8) The Financial Supervision Authority shall promptly communicate the decision to approve the amendments to prospectuses to the applicant and the depositary of the fund.

(9) Amendments to prospectuses enter into force after approval of the prospectuses, unless a later date for entry into force is provided for in the prospectuses.

Division 2

Disclosure of Information

§ 80. Requirements for information to be disclosed

(1) All information published and provided in documents concerning a fund, including advertising (hereinafter *information to be disclosed*) must be true and unambiguous and not misleading.

(2) The information to be disclosed may include data and assessments disclosed concerning a fund with the aim of notification of the public of the activities or financial situation of the fund, formation of the net asset value of the units or shares of the fund and other required circumstances.

(3) The information to be disclosed shall not give ostensible guarantees concerning the rate of return of or distributions from the fund or contain forecasts or prognoses of the financial performance of the fund, taking into account the provisions of this Act concerning guaranteed rates of return. The information which refers to replicating of an index, benchmark portfolio or financial assets upon calculation of the yield of or distributions from the fund are not deemed to be a prognosis of the financial performance of the fund.

(4) Any information to be disclosed which directly or indirectly invites persons to purchase units or shares must include a notation as to where the prospectus and key information prepared for the offer of the fund can be examined.

(5) A fund manager or public limited fund shall promptly disclose on the website of the fund manager, the consolidation group to which the fund manager belongs or the public limited fund all the circumstances which materially influence the activities or financial situation of the fund.

(6) The provisions of this Division concerning a fund also apply to disclosure of information concerning sub-funds of a common fund.

(7) Any incorrect, misleading, untimely or incomplete information shall be deemed to be failure to disclose or submit information.

(8) Specific requirements for information to be disclosed concerning a fund may be established by a regulation of the minister responsible for the area.

§ 81. Disclosure of fund documents and language requirements

(1) A fund manager or public limited fund shall make the documents required pursuant to this Act and legislation issued on the basis thereof public at least at the seat of the fund manager or public limited fund, the seats of the branches thereof and on the website of the fund manager, the consolidation group to which the fund manager belongs or the public limited fund.

(2) Each person must be able to examine the following documents free of charge at the places specified in subsection (1) of this section:

- 1) the fund rules or articles of association of the fund;
- 2) the latest annual accounts or annual report of the fund;
- 3) the latest semi-annual report of the fund if it is approved after the latest annual accounts or annual report;
- 4) the prospectus and key information.

(3) The documents specified in subsection (2) of this section shall be disclosed in a format which can be reproduced in writing. At the request of an investor, a fund manager or public limited fund shall give a copy of the documents to the investor free of charge.

(4) A fund manager or public limited fund shall disclose the annual accounts or annual report of the fund within four months after the end of a financial year. A fund manager or public limited fund shall disclose the semi-annual report of the fund within two months after the end of a half-year.

(5) The key information shall be disclosed at least in the Estonian language. The remaining documents specified in subsection (2) of this section shall be disclosed at least in the Estonian or English language, unless otherwise provided for in this Act.

(6) If the documents specified in this section are not disclosed in the Estonian language, the Financial Supervision Authority may request from the fund manager, in order to protect the interests of investors, translation of the documents of the fund into the Estonian language and making of the translation public.

(7) If the translations of any documents disclosed are not in compliance with the documents translated or can be interpreted differently, the documents in the Estonian language or translations of documents in other languages into the Estonian language shall apply.

(8) If the assets of a common fund are divided into sub-funds, the fund's annual and semi-annual reports specified in clauses (2) 2) and 3) of this section must disclose information concerning each sub-fund and key information specified in clause (2) 4) of this subsection concerning each sub-fund and class of units.

§ 82. Disclosure of rates of return of funds

(1) Upon disclosure of the rate of return of a fund, the information to be disclosed must contain a notation that the rate of return achieved by the fund in past periods does not guarantee the rate of return of the fund in future periods, unless the rate of return of the fund is guaranteed pursuant to the fund rules or articles of association. Data concerning the period used as the basis for determining the rate of return must be included in the information to be disclosed concerning the rate of return.

(2) If a fund has sufficient history, the rate of return shall be disclosed at least per calendar year or at least the last 12 months. No annual rate of return shall be disclosed on the basis of periods that are shorter than 12 months.

(3) The annual rate of return of any period shorter than 12 months may be disclosed only in the case of funds which mainly invest in money market instruments. In this case it must be indicated that the rate of return is annualized.

(4) If a fund has sufficient history, the average rate of return of the fund for the last two, three and five calendar or financial years must be stated upon disclosure of the rate of return of the fund. In addition to the provisions of this subsection, the average rate of return of the fund after establishment or foundation of the fund may be presented.

(5) The provisions of this section do not apply to any comparative information and information disclosed on the website of the fund manager, the consolidation group to which the fund manager belongs or the public limited fund, provided that the data concerning the rate of the return for the latest calendar year or the last 12 months shall be appended to it. Information submitted by an independent person in which the rate of return of funds is directly or indirectly compared or which refers to the respective reference basis is deemed to be reference information.

(6) The provisions of this section concerning a fund also apply to disclosure of the rate of return of sub-funds of a common fund.

(7) Specifications for disclosure of key information concerning the rate of return of a UCITS are provided for in Commission Regulation (EC) No 583/2010.

Division 3 Accounting and Reporting

§ 83. Organisation of accounting

(1) The accounting and reporting of a fund shall be organised on the basis of the Accounting Act, this Act, other legislation issued on the basis thereof and the accounting policies and procedures of the fund manager or fund. In the case of a conflict between this Act and other legislation, this Act applies.

(2) The provisions of the Accounting Act concerning financial statements apply to annual reports of common funds, unless otherwise provided for in this Act. The provisions of the Accounting Act concerning annual reports apply to annual reports of public limited funds, unless otherwise provided for in this Act.

(3) If the assets of a common fund are divided into sub-funds, the provisions of this Act concerning annual accounts also apply to preparation of the annual accounts of sub-funds, unless otherwise provided for in this Act. Reports are prepared and information is submitted separately for the fund and each sub-fund.

(4) The annual accounts or annual reports of a fund are prepared, submitted and disclosed at least in the Estonian language. A fund manager founded in a foreign state may prepare, submit and disclose the annual accounts or annual reports of funds in the English language. The Financial Supervision Authority has the right to require translation into the Estonian language of the annual accounts or annual reports in the English language of a fund manager founded in a foreign state.

(4¹) The annual or semi-annual accounts or annual report of a fund shall include the following statements:
1) financial statements;
2) statement of investments;
3) statement of transaction fees and commissions.
[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

(5) The annual accounts or annual reports of a fund, except of a pension fund, shall include the following data in addition to the balance sheet, income and expense statement and management report:

- 1) the total amount of remuneration paid by the fund manager during the financial year, making a distinction between the total amount of the basic pay and performance pay, the number of beneficiaries and fees and charges paid from the assets of the fund;
- 2) the amounts of remuneration paid by the fund manager during the financial year according to the categories of the managers and employees to whom the principles of remuneration must be applied.

(6) The fund manager of a UCITS shall submit in the annual accounts or annual reports of the UCITS the following additional information:

- 1) description of the bases for calculation of remuneration and compensations of managers and employees;
- 2) results of the control procedure of implementation of the principles of remuneration by the supervisory board of the fund manager, or the remuneration committee and internal control, if any, and information concerning any deviations encountered in the implementation thereof;
- 3) material changes made in the principles of remuneration.

(7) The requirements for the contents of reports and methods of preparation of the reports shall be established by a regulation of the minister responsible for the area.

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

§ 84. Requirements for organisation of accounting of common funds

(1) The accounting of a common fund shall be organised by the management board of its fund manager.

(2) The accounting of a common fund must be kept separate from the accounting of the fund manager and other funds of the fund manager.

(3) The provisions of § 14, subsection 15 (2) and subsection 18 (3) and §§ 25 and 26 of the Accounting Act do not apply to accounting and reporting of common funds.

(4) The financial year of a common fund is a calendar year.

§ 85. Additional requirements for organisation of accounting of public limited funds

(1) The provisions of the Accounting Act apply to the accounting and reporting of public limited funds, including annual reports and semi-annual reports, unless otherwise provided for in this Act or legislation established on the basis thereof.

(2) The financial year of a public limited fund is a calendar year.

§ 86. Audit obligations

(1) An audit firm must be appointed to a fund.

(2) The audit firm of a common fund shall be appointed by the management board of its fund manager. The audit firm of a public limited fund shall be appointed by the general meeting of the public limited fund, unless this right was granted to the supervisory board of the public limited fund by the articles of association of the public limited fund.

(3) The annual accounts of common funds and public limited funds must be audited. The provisions concerning audits in the Auditors Activities Act and other legislation apply to audits, taking account of specifications provided for in this Act.

§ 87. Notification obligations of sworn auditors

(1) A sworn auditor is required to inform the Financial Supervision Authority promptly in writing of any circumstances revealed in the course of providing the service which result or may result in:

- 1) material violation of legislation governing the activities of fund managers, funds or depositaries;
- 2) situation or a risk of a situation arising in which the obligations of the fund cannot be performed for the account of the fund;
- 3) qualified report prepared by the sworn auditor concerning the annual accounts or annual report of the fund;
- 4) significant proprietary damage caused by the activities of a member of the management board or supervisory board or employee of the fund manager or public limited fund to the unit-holders or shareholders of the fund.

(2) Upon submission of data to the Financial Supervision Authority in accordance with subsection (1) of this section, a sworn auditor does not violate the obligation to maintain confidentiality of data which is imposed on the sworn auditor by legislation or a contract.

§ 88. Reports submitted to Financial Supervision Authority

(1) A fund manager shall prepare and submit to the Financial Supervision Authority reports on the supervision over the funds managed by it (hereinafter in this Division *reports*) pursuant to the procedure provided for in this Act and legislation issued on the basis thereof. A public limited fund shall prepare reports and submit them to the Financial Supervision Authority pursuant to the procedure provided for in this Act or legislation issued on

the basis thereof, unless the fund manager submits the reports pursuant to its management contract in the name of the public limited fund.

(2) A fund manager or public limited fund shall prepare and submit reports on the assets, obligations, fees and charges and payments of the fund and the units or shares of the fund.

(3) The period of the reports submitted to the Financial Supervision Authority is a calendar month, unless otherwise provided by legislation.

(4) A fund manager or public limited fund shall submit reports to the Financial Supervision Authority within ten days after the end of the accounting period.

(5) The reports submitted to the Financial Supervision Authority must be in the Estonian language. A fund manager founded in a foreign state may submit reports of funds to the Financial Supervision Authority in the English language. The Financial Supervision Authority has the right to request translation into the Estonian language of reports of funds in the English language from a fund manager founded in a foreign state.

(6) In addition to the provisions of this Division, the Financial Supervision Authority has the right to request, for the purpose of exercising supervision, additional periodic and specific reports from a public limited fund or fund manager concerning the funds managed by it, and any data and reports on the services provided by the fund manager and the structure of the funds managed by it, the trends and innovations thereof, which are required for the performance of the functions of the Financial Supervision Authority on the basis of Regulation (EU) No 1095/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, pp. 84-119).

(7) Based on the reports specified in this section submitted to the Financial Supervision Authority, the Financial Supervision Authority may submit data to the Ministry of Finance for performance of the functions pursuant to the Government of the Republic Act and to *Eesti Pank* for performance of the functions pursuant to the Official Statistics Act.

(8) A list of the reports submitted to the Financial Supervision Authority and the contents, methods of preparation and the procedure for submission thereof shall be established by a regulation of the minister responsible for the area.

Division 4

Specifications for Disclosure of Information and Reporting on Alternative Funds

§ 89. Application of Division

(1) The provisions of this Division apply to alternative funds managed by alternative fund managers and publicly offered in Estonia or other EEA Member States.

(2) The provisions of this Division applicable to alternative funds also apply to sub-funds.

§ 90. Additional requirements for information to be disclosed concerning alternative funds

(1) A fund manager must make at least the following information concerning a fund available to investors in addition to the information provided for in the fund rules, articles of association and prospectus:

- 1) jurisdiction for settlement of disputes;
- 2) business name, registry code and seat of the audit firm;
- 3) procedure for mitigation and prevention of conflicts of interests which includes the procedure for mitigation and prevention of conflicts of interests upon outsourcing of the functions relating to the management of the fund;
- 4) information concerning compliance of the fund manager with the own funds requirement;
- 5) description of the liquidity risk management of the fund, including conditions for redemption of units or shares;
- 6) information concerning compliance with the requirement for equal treatment of investors, and treatment of investors with different rights associated with units or shares of different classes, and connections thereof with the fund and fund manager;
- 7) business name, registry code and seat of the prime broker, if any, and information concerning significant agreements entered into with the prime broker, including agreements for transfer of liability, description of measures for mitigation and prevention of conflicts of interests and terms and conditions for transfer and reuse of the assets of the fund in the depositary contract.

(2) At least the following information must be made available to investors concerning the investment policy of a fund:

- 1) if the fund is a feeder fund or if the assets of the fund are invested to a large extent in another fund, the information concerning the seat of the master fund or the specified other fund;
- 2) investment techniques and risks associated with assets and investment restrictions.

(3) In addition to the information specified in subsection (1) of this section, a fund manager shall promptly notify investors of all the agreements pursuant to which the liability of the depositary is limited in accordance with subsection 298 (4) of this Act and of any changes in connection with the depositary's liability.

(4) A fund manager must make the following information available to investors on regular basis:

- 1) the percentage of illiquid assets in the assets of the fund to which the special arrangements arising from their illiquid nature are applied pursuant to Commission Delegated Regulation (EU) No 231/2013;
- 2) the arrangements for managing the liquidity of the fund and amendments thereto;
- 3) the risk profile of the fund and description of the risk management system employed to manage the respective risks.

(5) The following information must be published on a regular basis concerning a fund employing leverage:

- 1) the principles of employing leverage and borrowing, including the methods of employing leverage, risks related to use of leverage, procedure for reuse of assets and collaterals, and restrictions on the use of leverage;
- 2) changes in the maximum level of leverage which the fund is entitled to employ;
- 3) the right to reuse collaterals or other guarantees issued under leveraging arrangements;
- 4) the total amounts of leverage of the fund.

(6) A fund manager must promptly notify investors of any changes in the information specified in subsections (1)-(5) of this section in the cases provided for in the Commission Delegated Regulation (EU) No 231/2013, including changes in the procedure for redemption of units or shares for management of the liquidity of the fund.

§ 91. Additional requirements for disclosure of reports

(1) Material changes made in the information disclosed to investors in accordance with § 90 of this Act must be appended to the annual accounts or annual reports of alternative funds (hereinafter in this section *report*).

(2) If reports are disclosed in accordance with the requirements of the Securities Market Act applicable to issuers, the information specified in subsection 83 (5) of this Act and subsection (1) of this section must be appended to the reports, unless this information is disclosed in the issuer's report.

(3) Requirements for disclosure of information concerning funds are provided for in Commission Delegated Regulation (EU) No 231/2013.

§ 92. Additional information submitted to Financial Supervision Authority concerning alternative funds

(1) An alternative fund manager shall prepare and submit to the Financial Supervision Authority information on regular basis concerning traded financial instruments in the assets of the alternative fund and trading venues where the alternative fund manager trades in the name of the fund, and concerning the main risks and risk concentration of the fund.

(2) The following information must be submitted to the Financial Supervision Authority concerning an alternative fund:

- 1) the percentage of illiquid assets in the assets of the fund to which the special arrangements arising from their illiquid nature are applied pursuant to Commission Delegated Regulation (EU) No 231/2013;
- 2) the arrangements for managing the liquidity of the fund and amendments thereto;
- 3) the risk profile of the fund and description of the risk management system required to manage the market risk, liquidity risk, counterparty risk or credit risk, operational risk and other risks of the fund;
- 4) types of assets of the fund;
- 5) the results of stress tests.

(3) If leverage is employed on a substantial basis upon management of the assets of a fund, the fund manager shall submit to the Financial Supervision Authority the following information concerning the fund:

- 1) the overall level of leverage employed by the fund;
- 2) the break-down of the leverage of the fund between the leverage arising from borrowing of cash or securities and the leverage arising from derivatives;
- 3) the extent to which the assets of the fund have been reused under leveraging arrangements.

(4) The information specified in subsection (3) of this section shall identify the five largest sources of borrowed cash or securities and the amounts of leverage received from each of those sources for each of the funds.

(5) An alternative fund manager shall submit information electronically to the Financial Supervision Authority with the frequency and time limits specified in Article 110(3) and in accordance with the templates provided for in Annex IV of the Commission Delegated Regulation (EU) No 231/2013.

Division 5

Specifications for Disclosure of Information and Reporting on Pension Funds

§ 93. Additional requirements to information to be disclosed concerning pension funds

(1) Each person must be able to examine, at the seat of the pension fund manager and on the website of the fund manager or the consolidation group to which the fund manager belongs, the documents specified in clauses 81 (2) 1), 2) and 4) of this Act and in the case of a mandatory pension fund, the latest statement on the investments thereof.

(1¹) The prospectus of an occupational pension fund has to specify, in addition to the information specified in subsection 74 (2) of this Act, whether and how the principles of responsible investment are complied with in the investment policy of the pension fund and whether environmental, social and governance factors are taken into account in making investment decisions.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) The period of the statements of investments of a mandatory pension fund is one month, the statement shall be prepared in accordance of the regulation of the minister responsible for the area established on the basis of subsection 83 (7) of this Act and shall be disclosed by the 15th date of the month following the accounting period.

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

(2¹) No semi-annual reports shall be prepared for pension funds.

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

(3) The data and documents prepared concerning a pension fund shall be disclosed at least in the Estonian language.

(4) A mandatory pension fund manager shall submit to the registrar of the pension register for disclosure on the website of the latter the fund rules, prospectus and key information of the mandatory pension fund and in the case of any amendments thereto the amended fund rules, prospectus and key information.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(5) Information disclosed concerning a mandatory pension fund shall not include offers of non-fund benefits or be related, in any other way, to the offers which may influence persons to make a decision in choosing a mandatory pension fund based on such non-fund benefits.

(6) Employers who wish to commence making of contributions or make contributions to an occupational pension fund, employees, servants, members of managing and controlling bodies thereof and unit-holders of the fund must be able to examine the documents disclosed concerning the occupational pension fund in accordance with subsection (1) of this section at the seat of the fund manager or on the website of the fund manager or the consolidation group to which the fund manager belongs.

(7) The annual report of an occupational pension fund shall be made available to the persons specified in subsection (6) of this section within four months after the end of the financial year.

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

(8) In addition to the provisions of subsection (1) of this section, a fund manager must submit once a year to each unit-holder of any occupational pension funds managed by the fund manager a pension statement prepared pursuant to § 94¹ of this Act in a format which can be reproduced in writing. At the request of a unit-holder, the fund manager shall issue a free copy of the pension statement of the occupational pension fund to the unit-holder.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(9) At the request of a unit-holder or at the latest six months before commencement of payments, the occupational pension fund manager shall notify unit-holders of the methods of payment of supplementary funded pension.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 94. Additional requirements for key information of pension funds

(1) The key information of a pension fund shall include under practical information in addition to that provided for in Commission Regulation (EU) No 583/2010 information about when unit-holders can get payments from

the pension fund, and references to clauses in the prospectus of the fund where it is possible to find information about the terms and conditions of exchange, redemption of units and making of payments.

(2) The key information of a mandatory pension fund shall include under fees and charges, in addition to that provided for in Commission Regulation (EU) No 583/2010, the asset turnover ratio which equals to the quotient of the arithmetic means of the value of the assets of the mandatory pension fund sold or the value of the assets of the mandatory pension fund purchased in a calendar year, whichever is smaller, and the value of the assets on the days of calculation of the net asset value of the units of the mandatory pension fund for the calendar year.

(3) The ongoing fees and charges shown under the key information of a mandatory pension fund must also include the fees, charges and expenses of the calendar year which are paid in accordance with clause 58 (1) 3) of this Act for the account of the mandatory pension fund.

§ 94¹. Pension statement of occupational pension fund

(1) Pension statements of occupational pension funds must set out the following information:

- 1) the name and personal identification code or, in the absence thereof, the date of birth, of the unit-holder;
- 2) the age of the unit-holder when payments shall commence to the unit-holder pursuant to the rules of the occupational pension fund;
- 3) the name and contact details of the fund manager and the name of the occupational pension about which the pension statement is submitted;
- 4) the forecast of the payments to be made to the unit-holder after the unit-holder reaches the age provided for in clause 2) of this subsection;
- 5) the total value of the units of the occupational pension fund held by the unit-holder;
- 6) the amount of the contributions to the pension fund made by the employer for the unit-holder to the pension fund during at least the last 12 months;
- 7) the amount of any fees and costs covered for the account of the unit-holder and the occupational pension fund at least during the last 12 months.

(2) When using assumptions required for forecasting distributions to unit-holders from an occupational pension fund, the fund manager shall be based on its best estimates and the indicators published by the Ministry of Finance in its latest economic forecast.

(3) The assumptions used for forecasting distributions may be specified by a regulation of the minister responsible for the area.

(4) If the forecast of distributions to be made to a unit-holder is based on scenarios, it must contain at least a scenario based on the best estimate of the fund manager and a negative scenario.

(5) The forecast specified in clause (1) 4) of this section shall be submitted in a pension statement of the occupational pension fund together with a warning that distributions to the unit-holder in the estimated amount can not be guaranteed and that actual distributions may differ from it.

(6) In addition to the provisions of subsection (1) of this section, a pension statement of an occupational pension fund must include a reference to where the unit-holder can examine:

- 1) the documents specified in clauses 81 (2) 1), 2) and 4) of this Act about the occupational pension funds which are managed by the fund manager and making of contributions to which the unit-holder can choose;
- 2) the information about potential distributions to the unit-holder should the employer terminate making of contributions for the unit-holder to the occupational pension fund.

(7) Any information which has significantly changed compared to the information submitted about the previous period must be clearly indicated in the pension statement.

(8) The pension statement of an occupational pension fund shall be prepared in such a manner that it would be easy for the unit-holder to understand the contents thereof and the data stated therein are relevant and presented as at the date indicated in the pension statement.

(9) The name “pension statement” and, where appropriate, the translation thereof shall be used in an unaltered form and without supplements in all the Member States where the units of the occupational pension fund are offered.

(10) At the request of a unit-holder, the occupational pension fund manager shall inform the unit-holder of the assumptions which were used for estimating the distributions stated in the pension statement.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 95. Compensation for damage

(1) Upon compensation for damage caused to a unit-holder of a mandatory pension fund, the units redeemed pursuant to subsection 76 (3) of this section shall be exchanged for the units of another mandatory pension fund chosen by the unit-holder under the conditions provided for in the Funded Pensions Act concerning exchange of units.

(2) Upon redemption of units of a voluntary pension fund, the procedure for making of payments or exchange of units provided for in the Funded Pensions Act shall be implemented.

§ 96. Specifications for amendments to information contained in prospectuses and key information of pension funds

(1) The regulation on amendment of the prospectus and key information of a fund provided for in §§ 77 and 78 of this Act (hereinafter jointly in this section *prospectuses*) is applied to mandatory pension funds and occupational pension funds, taking account of the specifications provided for in this section.

(2) The provisions of subsections 78 (4)-(6) of this Act do not apply to material amendments to the prospectuses of a mandatory pension fund.

(3) Material amendments to the prospectuses of a mandatory pension fund enter into force on the date of exchange of units provided for in subsection 24 (3) of the Funded Pensions Act but not earlier than 100 calendar days after publication of a respective notice.

(4) The fund manager shall have the amendment of the prospectuses of an occupational pension fund approved by the employer making contributions to such fund.

(5) Amended prospectuses of an occupational pension fund shall be disclosed by the fund manager to unit-holders promptly after submission thereof to the Financial Supervision Authority for the information thereof. The fund manager shall inform the Financial Supervision Authority of the date of disclosure of the amendments to unit-holders.

(6) Upon material amendments to the investment policy or rights associated with the units arising from amendments to the pension fund rules in the prospectuses of a mandatory pension fund and occupational pension fund, the provisions of §§ 40, 41 and 46 of this Act apply to notification of amendments to prospectuses, disclosure and entry into force thereof.

Chapter 11 Investment of Assets of Funds and Transactions conducted Therewith

Division 1 General Requirements for Investment of Assets of Public Funds

§ 97. Application of Chapter

(1) The provisions of this Chapter apply to public funds founded or established in Estonia.

(2) If the assets of a common fund are divided into sub-funds, each sub-fund shall be treated as a separate fund for the purposes of this Chapter.

(3) The provisions of this Chapter do not apply to termination of funds, unless otherwise provided for in the decision to issue an authorisation for liquidation of a fund.

§ 98. General requirements for investment of assets of funds

(1) Upon investment of the assets of a fund, it has to be ensured that the investments of the fund are sufficiently diversified between different securities and other assets in such a manner that redemption of the units or shares of the unit-holders or shareholders of the funds would be guaranteed in accordance with the provisions of the fund rules or articles of association.

(2) The assets of a fund may be invested only in the assets specified in the basic document or prospectus of the fund, taking account of the requirements and restrictions provided for in the basic document and prospectus of the fund.

(3) If the rate of return of a fund is not guaranteed in accordance with the fund rules or articles of association, the fund, fund manager or another person shall not:

- 1) give any guarantee or other form of collateral concerning the income of the fund or distributions made from the fund;
- 2) make forecasts or prognoses of the financial performance of the fund;
- 3) offer other guarantees outside the fund on the basis of the factors associated to the fund.

§ 99. General requirements for management of risks associated with investment of assets of funds

(1) Internal rules of procedure must be established for management of the risks associated with the investment of the assets of a fund which enable to monitor and measure, at any time, the risk positions and the percentage thereof in the assets of the fund (hereinafter *risk management rules*). The risk management rules shall be sufficient and proportionate to the nature, extent and complexity of the investments of the fund.

(2) The risk management rules shall *inter alia* set out the following:

- 1) transparent organisational structure of the fund manager for the management of risks with clearly delineated areas of responsibility, and requirements for submission of reports, the contents and frequency thereof;
- 2) risk management process taking into consideration the risks associated with investments in compliance with the investment policy of the fund;
- 3) sufficient and proportional rules of procedure for measurement and management of risks (hereinafter *procedure for measurement and management of risks*), rules of procedure for calculation of risk positions of derivative instruments which take account of the risk profile of the fund, and the procedure for notification of the managers of the fund manager;
- 4) measures which ensure knowledgeability of the managers and employees of the fund manager about the risk profile of the fund and the risks arising from the investment activities of the fund and taking of the risk considerations into account in the decision-making processes;
- 5) measures which must ensure the liquidity required for regular operation of the fund, taking into consideration the extent of the obligations assumed for conducting transactions for the account of the fund, and the policy for redemption of units or shares.

(3) The procedure for measurement and management of risks specified in clause (2) 3) of this section must allow to establish, measure, manage and constantly monitor the market risk, liquidity risk, operational risk and counterparty risk and other risks of each fund.

(4) The procedure for measurement and management of risks must ensure compliance with the requirements for calculation of risk positions of derivative instruments and measurement of counterparty risk arising from derivative instruments.

(5) The procedure for measurement and management of risks shall *inter alia* determine:

- 1) the rules of procedure for measurement and management of the risks arising from the investments of each fund and the data and documents used for the measurement and management of the risks, calculation of the percentage of the risks of the fund in the general risk profile and storage of the measurement and management data;
- 2) performance of periodic back tests in order to assess suitability of the procedure for measurement and management of risks and of the mark to model forecasts and valuations;
- 3) performance of periodic stress tests and analysis of scenarios in order to measure and manage the risks which arise from potential changes in the market conditions;
- 4) risk limits system of the fund for management and control of the risks of the fund and storage of the data thereof;
- 5) measures to ensure that the risk level of the fund complies at any moment with the risk limits system specified in clause 4) of this subsection;
- 6) rules to operate in the best interests of unit-holders or shareholders in the case of actual and potential deviations from the risk limits system specified in clause 4) of this section and storage of the data thereof.

(6) At least once a year the efficiency, up-to-date and appropriate nature of the risk management rules, compliance of the activities with the risk management rules and relevance and effectiveness of the measures adopted for elimination of deficiencies in the implementation of the risk management rules must be assessed and, as appropriate, the risk management rules and investment policy of the fund changed.

(7) The liquidity profile of the investments of a UCITS must comply with the units redemption policy established in the fund rules and prospectus of the UCITS and adequate liquidity risk management measures must be applied to the UCITS in order to ensure fulfilment of the obligation to redeem the units of the UCITS. In order to verify the liquidity requirements of a fund, stress tests have to be performed, as appropriate, in order to assess the liquidity risk of the fund in emergency situations.

(8) The Financial Supervision Authority must be promptly notified of establishment of and amendments to risk management rules.

(9) The Financial Supervision Authority may require, by its precept, amendment of risk management rules if the rules:

- 1) do not comply with the requirements provided for in this Act;
- 2) do not comply with the provisions of the fund rules or articles of association of the fund;
- 3) are incomplete or misleading or contain provisions which are contradictory or ambiguous;
- 4) do not enable adequate determination of the net asset value of the fund;
- 5) are not in the best interests of the unit-holders or shareholders of the fund for other reasons.

§ 100. Requirements for investment in immovables and valuation of immovables

(1) Objects which are necessary for the management of immovables may also be acquired for the account of a fund which invests in immovables.

(2) For the purposes of this Act, adjacent immovables or immovables in close proximity to each other are deemed to be one immovable, unless the intended use of the immovables or the risks and circumstances which affect the value of the immovables are clearly distinguishable.

(3) The assets of a fund may be invested only in immovables which are located in the states which have an effective and reliable registration system for immovables which proves the right of ownership.

(4) Only an independent valuator of immovables (hereinafter in this section *valuator*) who is of good repute and has sufficient experience to evaluate the assets concerned may be a valuator of immovables.

(5) Immovables of a fund are valued at least once as at the end of a financial year before the audit of the annual accounts of the fund is conducted.

(6) The Financial Supervision Authority may require, by its precept, re-valuation of immovables if valuations of immovables:

- 1) do not comply with the provisions of the fund rules or articles of association;
- 2) were not objective;
- 3) do not enable adequate determination of the net asset value of the fund;
- 4) were not in the best interests of the unit-holders or shareholders of the fund for other reasons.

§ 101. General requirements for mitigation and avoidance of conflicts of interests and related-party transactions

(1) A fund may not have a holding in the fund manager managing it. The provisions of the first sentence do not apply upon investment in the units and shares of another fund managed by the fund manager of the fund.

(2) A fund may have a holding in companies belonging to the same consolidation group of companies as the fund manager of the fund or in the securities issued by the specified person only through a regulated market. The provisions of the first sentence do not apply to acquisition of money market instruments and investment in the units and shares of another fund.

(3) The assets of a fund shall not be transferred to:

- 1) the fund manager or companies belonging to the same consolidation group as the fund manager;
- 2) the fund manager or a manager, sworn auditor or employee of the fund;
- 3) other funds managed by the fund manager, with the exception of disposal of securities on a regulated market at a price established by the moment of disposal or any other fair price determined by an independent valuer, if conduct of such transaction helps another fund managed by the fund manager to achieve its investment objectives;

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

- 4) persons who have an equivalent economic interest with the persons specified in clauses 1)-3) of this section.

(4) The assets of a fund may be transferred upon transferring the assets of the fund during the liquidation proceedings of the fund or for other purposes for ensuring the protection of the best interests of the fund, unit-holders or shareholders of the fund on a regulated market at the price as at the time of transfer or at other fair price to the fund manager of this fund or a company which belongs to the same consolidation group or another fund managed by it.

(5) [Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(6) No assets shall be acquired for the account of a fund from the persons specified in subsection (3) of this section, with the exception of the cases provided for in subsection (4) of this section.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(7) In this section, a fund manager also denotes the person to whom the fund management functions have been outsourced.

§ 102. Violation of requirements and compensation for damage

(1) Violation of the requirements provided for in this Chapter upon conduct of transactions does not render such transaction void but the fund manager must compensate the fund or unit-holders or shareholders of the fund for any damage caused by the violation.

(2) A fund manager or public limited fund is required to promptly notify the Financial Supervision Authority of violations and termination of violations of the requirements provided for in this Chapter. If violations of the requirements provided for in this Chapter take place for reasons that are not attributable to the fund or fund manager, the fund manager shall notify the Financial Supervision Authority if the violation cannot be eliminated within a reasonable period of time or if damage was caused to unit-holders as a result of the violation.

(3) The limitation period for a claim provided for in subsection (1) of this section is five years, unless the damage arose from the violation provided for in the second sentence of subsection (2) of this section.

Division 2

Investment of assets of UCITS

Subdivision 1

General Requirements for Investment of Assets of UCITS

§ 103. Investment of assets of UCITS

(1) The assets of a UCITS may be invested only in:

- 1) transferable securities, such as shares or other similar rights, bonds or other similar debt obligations and subscription rights or other transferable rights which grant the right to acquire the above specified securities (hereinafter in this Chapter *securities*);
- 2) units or shares of other funds;
- 3) derivative instruments;
- 4) deposits in credit institutions;
- 5) money market instruments which are generally traded on money markets and which are liquid and which value can be accurately determined at any time.

(2) In this Chapter, the following are also deemed to be securities:

- 1) financial instruments which may be guaranteed by assets, which do not qualify as securities, or the rate of return of such assets; and
- 2) units and shares of a closed-end fund.

(3) The provisions in this Division concerning investment in units or shares of other funds do not apply to units and shares of closed-end funds.

(4) The assets of a UCITS shall not be invested in precious metals and securities which underlying assets are precious metals or which price is dependent on precious metals.

(5) A UCITS founded as a public limited fund may own and acquire immovables which are directly required for its day-to-day business activities.

§ 104. Specifications for investment of assets of UCITS and risk spreading

(1) Upon investment of the assets of a UCITS, the requirements provided for in this Chapter for investment of assets and risk spreading when exercising securities or money market instruments subscription rights need not be complied with in the case the specified securities or money market instruments belong to the assets of the fund.

(2) The restrictions provided for in §§ 115-117 of this Act for risk spreading do not apply during six months after approval of the rules of a UCITS or entry thereof in the commercial register, provided sufficient compliance with the principle of risk spreading is ensured.

(3) The restrictions on risk-spreading provided for in this Chapter may be temporarily exceeded for reasons not dependent on the fund manager or due to exercise of the subscription rights specified in subsection (1) of this section. In this case, the composition of the assets of the fund has to be brought into accordance with the provisions in this Chapter as soon as possible without damaging the interests of the unit-holders or shareholders.

(4) Exercising of a right of pre-emption to acquire securities, a bonus issue, change in the market value of securities and other such reasons are deemed to be reasons independent of a fund manager if the objective of the transactions conducted for the account of the fund is to commence compliance with the above specified restrictions.

§ 105. Requirements for management of risks upon investment of assets of UCITS and conduct of transactions with derivative instruments

(1) A fund manager must implement measures for management of risks which allow to monitor and measure at any time the risks of investment positions and their general impact on the risk profile of the portfolio of the fund and adequately and independently assess the value of the derivative instruments acquired over-the-counter.

(2) The methods and instruments which are used for effective management of the asset portfolio of a fund shall fulfil the following conditions:

- 1) their use shall be economically inexpedient and they shall be used in a cost-effective manner;
- 2) while being in compliance with the risk profile of the fund and the established risk management rules, their purpose is to reduce the risks and costs associated with investment of the assets of the fund and to generate additional income or profit;
- 3) the risks associated with their use shall be sufficiently managed by the risk management system implemented;
- 4) the use thereof shall under no circumstances cause divergences from the investment objectives laid down in the rules or articles of association and prospectus of the fund.

(3) The total open risk position of derivative instruments may not exceed the net asset value of a UCITS. The risk position is calculated taking into account the value of the underlying asset of the derivative instrument, counterparty credit risk, market movements and time available to liquidate the positions.

(4) The underlying assets of the derivative instruments of a UCITS must not exceed, at the moment the derivative instruments are potentially used, the restrictions for risk spreading upon investment of the assets of the fund prescribed in § 115 of this Act. The above does not apply in the case of index-based derivative instruments.

(5) If the securities or money market instruments embed derivative instruments (hereinafter *embedded derivatives and money market instruments*), the provisions of this Division regarding derivative instruments apply to them.

(6) More specific requirements for risk management of a UCITS and conduct of transactions with the assets of a UCITS and preparation of reports thereon shall be established by a regulation of the minister responsible for the area.

Subdivision 2

Specific Requirements for Investment of Assets of UCITS

§ 106. Investment of assets of UCITS in deposits

The assets of a UCITS may be invested in demand deposits and deposits in credit institutions maturing in no more than 12 months, if the following conditions are fulfilled:

- 1) the credit institution is registered in an EEA Member State; or
- 2) the prudential requirements applicable to credit institutions registered in third countries comply in the opinion of the Financial Supervision Authority with the requirements which are at least as strict as those provided for in the legislation of the European Union.

§ 107. Investment of assets of UCITS in securities and money market instruments

(1) The assets of a UCITS may be invested in securities and money market instruments which fulfil at least one of the following conditions:

- 1) the securities or money market instruments are traded on a regulated market of an EEA Member State for the purposes of § 3 of the Securities Market Act or other regulated market which is recognized by this country and operates regularly and through which the public can acquire or transfer securities;
- 2) the securities or money market instruments are traded on a stock exchange or other regulated market of a third country which is recognized by this country and operates regularly and through which the public can acquire or transfer securities and which has been approved by the Financial Supervision Authority or which is specified in the fund rules, articles of association or prospectus;
- 3) the securities are not traded on regulated markets but, pursuant to their conditions of issue, the securities shall be admitted to the regulated market of a state specified in clause 1) or 2) of this subsection within 12 months after the issue of the securities, and the choice of the regulated market has been approved by the Financial Supervision Authority or is specified in the fund rules, articles of association or prospectus.

(2) In addition to the provisions of subsection (1) of this section, the assets of a UCITS may be invested in money market instruments which are not traded on regulated markets (hereinafter *money market instrument not traded on regulated markets*), if sufficient investor protection requirements apply to the issue or issuer thereof which comply with at least one of the following conditions:

- 1) the money market instruments are issued or guaranteed by an EEA Member State or regional or local authority of an EEA Member State, the European Union, the central bank of an EEA Member State, the European Central Bank, the European Investment Bank, a third country or a state of that country or an international organisation in which the EEA Member State is a member, shareholder or partner;
- 2) the money market instruments are issued by a person which has issued other securities traded on regulated markets;

- 3) the money market instrument has been issued or is guaranteed by an e-money institution established in an EEA Member State, fund manager, investment firm, insurer, credit institution, payment institution or other person established in an EEA Member State which compliance with prudential requirements established with regard to the person is subject to financial supervision in accordance with the European Union law;
- 4) the money market instrument has been issued or is guaranteed by a person not specified in clause 3) of this section which is subject to prudential requirements and in the case of which the financial supervision is in compliance with as strict requirements as is provided for in the European Union law;
- 5) the issuer of the money market instrument is among the issuers approved by the supervision authority of another EEA Member State pursuant to the conditions specified in Article 50(1)(h)(4) of Directive 2009/65/EC of the European Parliament and of the Council;
- 6) the issuer of the money market instrument, particularly the financial situation, purpose of activities and reliability of the issuer, comply in the opinion of the Financial Supervision Authority with the conditions provided for in the regulation of the minister responsible for the area established on the basis of subsection (5) of this section.

(3) The requirement provided for in clause (2) 4) of this section are met if:

- 1) the issuer of the money market instrument was founded in an OECD member country belonging to the G10 (Group of Ten);
- 2) the issuer of the money market instrument has been assigned at least an investment grade rating;
- 3) it can be proven based on an in-depth analysis of the issuer of the money market instrument that the prudential requirements applicable to the issuer and the financial supervision over compliance therewith are at least as strict as those provided for in the European Union law. The Financial Supervision Authority has the right to determine whether the person specified in this clause is in compliance with the above specified requirements.

(4) The assets of a UCITS may also be invested in securities or money market instruments not specified in subsections (1) and (2) of this section to the extent of up to ten per cent of the value of the assets of the fund.

(5) Specific requirements for issuers of money market instruments are established by a regulation of the minister responsible for the area.

§ 108. Qualifying criteria for investment in securities

(1) Upon investment of the assets of a UCITS in securities, the securities must fulfil at least one of the following conditions:

- 1) the potential damage arising from the acquisition thereof is limited to the amount paid for them;
- 2) they are sufficiently liquid in order to ensure redemption of the units or shares at the request of unit-holders or shareholders in accordance with the provisions of this Act, the fund rules, articles of association or prospectus;
- 3) the value thereof can be ascertained in a reliable manner;
- 4) appropriate information is available on them;
- 5) they can be acquired and transferred;
- 6) their acquisition is consistent with the investment objectives and the investment policy of the fund;
- 7) the risks arising therefrom are sufficiently managed by the policy for the management of the risks of the fund and the procedure of implementing thereof.

(2) The value of the securities traded or to be admitted to trading on a regulated market shall be determined accurately and reliably based on the market price or the price determined using valuation systems which are independent of the issuer of the securities. The value of the securities not specified in the first sentence must be determined periodically on the basis of the information made public by their issuers or competent investment researches.

(3) Correct and appropriate information concerning securities traded or to be admitted to trading on regulated markets must be constantly available for the market. Information concerning securities not specified in the first sentence must be constantly available at least for fund managers.

(4) The conditions provided for in clauses (1) 2) and 5) of this section are fulfilled if the security has been admitted to trading on a regulated market, unless such information is available on the specified security based on what the fulfilment of the conditions specified in clauses (1) 2) and 5) of this section has to be determined separately.

§ 109. Qualifying criteria for investment in units or shares of closed-end funds

Upon investment of the assets of a UCITS in units or shares of closed-end funds, these units or shares must comply with the following conditions:

- 1) the conditions provided for in §§ 107 and 108 of this Act are complied with;
- 2) the requirements for investor protection and management or managing bodies of the fund manager or fund shall be implemented to these funds.

§ 110. Qualifying criteria for investment in money market instruments

(1) A money market instrument is deemed to be traded on a money market if it fulfils one of the following conditions:

- 1) the redemption or maturity date of the money market instrument is up to 397 days;
- 2) the money market instruments undergo regular yield adjustments in compliance with the money market conditions at least every 397 days;
- 3) the risk profile of the money market instrument, including credit and interest rate risks, corresponds to that of such securities which have the maturity specified in clause 1) of this subsection or which are subject to regular yield adjustments in accordance with clause 2) of this subsection.

(2) A money market instrument is understood to be liquid if it can be transferred in a short time frame at as limited cost as possible, taking into account the term for redemption of units or shares established in the fund rules, articles of association or prospectus.

(3) The value of a money market instrument can be accurately determined at any time if relevant and reliable valuation systems are implemented to determine it which enable to establish the net asset value of the fund in accordance with the value at which the security in the composition of the fund could be exchanged between knowledgeable, willing parties in an arm's length transaction or which are based either on market data or on valuation models based on amortised costs.

(4) The conditions provided for in subsections (2) and (3) of this section are fulfilled if the money market instrument has been admitted to trading on a regulated market or it is traded on a money market for the purposes of subsection (1) of this section, unless such information is available concerning the money market instrument based on what the fulfilment of the conditions specified in subsections (2) and (3) of this section has to be determined separately.

(5) Upon investment of the assets of a fund in money market instruments that are not traded on a regulated market, appropriate information concerning the money market instruments must be available, including information which enables appropriate assessment of the credit risks related to the specified money market instruments, particularly on the basis of subsections (6)-(8) of this section.

(6) In the case of money market instruments that are not traded on regulated markets, unless their issuer is the European Central Bank or the central bank of an EEA Member State, appropriate information must consist at least of information concerning both the issue or respective offer programme as well as the legal and financial situation of the issuer prior to the issue of the money market instrument.

(7) If the issuer of a money market instrument that is not traded on a regulated market is a person specified in clauses 107 (2) 2)-6) of this Act or regional or local authority of an EEA Member State or international organisation which member, shareholder, unit-holder or partner the EEA Member State is but the money market instrument is not guaranteed by the EEA Member State, the appropriate information shall contain, in addition to the information provided for in subsection (6) of this section:

- 1) information concerning changes related to the above specified information; and
- 2) available and reliable statistical data on the issuer or offer programme or other information which enables appropriate assessment of the credit risks associated with the investments made in the specified instruments.

(8) If the issuer of a money market instrument is a person specified in clause 107 (2) 2), 5) or 6) of this Act or a state of an EEA Member State or regional or local authority of an EEA Member State or international organisation which member, shareholder or and partner the EEA Member State is but the money market instrument is not guaranteed by the EEA Member State, the appropriate information must also contain information on verification of the information specified in subsection (6) of this section by third parties with appropriate qualification and independent from the issuer in addition to the information provided for in subsections (6) and (7) of this section.

§ 111. Requirements for investment of assets of UCITS in derivative instruments

(1) The assets of a UCITS may be invested in derivative instruments traded on regulated markets or derivative instruments acquired over-the-counter, if the underlying assets thereof are the following assets or the price thereof directly or indirectly depends on the following factors:

- 1) the deposits, securities, money market instruments and units or shares of a fund which are in compliance with the requirements provided for in this Division and in which investment is permitted pursuant to the fund rules, articles of association or prospectus of the fund, including financial assets which have similar characteristics with the above specified assets;
- 2) the interest rates, currency or exchange rates in which investment is permitted pursuant to the fund rules, articles of association or prospectus of the fund;
- 3) securities or other financial indices in which investment is permitted pursuant to the fund rules, articles of association or prospectus of the fund.

(2) Upon investment in derivative instruments acquired over-the-counter, the following conditions must be additionally fulfilled:

- 1) the counterparty to a transaction conducted with derivative instruments must be an e-money institution, fund manager, investment firm, insurer, credit institution, payment institution or other person whose compliance with prudential requirements established with regard to the person is subject to state financial supervision;
- 2) the value of derivative instruments can be reliably assessed every day and on the initiative of the fund, the derivative instruments can be transferred at any time at a fair price, its position therein can be liquidated or closed by an offsetting transaction.

(3) A fair price is deemed to be the price at which assets can be acquired or transferred or at which an obligation can be performed between knowledgeable, willing parties in an arm's length transaction.

(4) Reliable valuation is deemed to be valuation which corresponds to the concept of fair price provided for in subsection (3) of this section. Reliable valuation cannot rely only on the price quotation of the counterparty and must comply with the following conditions:

- 1) the basis for the valuation is either a reliable up-to-date market value of the asset or, if such a value is not available, a pricing model using a generally recognised methodology;
- 2) verification of the valuation is carried out by an independent counterparty to an over-the-counter transaction with derivative instruments at an adequate frequency and in such a manner that a competent person of the fund manager or such an entity of the fund manager which is not engaged in investment of the assets of the fund is able to check it as appropriate.

(5) Derivative instruments acquired over-the-counter are also deemed to include credit derivatives if they comply with the provisions of subsections (2)-(4) of this section and the following conditions are fulfilled:

- 1) they enable transfer of the credit risk of an underlying asset provided for in subsection (1) of this section independently from the other risks associated with the specified underlying asset;
- 2) they do not require delivery or transfer of money, securities or other financial assets;
- 3) the risks resulting from potential access of the counterparty to non-public information on underlying assets of credit derivatives (asymmetry of information) are sufficiently managed by the risk management rules and internal control measures prescribed for risk management and applicable to the fund.

§ 112. Additional conditions for financial indices linked derivatives

(1) In the case of derivative instruments linked to financial indices, the assets used as the basis for compiling an index must be sufficiently diversified and the following conditions must be fulfilled:

- 1) the index is composed in such a manner that potential price fluctuations of one component of the index or transactions with the component do not have excessive impact on index-linked transactions as a whole;
- 2) where the index is composed based on financial assets in which the assets of a UCITS may be invested in accordance with this Division, except for non-negotiable securities and money market instruments specified in subsections 107 (2) and (4) of this Act, these assets must be diversified at least pursuant to as strict requirements as in the case a share or debt securities index is replicated upon investment of the assets of the UCITS;
- 3) where the index is composed based on non-negotiable securities and money market instruments specified in subsections 107 (2) and (4) of this Act, the financial assets must be diversified at least in accordance with equivalent requirements as in the case a share or debt securities index is replicated upon investment of the assets of the UCITS.

(2) A financial index shall represent an adequate benchmark replicating the market and the following conditions must be fulfilled:

- 1) the index must adequately measure the rate of return of the underlying assets;
- 2) the index shall be revised and its composition rebalanced periodically to ensure that it continues to reflect the movements of the market, following thereupon the criteria and principles which are accessible to the public;
- 3) the underlying assets of the index must be sufficiently liquid to allow index providers to change the composition thereof as appropriate.

(3) A financial index must be disclosed in an appropriate manner and the following conditions must be fulfilled:

- 1) disclosure of the index is based on sound methods of price collection and calculation, and where market prices are not available, the method is used which ensures adequate value of the index components;
- 2) information on index calculation, rebalancing method and index changes and potential deviations in providing timely or accurate information must be provided on a sufficiently wide and timely basis.

(4) If the composition of the underlying asset of a derivative instrument linked to a financial index does not fully comply with the conditions specified in subsections (1)-(3) of this section, the derivative instrument shall be treated as a combination of the underlying assets specified in clauses 111 (1) 1) and 2) of this Act, provided the conditions provided for in subsections 111 (1) and (2) of this Act are fulfilled.

§ 113. Embedded derivatives and money market instruments

(1) Embedded derivatives are the securities which satisfy the conditions provided for in § 108 of this Act and contain a component which fulfils the following conditions:

- 1) due to that component, some or all of the cash flows that would be initially required by the underlying contract of the derivative instrument (hereinafter *underlying contract*) can be modified or postponed according to an agreed interest rate, price of the security or other financial instrument, foreign exchange rate, index of prices

or exchange rates, credit rating or credit index, or other circumstances, and therefore the value of the component may vary in a manner similar to the value of the underlying assets of a stand-alone derivative instrument;

2) its economic characteristics and risks are not closely related to the economic characteristics and risks of the underlying contract;

3) it has a significant impact on the risk profile and pricing of the security.

(2) Money market instruments which embed derivatives are money market instruments which comply with one of the conditions provided for in subsection 110 (1) of this Act and all the conditions provided for in subsections 110 (2) and (3) and which contain a component which fulfils the conditions provided for in clauses in subsection (1) of this section.

(3) A security or money market instrument shall not be regarded as an embedded derivative if it contains a component which is contractually transferable independently of the specified security. Such a component shall be deemed to be a separate security or other financial asset.

(4) The derivative component of an embedded derivative or money market instrument specified in subsections (1) and (2) of this section must be taken into account upon calculation of the open risk position provided for in subsection 105 (3) of this Act.

§ 114. Investment of assets of UCITS in units or shares of other funds

(1) The units of a UCITS may be invested in units or shares of another UCITS or units or shares of such a fund which complies with the following conditions:

1) the units or shares of the fund are offered to the public and the assets thereof are invested in securities or other liquid financial assets based on the principle of risk spreading;

2) the units or shares of the fund are redeemed at the request of unit-holders or shareholders within a reasonable time period;

3) financial supervision is exercised over the fund pursuant to the requirements of the legislation of the European Union or requirements which are at least as strict as the requirements of the legislation of the European Union, and cooperation between the Financial Supervision Authority and the authority exercising supervision over the fund is not hindered;

4) investors are guaranteed protection of interests equal to the investors of the UCITS in accordance with the provisions of this Act, including the requirements for separation of assets, taking and granting of loans and short selling of securities and money market instruments must be fulfilled;

5) annual and semi-annual reports are prepared concerning the fund which provide an overview of at least the assets of the fund, including liabilities, income, expenses and investments of the fund.

(2) The assets of a UCITS may be invested in the units or shares of such other UCITS or other funds which in turn may invest, in accordance with the fund rules, articles of association or prospectus, in other funds in total up to ten per cent of its assets.

Subdivision 3

Risk Spreading upon Investment of Assets of UCITS

§ 115. Risk spreading upon investment in deposits, securities, money market instruments and derivative instruments

(1) Up to ten per cent of the value of the assets of a UCITS may be invested in the securities and money market instruments issued by one person, unless otherwise provided for in this Subdivision.

(2) Up to 20 per cent of the value of the assets of a UCITS may be placed in the deposits of one credit institution. The provisions of the first sentence do not apply to bank accounts of a fund opened with a depository where the financial resources received from the issue of units and transfer of the assets of the fund as well as dividends, interest amounts and other financial resources are deposited, and to money placed on overnight deposit.

(3) The risk position from an over-the-counter transaction with derivative instruments may constitute up to ten per cent of the value of the assets of the fund if its counterparty is a credit institution in the deposits of which the assets of a UCITS may be placed pursuant to this Chapter. A risk position in a person not specified in the first sentence of this subsection may constitute up to five per cent of the value of the assets of the fund.

(4) If the value of the securities, money market instruments and derivative instruments issued by one person constitutes more than five per cent of the value of the assets of a UCITS, the value of these investments in total may not constitute more than 40 per cent of the value of the assets of the UCITS.

(5) The provisions of subsection (4) of this section do not apply to:

- 1) over-the-counter transactions with derivative instruments if financial supervision is exercised over the prudential requirements applicable to the credit or financial institution which is a party to the transaction;
- 2) to investment of the assets of a UCITS in the securities or money market instruments specified in subsections (7)-(9) of this section.

(6) The value of the securities and money market instruments issued by one person and the value of the deposits placed in such person and the risk positions of transactions with derivative instruments in this person may not constitute in total more than 20 per cent of the value of the assets of a UCITS.

(7) The value of the securities and money market instruments issued by one person may constitute up to 35 per cent of the value of the assets of a UCITS if they are issued or guaranteed by:

- 1) an EEA Member State or local authority of an EEA Member State;
- 2) a third country; or
- 3) an international organisation to which at least one EEA Member State belongs.

(8) The assets of a UCITS may be invested in the securities and money market instruments of a person specified in subsection (7) of this section or the securities and money market instruments guaranteed by such person to the extent exceeding 35 per cent of the value of the assets of the fund, if:

- 1) in the opinion of the Financial Supervision Authority, sufficient protection of the interests of the unit-holders or shareholders of the UCITS is ensured;
- 2) the assets of the UCITS include securities or money market instruments issued in the course of at least six different issues of such person or guaranteed by such person and the value of the securities or money market instruments acquired in the course of one issue does not constitute more than 30 per cent of the value of the assets of the fund;
- 3) the fund rules, articles of association or prospectus of the UCITS clearly set out the issuers, the securities or money market instruments issued or guaranteed by which are or have been the targets for investments in which more than 35 per cent of the value of the assets of the fund are invested.

(9) The assets of a UCITS may be invested in non-equity securities which are continuously or repeatedly issued by one credit institution (hereinafter *covered bonds*) to the extent of up to 25 per cent of the value of the assets of the fund if all the following conditions are fulfilled:

- 1) the credit institution was founded in an EEA Member State;
- 2) the credit institution regularly discloses its annual reports and state financial supervision is exercised over the institution primarily in order to protect the interests of persons holding securities;
- 3) the money received from the issue of covered bonds is invested in assets which, during the whole period of validity of the covered bonds, cover claims attaching to these securities;
- 4) in the case of the insolvency of the credit institution, the principal and the accrued interest on the covered bonds is reimbursed to the creditors on a priority basis.

(10) If more than five per cent of the value of the assets of a UCITS is invested in the covered bonds issued by one credit institution, the total value of all these investments may amount up to 80 per cent of the value of the assets of the UCITS.

(11) The total value of securities and money market instruments, including covered bonds, derivative instruments belonging to the assets of a UCITS and issued by the same person, and deposits placed with the person may not constitute more than 35 per cent of the value of the assets of the UCITS. The provisions of the previous sentence do not apply in the case specified in subsection (8) of this section.

(12) In this section, one person is deemed to include all persons who belong to the same consolidation group in accordance with the European Union legislation or international financial reporting standards. Differently from the provisions of subsection (1) of this section, up to 20 per cent of the value of the assets of a UCITS may be invested in the securities and money market instruments issued by persons belonging to the same consolidation group.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 116. Specifications upon replication of financial indices

(1) If the assets of a UCITS are invested in accordance with the fund rules, articles of association or prospectus thereof with the aim of replicating a certain share index or other debt securities index (hereinafter in this section *index*), the securities or money market instruments issued by one person may constitute up to 20 per cent of the value of the assets of the fund if this index has been approved by the Financial Supervision Authority through approval of the basic document of the fund on the following bases:

- 1) the underlying assets of the index are sufficiently diversified;
- 2) the index adequately represents the movement of the market to which it is linked, and internationally recognized methods are used to compile the index according to which the main or major issuer on such market is generally not excluded;
- 3) the index is accessible to the public and its compiler or provider is independent in its activities from the UCITS and its fund manager.

(2) The assets of a UCITS may be invested in securities or money market instruments of a person specified in subsection (1) of this section or in securities or money market instruments guaranteed by such person to the

extent of up to 35 per cent of the value of the assets of the fund if this primarily originates from the particular conditions of a regulated market where certain shares or debt securities are highly dominant.

(3) The provisions of clause (1) 3) of this section do not prohibit the compiler or provider of an index and a UCITS replicating the index or the fund manager to be part of one business entity or member of a consolidation group provided that conflicts of interests are sufficiently managed.

(4) Replication of an index is deemed to be replication of the composition of the assets constituting the underlying assets of the specified index, including use of transactions with derivative instruments or other methods or means in accordance with the provisions of § 105 of this Act.

(5) Upon approval of the fund rules, articles of association or prospectus of a UCITS replicating an index or the amendments thereof, the Financial Supervision Authority may require submission of a contract on the basis of which the fund manager or another entitled person is required to regularly disclose the purchase and selling prices of the units or shares of the UCITS and execute purchase and sales orders according to this.

§ 117. Risk spreading upon investment in shares or units of other funds

(1) The value of the shares or units of a fund may not total more than 20 per cent of the value of the assets of a UCITS.

(2) Investments in shares or units of other such funds which are not UCITS may amount up to 30 per cent of the value of the assets of the UCITS.

(3) The shares or units of other funds managed by the fund manager of a UCITS shall not be acquired or held for the account of the UCITS, including shares or units of the funds which the fund manager manages as a third party to whom the functions of the fund manager have been outsourced, if the fund manager does not charge thereupon any redemption or issue fees.

(4) The provisions of subsection (3) of this section also apply if the assets of a UCITS are invested in the shares or units of funds managed by a company with which the fund manager or public limited fund is linked by common management or control, or by a qualifying holding, and in the case the company is a third party to whom management of the fund is transferred.

Subdivision 4

Other Requirements for Investment of Assets and Conclusion of Transactions of UCITS

§ 118. Restrictions on holding

(1) No qualifying holding shall be acquired or held through any shares carrying voting rights or other equivalent rights for the account of any UCITS or all the contractual UCITS managed by a fund manager in total.

(2) For the account of a UCITS, the maximum holding acquired or held in one person is:

- 1) ten per cent of non-voting shares or other equivalent rights;
- 2) ten per cent of the debt securities issued by it;
- 3) ten per cent of the money market instruments issued by it;
- 4) 25 per cent of the units or shares of another fund.

(3) The restrictions specified in clauses (2) 2)-4) of this section need not be complied with at the moment of acquisition of bonds, money market instruments or other units or shares of the fund if it is impossible to find the gross or net value of the above specified instruments at the moment of the issue thereof.

(4) The provisions of subsections (1) and (2) of this section do not apply to:

- 1) acquisition and holding of securities or money market instruments issued or guaranteed by an EEA Member State or local authorities thereof;
- 2) acquisition and holding of securities or money market instruments issued or guaranteed by a third country;
- 3) acquisition and holding of securities or money market instruments issued or guaranteed by an international organisation which member at least one of the EEA Member States;
- 4) investments in shares of a company registered in a third country if the above specified person invests its assets in turn primarily in the securities of issuers registered in this country and if this is the only method of investment in the securities of issuers of this country in accordance with the legislation of this country;
- 5) acquisition or holding of subsidiaries by a UCITS that is a public limited fund if the only area of activity of these subsidiaries is provision of management, advisory or fund offer services at the request of the shareholders of the fund in connection with redemption of shares in the country where the subsidiary was founded.

(5) The exception provided for in clause (4) 4) of this section only applies in the case the company registered in the respective third country complies with the provisions of subsections (1)-(3) of this section and §§ 115 and 117 of this Act upon investment of its assets, taking account of the conditions provided for in § 104 of this Act.

§ 119. Requirements for loan and other transactions

(1) A short-term loan may be taken for the account of a UCITS to the extent of up to ten per cent of the value of the assets of the fund.

(2) For the account of a UCITS that is a public limited fund, loans may be taken for acquisition of immovables to the extent of up to ten per cent of the value of the assets of the fund, if the specified immovables are only intended for the day-to-day business activities of the fund.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(3) The obligations specified in subsections (1) and (2) of this section assumed for the account of a UCITS in total may not exceed 15 per cent of the value of the assets of the fund.

(4) No loans may be granted and no obligations of third parties related to providing a security or guarantee may be assumed for the account of a UCITS. The provisions in the first sentence of this subsection do not exclude acquisition of the securities, money market instruments or other financial assets which are not paid for in full.

(5) No transfer or loan transactions related to securities or other financial assets may be conducted for the account of a UCITS if performance of the respective obligation is not covered to the same extent by the securities or other financial assets belonging to the assets of the fund or if the securities or other financial assets did not belong to the assets of the fund at the time of entry into the transfer deed.

Division 3

Specifications for Investment of Assets of Other Public Funds and Risk Spreading

§ 120. Specifications for investment of assets of other public funds and risk spreading

(1) The provisions of this Chapter concerning a UCITS apply to investment of the assets of another public fund which is not a UCITS or pension fund (hereinafter *other public fund*), risk spreading and other transactions conducted with the assets of the fund, unless otherwise provided for in this section.

(2) The assets of another public fund may be invested in addition to the provisions of § 103 of this Act in:

- 1) immovables;
- 2) precious metals and securities which underlying assets are precious metals or which price is dependent on precious metals.

(3) The acquisition cost of an immovable together with the acquisition cost of objects required for the management of the immovable must not exceed 20 per cent of the value of the assets of the fund at the time of acquisition.

(4) The total value of an immovable together with the objects required for the management of the immovable shall not exceed 30 per cent of the value of the assets of the fund.

(5) The assets of another public fund may be invested in the securities or money market instruments not specified in subsections 107 (1) and (2) of this Act to the total extent of up to 30 per cent of the value of the assets of the fund.

(6) Upon investment of the assets of other public funds in other funds, the provisions of subsections 117 (1) and (2) of this Act do not apply, if investment of the assets of the fund is in turn in compliance with the requirement to diversify the investments to a sufficient extent between different securities and other assets. Up to 50 per cent of the value of the assets of another public fund may be invested in the units or shares of a fund not specified in § 114 of this Act, if the value of the units or shares of such funds can be determined accurately and reliably based on the market price or other appropriate valuation system.

(7) The assets of other public funds may be placed in precious metals and securities which underlying assets are precious metals or which price is dependent on precious metals in total to the extent of up to five per cent of the value of the assets of the fund.

(8) The total open risk position of derivative instruments of another public fund must not exceed the net asset value of the fund by more than twice.

(9) The restrictions prescribed in §§ 115-117 and 120 of this Act on risk spreading do not apply to other public funds which conditions of redemption of units or shares and investment policy comply with the provisions of subsection 286 (4) of this Act within 24 months after approval of the fund rules or entry in the commercial register.

Division 4

Specifications for Investment of Assets of Pension Funds and Risk Spreading and Additional Operational Requirements

§ 121. General requirements for management and investment of assets of pension funds

(1) The provisions of this Chapter concerning a UCITS apply to investment of the assets of a pension fund, risk spreading and other transactions conducted with the assets of the pension fund, unless otherwise provided for in this Division.

(2) The assets of a pension fund may be invested in addition to the provisions of § 103 of this Act in:

- 1) deposits in credit institutions;
- 2) precious metals;
- 3) the securities specified in § 2 of the Securities Market Act, including any securities which underlying assets are precious metals or which price is dependent on precious metals;
- 4) immovables.

(2¹) In addition to as specified in subsection (2), loans may be issued for account of the pension fund in total up to the extent of ten per cent of the asset value of the pension fund to persons in the case of whom the fund is allowed to invest in the bonds issued by such persons. The limitations on investment in securities provided for in this Division shall apply to issue of loans by pension funds.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(3) The restrictions provided for in § 118 of this Act do not apply to investment of the assets of pension funds. The requirement for the term of loans provided for in subsection 119 (1) of this Act shall not apply to borrowing on account of pension funds.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(4) Upon implementation of the requirements prescribed in this Act for investments of the assets, risk management and other transactions conducted with the assets of pension funds, any holding of the pension and other investment funds managed by a fund manager in other persons or the voting rights arising therefrom shall not be deemed to belong to the pension fund manager, and such person shall not be deemed to belong to the same consolidation group with the pension fund manager.

(5) A pension fund shall not be a partner of a general partnership or a general partner of a limited partnership, a member of a non-profit association or commercial association, or a founder of a foundation. This limitation does not apply to membership in an apartment association if apartment ownership belongs to the fund. The provisions of this subsection also apply to the partnership or membership of equivalent persons or pools of assets founded pursuant to foreign law or to being the founders thereof.

(6) The minister responsible for the area may specify, by a regulation, the requirements for investment of the assets of a pension fund, risk spreading and other transactions conducted with the assets of the pension fund.

§ 122. Investment in deposits

[Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 123. Investment in precious metals

The assets of a pension fund may be placed in precious metals and securities which underlying assets are precious metals or which price is dependent on precious metals, to the total extent of up to five per cent of the value of the assets of the pension fund.

§ 124. Investment in securities and money market instruments and lending

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(1) The assets of a pension fund may be invested in the securities and money market instruments not specified in subsections 107 (1) and (2) of this Act and on account of the assets the loan specified in subsection 121 (2¹) may be granted in total to the extent of up to 50 per cent of the value of the assets of the pension fund. The requirement provided for in clause 108 (1) 5) of this Act shall not apply to the investments provided for in this section.

(2) The assets of an occupational pension fund may be invested in the securities or money market instruments issued by one person to the extent of up to five per cent of the value of the assets of the occupational pension

fund and the value of the securities issued by persons belonging to the same consolidation group shall not total more than ten per cent of the value of the assets of the occupational pension fund.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 125. Investment in other funds

(1) If a certain index is replicated upon investment of the assets of a UCITS in accordance with § 116 of this Act or the provisions of Article 53 of Directive 2009/65/EC of the European Parliament and of the Council, the value of the units or shares of one such fund may total up to 30 per cent of the value of the assets of the pension fund.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(2) Upon investment of the assets of a pension fund in other funds, the provisions of § 109 and subsection 117 (2) of this Act do not apply.

(3) Up to 50 per cent of the asset value of a pension fund may be invested in units or shares of a fund not specified in subsections 114 (1) of this Act which are not admitted for trading on any regulated market specified in clause 107 (1) 1) or 2) of this Act if the value of the units or shares of these funds can be determined accurately and reliably based on the market price or using any other appropriate valuation systems. The units or share of the above specified funds shall not be regarded as securities for the purposes of this Chapter. The fund which units or shares have been admitted for trading on a regulated market specified in clause 107 (1) 1) or 2) of this Act shall be deemed to comply with the requirements provided for in § 114.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(4) If the assets of a mandatory pension fund are invested in the units or shares of a fund which is not a UCITS, and in the case of which primarily transactions with derivative instruments are used for achievement of their investment objectives, particularly swaps, the provisions of this Chapter concerning derivative instruments apply. The restriction provided for in subsection 127 (1) of this Act concerning derivative instruments does not apply to investments specified in the first sentence of this subsection.

§ 126. Additional requirements for investment in shares and equity funds

[Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 127. Transactions with derivative instruments and limitations on investments in securities denominated in foreign currencies

(1) The entire open risk position of derivative instruments may not exceed 50 per cent of the value of the assets of a pension fund, with the exception of transactions conducted for mitigation of foreign exchange, interest, market or other risks associated with the assets of the pension fund.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(2) The entire open net foreign exchange position shall not total more than 25 per cent of the assets of a conservative pension fund. Upon calculation of open net foreign exchange positions, foreign exchange positions arising from investments made by this fund shall not be taken into account in the case of investments made in the shares or units of other funds.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 128. Investment in immovables

(1) [Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(2) The acquisition cost of an immovable shall, at the time of acquisition, may not exceed ten per cent of the value of the assets of the pension fund. The provisions of the first sentence also apply in the case the assets of the pension fund are invested in immovables through another fund or company.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(3) The value of immovables, units and shares of other funds or other companies investing in immovables and other securities shall not total more than 70 per cent of the value of the assets of a voluntary fund and more than 40 per cent of the value of the assets of a mandatory pension fund.

(4) The limitation provided for in subsection (3) of this section also applies to investments in securities or other instruments which price or the income received from which depends directly or indirectly on the price of the immovable or the changes thereof.

(5) The investment specified in subsection (4) of this section shall be taken into full account upon investment of the assets of a pension fund in the specified instruments.

§ 129. Requirements for investment of assets of conservative pension funds

(1) A conservative pension fund is a pension fund the assets of which are invested, pursuant to the fund rules or prospectus, at least to the extent of 90 percent in total in:

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

- 1) deposits in credit institutions;
- 2) bonds and other equivalent debt obligations (hereinafter in this section *bonds*);
- 3) money market instruments if they have been admitted to trading on a regulated market;
- 4) units or shares of such funds which assets are mainly invested in deposits or bonds of credit institutions in accordance with the provisions of subsection (2) of this section, derivative instruments in accordance with clause 5) of this subsection, or money market instruments;

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

- 5) derivative instruments which underlying assets are the assets specified in clauses (1)-(4) of this section, or bond or other financial indices, interest rates, currency or exchange rates, or which price depends directly or indirectly on the above.

(2) Only the following securities shall be regarded as the securities specified in clause (1) 2) of this section:

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

- 1) which have been assigned at least an investment grade credit rating by a rating agency registered in accordance with the Regulation (EC) No. 1060/2009 of the European Parliament and of the Council on credit rating agencies (OJ L 302, 17.11.2009, pp. 1-31) (hereinafter in this section *rating agency*);
- 2) which issuer has been assigned at least an investment grade credit rating by a rating agency, if the bonds have no credit rating;
- 3) which issuer, which parent undertaking is a credit institution has been assigned at least an investment grade credit rating by a rating agency, if the bonds and their issuer have no credit rating;
- 4) which are guaranteed by an EEA Member State or an OECD member state holding at least an investment grade credit rating of a rating agency.

(3) In the case of funds specified in clause (1) 4) of this section, the fund rules and articles of association or other respective documents have to be taken into account, and it has to be assessed with sufficient regularity how much of the assets of the specified fund is actually invested in the respective deposits, bonds, derivative instruments or money market instruments of the credit institutions which comply with the requirements.

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

(4) A fund manager shall determine in its risk management rules the rating agencies which credit ratings it follows and uses for the management of the investments and risks of conservative pension funds. and the principles how different credit ratings of rating agencies are taken into account.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(5) [Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(6) The minister responsible for the area may specify, by a regulation, the requirements for investment of assets of conservative pension funds, including the credit ratings of the bonds or deposits of credit institutions in which the assets of the fund may be invested.

§ 130. Mitigation and avoidance of conflicts of interests upon investment in other funds

(1) The total value of the shares and units of other pension funds managed by the pension fund manager may not exceed ten per cent of the value of the assets of a mandatory pension fund and 50 per cent of the value of the assets of a voluntary pension fund.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(2) The total value of the shares and units of other funds managed by fund managers which belong to the same consolidation group as the fund manager of a mandatory pension fund shall not exceed 50 per cent of the value of the assets of the mandatory pension fund and all the conditions provided for in subsections 117 (3) and (4) of this Act must be met.

(3) If acquisition of shares or units of a fund managed by another fund manager, which belongs to the same consolidation group as the mandatory pension fund manager, for the account of the mandatory pension fund involves repayment of the management fee charged by the other fund manager on such investment or any part thereof or payment of other fees to the manager of the mandatory pension fund, the respective amount must be transferred to the mandatory pension fund.

(4) The fund manager of a mandatory pension fund may not acquire or hold in total, for the account of all the mandatory pensions funds managed by it, the units or shares of any fund managed by it or another fund belonging to the same consolidation group and managed by the fund manager to the extent of more than 20 per cent of the assets of the fund.

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

(5) The shares or units of other funds managed by the fund manager of a mandatory pension fund may be acquired and held for the account of the mandatory pension fund in the case, in addition to the provisions

of subsection 117 (3) of this Act, the fund manager does not charge any management fee or transfers the management fee charged on such investment back to the mandatory pension fund.

(6) The shares or units of other funds managed by the fund manager of a mandatory pension fund and of funds belonging to the same consolidation group as the fund manager, which are not public or which are closed-end funds, may be acquired for the account of the mandatory pension fund in total to the extent of up to ten per cent of the assets of the mandatory pension fund.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(7) The provisions of this Chapter also apply in the case a fund manager is granted the right to manage or invest the assets of a fund of another fund manager under outsourcing of the fund management functions.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 131. Additional requirements for mitigation and avoidance of conflicts of interests

(1) The total value of the securities and money market instruments issued by a company belonging to the same consolidation group as the fund manager may not exceed five per cent of the value of the assets of the pension fund managed by the fund manager.

(2) For the account of the a mandatory pension fund, no holding may be acquired or held in a company where the relevant persons of the fund manager managing the mandatory pension fund, shareholders holding qualifying holdings or companies controlled by the fund manager hold either directly or indirectly a qualifying holding, and no holding may be acquired or held in a company which holds a qualifying holding in the fund manager managing the mandatory pension fund, and no securities or money market instruments issued by the specified companies may be acquired or held. The provisions of the first sentence of this subsection do not apply to investments in the units and shares of another fund. Investments in the instruments specified in the first sentence of this subsection which comply with the requirement provided for in subsection (4) of this section on account of mandatory pension funds are permitted to the extent provided for in subsections 118 (1) and (2) of this Act.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(3) Up to 25 per cent of the volume of the issue of securities or money market instruments may be subscribed for the account of a pension fund in the case of such securities or money market instruments which offer, issue or selling is guaranteed or arranged pursuant to the provisions of clauses 43 (1) 6) and 7) of the Securities Market Act by a company belonging to the same consolidation group as the fund manager or another company specified in subsection (2) of this section.

(4) The restriction provided for in subsection (3) of this section does not apply if:

- 1) the securities or money market instruments or the issuer thereof has been assigned an investment grade credit rating;
- 2) the issuer of the securities or money market instruments is the state or a company in which the state has a majority holding;
- 3) the issue of the securities or money market instruments is an investment fund which is managed by a company holding an activity licence of a fund manager;
- 4) the securities or money market instruments are publicly offered in an EEA Member State or an OECD member country for the purposes of the Securities Market Act or legislation of the respective foreign country, or they have been admitted to trading on a trading venue operated in the above specified country for the purposes of § 3 of the Securities Market Act;

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

5) the issuers of securities are companies which are mainly engaged in the development, management or operation of any infrastructure which is important for the public, including electricity market, road network, water supply or waste management.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(5) The counterparty of a derivative transaction conducted for the account of a pension fund may not be:

- 1) a unit-holder;
- 2) a person which has a conforming economic interest with the fund.

§ 132. Application of specifications for restrictions on investment and disposition and for risk spreading to pension funds

(1) The restrictions provided for in subsection 115 (1) of this Act do not apply during 18 months after approval of the fund rules of a voluntary pension fund, with the exception of the cases where the net assets value of the pension fund exceeds 1,200,000 euros before the end of the above specified term.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(2) [Repealed - RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 133. Compensation for damage

A loss caused to unit-holders of a mandatory pension fund shall be compensated for in accordance with the procedure provided for in §§ 32-36 of the Funded Pensions Act.

Chapter 12

Transfer of Management of Funds

Division 1

Transfer of Management of Funds and Transfer of Management Authority to Depositary

§ 134. Conditions of transfer of management of funds

- (1) Upon transfer of the management of a fund, one fund manager shall transfer the rights and obligations arising from the management of the fund to another fund manager.
- (2) The fund manager transferring the management of a fund and the one taking over the management of the fund shall enter into a contract for transfer of the management of the fund. Amendments to the terms and conditions of the management contract of a public limited fund shall be approved by the supervisory board of the public limited fund, unless otherwise provided for in this Act or the articles of association of the public limited fund.
- (3) A contract for transfer of the management of a fund shall determine the conditions and procedure for transfer of all the rights and obligations of the fund manager, which arise from the management of the fund, and for transfer of documents and administration related thereto, including the extent of the liability of the new fund manager for the obligations which arose prior to the transfer of the management of the fund.
- (4) The provisions of §§ 164-185 of the Law of Property Act do not apply to transfer of management of a fund.
- (5) An authorisation of the Financial Supervision Authority is required to transfer the management of a fund.
- (6) After receipt of the authorisation of the Financial Supervision Authority, the fund manager shall promptly disclose a notice concerning transfer of the management of a fund on the website of the fund manager, the consolidation group to which the fund manager belongs or the public limited fund.
- (7) All the rights and obligations arising from the management of the fund transferred shall transfer to the new fund manager. The fund manager which transferred the management of the fund and the new fund manager shall be jointly and severally liable to the creditors for obligations which have arisen before the transfer of the management of the fund and which have fallen due by the time of the transfer or fall due within five years after the transfer.
- (8) The rights and obligations arising from the management of a fund shall transfer to a new fund manager and amendments to the fund rules, articles of association or prospectus of the fund enter into force at the time prescribed by the contract for transfer of the management of the fund but not before one month has passed from publication of the notice specified in subsection (6) of this section, unless a longer term for entry into force of the amendments to the fund rules, articles of association or prospectus of the fund are prescribed in accordance with the provisions of §§ 38, 41 or 42 of this Act.

§ 135. Proceedings of authorisation for transfer of management of funds

- (1) In order to obtain an authorisation for transfer of the management of a fund, the fund manager which takes over the management of the fund (hereinafter in this Division *applicant*) shall submit, at the latest on 20th day after the entry into force of the contract for transfer of the management of the fund, a written application to the Financial Supervision Authority and the following data and documents (application, data and documents jointly hereinafter in this Division *application*):
 - 1) the decision of the applicant for taking over the management of the fund;
 - 2) the contract for transfer of management of the fund;
 - 3) the application, data and documents on approval of amendments to the fund rules, articles of association or prospectus of the fund specified in § 37 of this Act;
 - 4) the opinion of the depositary of the fund concerning amendments to the depositary contract arising from transfer of the fund;
 - 5) the assessment of the impact of taking over of the management of the fund on the fund manager and the estimated annual balance sheets and financial indicators, including revenue and expenditure by areas of activity, plan regarding compliance of the fund manager with prudential requirements, plans of the fund manager regarding the financial indicators of the managed funds which *inter alia* specify the revenue, expenditure, profit and cash flows and the presumptions which constitute the basis thereof.

(2) The provisions of § 314 of this Act apply to processing of applications, verification of submitted data and documents, transfer of management of a fund and verification of whether the future fund manager complies with the requirements provided for in this Act or legislation issued on the basis thereof. Upon processing of applications, the compliance thereof with the requirements provided for in subsection (1) of this Act shall be assessed. For verification of the respective requirements, the Financial Supervision Authority may require submission of additional data and documents.

(3) A decision to issue or refuse to issue an authorisation for transfer of the management of a fund and approval of the fund rules, articles of association or prospectus of the fund shall be made by the Financial Supervision Authority within two months from the receipt of the application but not later than within one month after receipt of all the necessary data and documents.

(4) The Financial Supervision Authority shall promptly communicate the decision specified in subsection (3) of this section to the fund manager, public limited fund and the depositary of the fund.

(5) The Financial Supervision Authority may refuse to issue an authorisation for transfer of management of a fund if:

- 1) the applicant does not have the necessary resources or experience to operate with success and continuity as a fund manager of the fund in question;
- 2) close links between the applicant and another person prevent sufficient supervision over the fund manager, or the requirements provided for by legislation of the state where the persons with whom the applicant has close links is founded prevent sufficient supervision over the fund manager;
- 3) the internal rules of the fund manager are not sufficiently accurate or unambiguous for regulation of the activities of the fund manager;
- 4) the circumstances specified in § 33 of this Act become evident;
- 5) other circumstances which damage the legitimate interests of unit-holders or shareholders become evident.

§ 136. Transfer to depositaries of authority to manage funds

(1) If the authority of a fund manager to manage a fund terminates on the bases specified in subsection 305 (7) of this Act and the management of the fund is not transferred to another fund manager, the management of the fund shall transfer to the depositary thereof.

(2) The depositary and the fund manager shall promptly publish on their websites a notice concerning transfer of management of a fund. If the fund manager did not suspend the issue or redemption of the units or shares of the fund before transfer of the management of the fund, the depositary shall suspend the issue and redemption of the units or shares of the fund and publish a relevant notice concerning it together with the notice of transfer of the management of the fund.

(3) Upon termination of the authority to manage a fund and transfer of the management authority to a depositary, the fund manager is required to promptly transfer the administration and documents of the fund to the depositary.

(4) After transfer of the administration and documents of the fund, the depositary has all the rights and obligations of the fund manager in the management of the fund, unless otherwise provided by law, the fund rules, articles of association, prospectus or depositary contract of the fund. The depositary may not issue or redeem any units or shares during the management of the fund and the depositary is not required to invest the assets of the fund.

(5) A depositary must transfer the management of a fund to a new fund manager within three months after transfer of the fund management authority to it or decide on merger of the fund as the fund being acquired in accordance with subsection 184 (1) of this Act. With the permission of the Financial Supervision Authority, the depositary may extend the term for transfer of the management of a fund to up to six months.

(6) The provisions of §§ 134 and 135 of this Act apply to transfer of the management of a fund. Transfer of management of a fund and entry into a respective contract shall be approved by the management board of the depositary and the management board of the fund manager taking over the management of the fund.

(7) A depositary shall disclose a notice concerning transfer of the management of a fund to a new fund manager on its website.

(8) If a depositary fails in transfer of the management of a fund to another fund manager, it has to terminate the fund in accordance with the provisions of § 184 of this Act.

Division 2

Specifications for Transfer of Management of Pension Funds

§ 137. Specifications for transfer of authority and obligations related to management of mandatory pension funds

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

The rights and obligations arising from management of a mandatory pension fund shall transfer to a new fund manager and amendments to the fund rules and prospectus of the fund enter into force on the working day of exchange of units provided for in subsection 24 (3) of the Funded Pensions Act but not earlier than 100 calendar days after publication of the notice specified in subsection 134 (6) of this Act.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 137¹. Specifications for transfer to depositary of authority to manage pension funds

(1) Where the management of a pension fund has been transferred from a fund manager to a depositary, the depositary shall have the right to issue and redeem units of the pension fund differently from the provisions of the second sentence of subsection 136 (4) of this Act.

(2) With the permission of the Financial Supervision Authority, a depositary has the right to extend the term of transfer of management of a pension fund to a fund manager to up to 18 months after transfer of the pension fund management authority to it.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 137². Specifications for transfer of management of occupational pension funds

(1) The provisions of subsections 134 (6) and (8) and subsections 135 (2)-(5) of this Act do not apply to transfer of the management of occupational pension funds.

(2) Transfer of the management of an occupational pension fund under the terms and conditions provided for in a contract must not damage the interests of the unit-holders, and the contract may not prescribe covering of any costs relating to transfer of the management for the account of the unit-holders of the occupational pension funds managed by the fund manager which transfers or takes over the management of the fund.

(3) A fund manager which transfer the management of an occupational pension fund shall notify the unit-holders of this pension fund of the terms and conditions of transfer of the fund.

(4) In order to transfer the management of an occupational pension fund, the consent of the employers making contributions to this pension fund and the majority of the unit-holds of the pension fund is required, including the majority of these unit-holders to whom distributions from the pension fund are already made.

(5) In order to obtain an authorisation for transfer of the management of an occupational pension fund, the fund manager which takes over the management of the fund has to submit to the Financial Supervision Authority, in addition to the provisions of 135 (1) of this Act, the following information and documents:

1) the business name and address of the seat of the fund manager that transfers the management and the fund manager that takes over the management, and another contracting state, if the fund manager that transfers the management is a fund manager of the other contracting state;

2) the business name and address of the seat of the employer which makes contributions to the occupational pension fund being transferred;

3) the consent to transfer the management of the fund by the employer making contributions to the occupational pension fund transferred and the majority of the unit-holds, including the majority of these unit-holders to whom distributions from the occupational pension fund are already made;

4) the name of the contracting state which social and labour law is applicable to the transferred occupational pension fund.

(6) The receiving fund manager has to notify the Financial Supervision Authority immediately of any changes made during the proceedings in the data and documents specified in subsection (5) of this section.

(7) If the receiving fund manager is a fund manager of another contracting state, the authorisation of the financial supervision authority of this contracting state shall be required for transfer of the management of the fund differently from the provisions of subsection 134 (5) of this Act. In the case provided for in this subsection, subsection 135 (1) of this Act shall no apply to the application for the authorisation.

(8) If the fund manager which transfers the management is a fund manager of an occupational pension fund of another contracting state, the Financial Supervision Authority shall notify the financial supervision authority of this contracting state of receipt of an application for authorisation to transfer an occupational pension fund and

immediately communicate the information and documents specified in subsection 135 (1) and subsection (5) of this act to it.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 137³. Specifications for proceeding of application to transfer management of occupational pension fund and issue of authorisation

(1) The Financial Supervision Authority shall make a decision on issue of or refuse to issue an authorisation to transfer the management of an occupational pension fund within three months after receipt of all the proper information and documents and deliver it immediately to the fund manager which receives the management of the fund.

(2) The Financial Supervision Authority may refuse to review an application if the application contains essential deficiencies.

(3) The Financial Supervision Authority may refuse to issue an authorisation for transfer of management of an occupational pension fund if:

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

2) the interests of the unit-holders of the transferred occupational pension fund are not sufficiently protected or the transfer may damage the interests of the unit-holders of any other occupational pension funds of the fund manager;

3) the transfer of the management of an occupational pension fund may damage the financial condition of the fund manager receiving the management;

4) the organisational structure, work organization of the fund manager receiving the management, or the reputation, qualifications or experience of the managers or employees thereof are insufficient for the management of such occupational pension fund;

5) after the receipt of the management of an occupational pension fund, the own funds of the fund manager receiving the management or the assets corresponding to them no longer comply with the requirements provided for in this Act.

(4) If the fund manager, which transfers the management, is a fund manager of another contracting state, the Financial Supervision Authority shall issue an authorisation for the transfer of the management of the fund only if the financial supervision authority of this contracting state agrees to the transfer of the management of the fund. Within two weeks after making a decision of issue of or refusal to issue an authorisation for transfer of the management of an occupational pension fund, the Financial Supervision Authority shall notify thereof the financial supervision authority of the contracting state of the fund manager transferring the management.

(5) Where the transfer of the management of an occupational pension fund results in the offer of this fund in another contracting states, the Financial Supervision Authority shall notify the fund manager receiving the management of the terms and conditions of the offer of occupational pension fund in the other contracting state within one week after receipt of these terms and conditions from the financial supervision authority of the contracting state of the fund manager transferring the management.

(6) When the Financial Supervision Authority receives information from the financial supervision authority of another contracting state about changes in the terms and conditions of the offer of an occupational pension fund, it shall immediately notify the fund manager receiving the management thereof.

(7) If the fund manager receiving the management has not received the terms and conditions of the offer of an occupational pension fund in another contracting state within five weeks after notification of the financial supervision authority of this other contracting state of making a decision by the Financial Supervision Authority on issue of an authorisation to transfer the assets of an occupational pension fund, the fund manager may commence the offer of the occupational pension fund in this contracting state, taking into consideration the requirements provided for in the legislation of the contracting state governing occupational pensions.

(8) If the fund manager transferring the management is an Estonian fund manager and the fund manager receiving the management is a fund manager of another contracting state, the Financial Supervision Authority shall grant its consent to transfer the management of an occupational pension fund within eight weeks after receipt of a respective application from the financial supervision authority of the other contracting state.

(9) The Financial Supervision Authority may refuse to grant its consent to transfer the management of an occupational pension fund if the interests of the unit-holders of this occupational pension fund are not sufficiently protected or the transfer of the management of the occupational pension fund may damage the interests of the unit-holders of the other occupational pension funds managed by the fund manager.

(10) Where the transfer of the management of an occupational pension fund results in the offer in Estonia of an occupational pension fund by the fund manager of another contracting state receiving the management of the fund, the Financial Supervision Authority shall notify the financial supervision authority of this contracting state of the terms and conditions to which the offer of an occupational pension fund must comply in Estonia within four weeks after receipt of information about issue of an authorisation to transfer the management of a fund.

(11) The Financial Supervision Authority shall also notify the financial supervision authority of any other contracting state, which occupational pension fund is offered in Estonia, of all significant changes in the terms and conditions specified in subsection (10) of this section.

(12) § 438 or subsections 440 (4)-(8) of this Act do not apply to cross-border offers associated with the transfer of the management of any occupational pension funds.

(13) If there are any disagreements between the Financial Supervision Authority and the financial supervision authority of another contracting state upon proceeding an application for authorisation to transfer the management of an occupational pension fund, the Financial Supervision Authority shall have the right to contact the European Insurance and Occupational Pensions Authority in order to settle the disagreements according to article 31(2)(c) of Regulation (EC) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, pp. 48-83).
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

Chapter 13

Division, Transformation and Merger of Fund Managers

Division 1

General Provisions

§ 138. Application of provisions

The provisions of this Chapter concerning funds apply to division, transformation and merger of sub-funds of common funds.

§ 139. Prohibition of division

Division of funds is not permitted.

Division 2

Merger of Funds

Subdivision 1

General Provisions on Merger of Funds

§ 140. General provisions on merger of funds

(1) A fund (hereinafter *fund being acquired*) may be merged with another established or founded fund (hereinafter *acquiring fund*).

(2) Funds may also merge in such a manner that they establish or found a new fund.

(3) A common fund may merge with a common fund. Common funds may also merge in such a manner that a new common fund is established. A public limited fund may merge with a public limited fund. Public limited companies may also merge in such a manner that a new public limited fund is founded.

(4) Provisions of subsection (3) of this section do not apply to cross-border mergers of common funds.

(5) A fund which is not a UCITS may merge with a UCITS only as a fund being acquired.

(6) A public fund may merge with a non-public fund only as an acquiring fund. The provisions of this Chapter concerning merger of funds apply to merger of a public fund with a non-public fund.

(7) A sub-fund of a common fund may merge with a sub-fund of the same fund or another fund or a sub-fund thereof, taking account of the provisions of this Act concerning mergers of common funds.

(8) In the case specified in this Chapter, a fund may merge with a fund of another EEA Member State.

§ 141. Mergers of common funds

- (1) Upon merger of a common fund, the assets of the fund being acquired are transferred to the acquiring fund and the fund being acquired is deemed dissolved.
- (2) Upon merger of a common fund by means of establishment of a new fund, the assets of the funds being acquired are transferred to the new fund established and the funds being acquired are deemed dissolved.
- (3) A fund being acquired is deemed to be dissolved after issue of the units of the acquiring fund to the unit-holders of the fund being acquired and cancellation of the units of the fund being acquired. The provisions of this Act concerning dissolution of funds do not apply to mergers.

§ 142. Mergers of public limited funds

- (1) The provisions of the Commercial Code do not apply to merger of a public limited fund, unless otherwise provided for in this Chapter.
- (2) A public limited fund may merge pursuant to the provisions of subsections 391 (1)-(5) of the Commercial Code only with another public limited fund.
- (3) A public limited fund which is a UCITS and which has been entered in the Estonian commercial register may acquire upon cross-border merger a company which is a fund founded pursuant to the law of an EEA Member State, unless otherwise provided for in this Chapter. The provisions of this Act and of subsections 391 (1)-(5) of the Commercial Code concerning the methods of merger of a public limited fund apply to such merger of a public limited fund.

§ 143. Exchange of units or shares upon mergers

- (1) Upon merger of a fund, the number of the units or shares of the acquiring fund issued to a unit-holder or shareholder of the fund being acquired shall be such that the net asset value thereof corresponds to the net asset value of the units or shares of the fund being acquired which were held by the unit-holder or shareholder.
- (2) Upon establishment or foundation of a new fund, the unit-holders of the fund being acquired shall become the unit-holders thereof. unit-holders or shareholders pay for the units or shares issued by the assets which correspond to their share in the fund being acquired.
- (3) The units or shares of an acquiring fund belonging to the assets of the fund being acquired and the units or shares of a fund being acquired belonging to the assets of the acquiring fund shall be redeemed before the merger.
- (4) The units or shares of a fund being acquired shall be cancelled upon merger.
- (5) The value of the units or shares used as the basis of the exchange ratio of the units or shares of a closed-end fund may be different from the net asset value of the units or shares under the following conditions:
 - 1) the conditions for determination of the exchange ratio and the value of the units or shares used upon determination of the exchange ratio shall be decided at the general meeting of unit-holders or shareholders of the fund being acquired and the acquiring fund and at least two-thirds of the votes represented at the general meeting are in favour thereof, unless the fund rules or articles of association prescribe a greater majority requirement;
 - 2) the units or shares of the fund being acquired are traded on a regulated market or, pursuant to the fund rules or articles of association, the units or shares of the fund being acquired must be admitted to trading on a regulated market within 12 months after adoption of the decision of the general meeting specified in clause 1) of this subsection.
- (6) The fund manager of an acquiring fund may determine, with the consent of the fund manager of the fund being acquired, the final issue price of a closed-end fund under the conditions indicated in the decision of the general meeting and within the range of the issue price determined in the decision of the general meeting specified in clause (5) 1) of this section.

§ 144. Redemption of units or shares and suspension of issue of units or shares upon merger

- (1) Unit-holders or shareholders of a fund being acquired and an acquiring fund have the right to demand redemption of their units or shares without any redemption fee. As appropriate, the unit-holders or shareholders of a fund being acquired and an acquiring fund also have the right to exchange units or shares without any additional fee for the units or shares of a fund with similar investment policy which is managed by the same fund manager, public limited fund or any other company with whom the fund manager or public limited fund is linked by common management or a qualifying holding. Unit-holders or shareholders of a fund being acquired or an acquiring fund shall have no right to demand redemption of the units or shares of the fund if the fund is a closed-end fund or if the merger agreement of the public limited fund excludes redemption of the shares and this has been approved in the merger resolution.
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) The right to demand redemption of the units or shares or the right to exchange units or shares specified in subsection (1) of this section applies to the unit-holders or shareholders of a fund being acquired and an acquiring fund at least for 30 calendar days after submission of the information specified in § 156 of this Act and expires five working days prior to the date of calculating the exchange ratio agreed upon in the merger agreement.

(3) In addition to the conditions of suspension of issue and redemption of units or shares provided for in this Act, a fund manager or public limited fund may suspend the issue or redemption of the units or shares of the fund, if it is necessary for the protection of the legitimate interests of the unit-holders or shareholders of one or several of the funds participating in the merger. For the reasons specified in the previous sentence, the Financial Supervision Authority may also request suspension of the issue or redemption of units or shares.

§ 145. Specifications for cross-border merger of UCITS

(1) A UCITS may merge with a UCITS of another EEA Member State or a new UCITS founded or established in another EEA Member State (hereinafter *cross-border merger of UCITS*).

(2) If a UCITS participates in a cross-border merger as a fund being acquired, the funds may merge in the manner provided for in this Act.

(3) If a UCITS participates in a cross-border merger as an acquiring UCITS, the conditions provided for in this Act apply to determination of the date on which the merger arising from the merger agreement of the UCITS takes effect, disclosure of the authorisation for merger and notification of the merger taking effect.

Subdivision 2

Application for Authorisation for Merger of Funds

§ 146. Authorisations for merger

(1) For merger of a fund, a fund manager or public limited fund must apply for an authorisation from the Financial Supervision Authority (hereinafter in this Division *authorisation for merger*).

(2) In order to apply for an authorisation for merger, a written application and the following data and documents (application, data and document jointly hereinafter in this Division the *application*) must be submitted to the Financial Supervision Authority:

- 1) the merger agreement;
- 2) the consent of the depositary of each merging fund specified in subsection 153 (1) of this Act;
- 3) the information specified in subsection § 156 of this Act which is given to the unit-holders or shareholders of each merging fund (hereinafter in this Division *merger information*);
- 4) an assessment of the impact of the merger on the financial position of the fund manager of the acquiring fund, including forecasts of compliance of the fund manager with prudential requirements, unless the UCITS is subject to cross-border merger.

(3) Applications must be submitted in the Estonian or English language. The merger information must be in the Estonian language or, with the consent of the Financial Supervision Authority, in the English language. If the data and documents specified in clauses (2) 1) and 2) of this section are not submitted in the Estonian language, the Financial Supervision Authority may demand translation of the documents into Estonian.

(4) If a UCITS participates in a merger, the merger information must be submitted in the official language of each EEA Member State where the notification has been given concerning the offer of the acquiring UCITS or UCITS being acquired. With the consent of the financial supervision authority of the EEA Member State specified in the first sentence, the information may be submitted in any other language.

(5) If funds merge in such a manner that a new fund is founded or established upon the merger or the fund rules, articles of association or prospectus of the fund are amended, an application for approval of establishment or foundation of a new fund in accordance with the provisions of § 31 of this Act or an application for approval of the amendments to the fund rules or articles of association by the Financial Supervision Authority in accordance with the provisions of § 37 of this Act must be appended to the application for an authorisation for merger, or the amendments to the prospectus must be submitted to the Financial Supervision Authority in accordance with the provisions of § 77 and, as appropriate, § 79 of this Act. If any other application is appended to the application for authorisation for merger or any other application is submitted in connection with the merger, it must be ensured that the amendments to the fund rules, articles of association or prospectus of the fund enter into force in line with the date of the merger taking effect, and the right arising from amendment of the fund rules, articles of association or prospectus of the fund to redeem the units or shares, as appropriate, is applicable in line with the right provided for in § 144 of this Act.

§ 147. Proceedings concerning authorisations for merger

(1) Upon merger, the Financial Supervision Authority shall examine the application submitted and assess whether the merger is in compliance with the principles of protection of the rights of the unit-holders or shareholders of the fund being acquired and the requirements provided for in this Act and whether the merger information is sufficient.

(2) If the application is not in compliance with the provisions of subsection 146 (2) of this Act, the Financial Supervision Authority may require elimination of deficiencies by the applicant within ten working days after receipt of the application.

(3) If the merger information does not comply with the requirements of §§ 156-160 of this Act, the Financial Supervision Authority may require amendment of the merger information within 15 working days after receipt of the authorisation for merger in compliance with subsection 146 (2) of this Act.

(4) The deficiencies specified in subsections (2) and (3) of this section shall be eliminated and the data and documents shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority shall notify the fund manager of a fund being acquired or a public limited fund being acquired and the depositary of issue of or refusal to issue an authorisation for merger within two months after receipt of a proper application.

§ 148. Bases for refusal to issue authorisations for merger

The Financial Supervision Authority may refuse to issue an authorisation for merger if:

- 1) the merger conditions of funds do not comply with the requirements provided by legislation or the data and documents submitted to the Financial Supervision Authority are incorrect, misleading or incomplete;
- 2) the merger information does not comply with the requirements provided for in this Act;
- 3) no notification has been made upon merger of UCITS concerning the offer of the units of the acquiring UCITS in the EEA Member State where the units or shares of the UCITS being acquired are offered.

§ 149. Specifications for cross-border merger of UCITS

(1) The Financial Supervision Authority shall make a decision to issue an authorisation for cross-border merger of a UCITS if the UCITS participates in a cross-border merger as a UCITS being acquired. The provisions concerning authorisations for merger specified in this Division apply to authorisations for cross-border merger of a UCITS, unless otherwise provided for in this Division.

(2) In order to apply for an authorisation for cross-border merger of a UCITS, the manager of the fund being acquired or a public limited fund being acquired shall submit an application to the Financial Supervision Authority. The prospectus and key information of the acquiring UCITS must be appended to the application if the acquiring UCITS is a fund of another EEA Member State.

(3) In addition to the provisions of this Division, an application and the additional documents specified in subsection (2) of this section must also be submitted to the Financial Supervision Authority in the official language of the EEA Member State of the acquiring UCITS. With the consent of the financial supervision authority of the home country of the acquiring UCITS, documents may also be submitted in another language.

(4) The Financial Supervision Authority shall send transcripts of the application and additional documents specified in subsection (2) of this section to the financial supervision authority of the home country of an acquiring UCITS promptly after receipt from the UCITS being acquired of all the required data and documents or elimination of deficiencies in accordance with the provisions of subsection 147 (2) of this Act.

(5) The Financial Supervision Authority shall notify the manager of the fund being acquired or public limited fund being acquired and the depositary of the issue of or refusal to issue an authorisation for cross-border merger of a UCITS within 20 working days after receipt of a proper application provided that the financial supervision authority of the home country of the acquiring UCITS has notified the Financial Supervision Authority within 20 working days after receipt of valid merger information of that the merger information of the acquiring fund is in compliance with the conditions. Furthermore, the Financial Supervision Authority shall notify the financial supervision authority of the home country of an acquiring, and if appropriate, of a UCITS being acquired or another EEA Member State of issue of or refusal to issue an authorisation for cross-border merger.

(6) In addition to the provisions of § 148 of this Act, the Financial Supervision Authority may refuse to issue an authorisation for cross-border merger of a UCITS if the financial supervision authority of the home country of the acquiring UCITS gives notification that the merger information does not comply with the requirements established in the home country of the UCITS.

§ 150. Processing of documents by Financial Supervision Authority upon cross-border merger of UCITS

(1) If a UCITS participates in a cross-border merger as an acquiring UCITS, the Financial Supervision Authority shall assess on the basis of a transcript of the application for authorisation for merger delivered

by the financial supervision authority of the home country of the UCITS being acquired whether the merger information complies with the principles of protection of the rights of the unit-holders or shareholders of the acquiring UCITS and the requirements provided for in this Act.

(2) The Financial Supervision Authority may demand, within 15 working days after receipt of a transcript of the application specified in subsection (1) of this section, elimination of the deficiencies in the merger information by the applicant.

(3) An acquiring UCITS shall submit the changes made in the merger information within a reasonable term determined by the Financial Supervision Authority.

(4) The Financial Supervision Authority shall promptly notify the financial supervision authority of the home country of the UCITS being acquired of submission of the demand specified in subsection (2) of this section. The Financial Supervision Authority shall notify the financial supervision authority of the home country of a UCITS being acquired of whether the amended merger information complies with the conditions provided for in this Act within 20 working days after receipt of valid information specified in subsection (2) of this section.

Subdivision 3

Decision on Conditions of Mergers

§ 151. Merger agreements

(1) Merger of a common fund shall be decided by the management board of the fund manager.

(2) For merger of a fund, the fund manager of a common fund or a public limited fund shall enter into an agreement (hereinafter *merger agreement*). Upon merger of a common fund with another common fund managed by the same fund manager, the merger conditions shall be determined to which the provisions provided for in this Division regarding merger agreements apply.

(3) A merger agreement shall set out at least the following data:

- 1) the method of merger and types of merging funds;
- 2) the reason for the merger;
- 3) the impact of the merger on unit-holders or shareholders of both the fund being acquired as well as the acquiring fund;
- 4) the exchange ratio of the units of the fund being acquired and criteria for the valuation of the assets and liabilities of the fund on the date of calculating the exchange ratio;
- 5) the method of calculation of the exchange ratio;
- 6) the planned effective date of the merger as of which the transactions of the fund being acquired shall be deemed to be conducted by the acquiring fund;
- 7) the procedure for transfer of assets and change of units or shares.

(4) A merger agreement may prescribe that monetary payments of the acquiring fund are made to unit-holders or shareholders of the fund being acquired and the amount thereof may not exceed one-tenth of the total amount of the net asset value of the units or shares exchanged for them. The monetary payments specified in this subsection must be made together with the issue of the units or shares of the acquiring fund to the unit-holders or shareholders of the fund being acquired.

(5) A merger agreement may contain other conditions.

§ 152. Specifications for merger agreements of public limited funds

(1) A merger agreement of a public limited fund must be notarised.

(2) In the case of merger together with foundation of a new public limited fund, the merger agreement must indicate the business name and seat of the new public limited fund and the members of the management board and supervisory board thereof. A merger agreement of a public limited fund shall indicate the amount of the share capital of the public limited fund at the time of making the merger resolution and a notification that the public limited fund is a fund founded as a public limited company pursuant to this Act and the amount of the share capital thereof corresponds to the amount of the net asset value of the fund.

§ 153. Verification of merger conditions

(1) The depositary of each fund participating in the merger shall verify the compliance of the data specified in clauses 151 (3) 1), 6) and 7) of this Act with the fund rules, articles of association or prospectus of the fund and the requirements of this Act. In the case of compliance with the requirements specified in the previous sentence,

the depositary shall prepare a written report on the verification carried out which *inter alia* states consent for merger of the fund.

(2) The depositary or sworn auditor of a fund being acquired shall additionally verify the following conditions of a merger agreement:

- 1) the criteria for valuation of the assets applicable on the date of calculating the exchange ratio;
- 2) the method of calculation of the exchange ratio and the actual exchange ratio determined on the date for calculation of that exchange ratio;
- 3) the monetary payments per unit or share.

(3) In order to verify the conditions of a merger agreement, one or several common sworn auditors may be appointed to several or all of the funds being acquired.

(4) A depositary or sworn auditor shall prepare a written report on the verification specified in subsection (2) of this section which shall be made accessible by the fund manager to the unit-holders or shareholders of the fund being acquired and the acquiring fund and the Financial Supervision Authority at their request free of charge. If the conditions specified in subsection (2) of this section are verified by a sworn auditor, the provisions of subsections 396 (2²)-(4) of the Commercial Code apply to the report prepared as a result of the verification.

§ 154. Decision on merger of public limited fund

(1) In addition to the provisions of this Act, the provisions of §§ 397 and 398, subsections 419 (2)-(5) and §§ 420 and 421 of the Commercial Code apply to holding of a general meeting, unless otherwise provided for in this Act.

(2) At least two weeks before the general meeting which decides on the merger, the management board shall submit to shareholders for examination at the seat of the public limited fund a signed merger agreement, the annual reports of the merging funds for the past three years, if available, and the depositary's report specified in subsection 153 (1) of this Act. Upon merger of a public limited fund, no merger report or interim balance sheet is prepared. Instead of the interim balance sheet, the latest disclosed semi-annual report shall be submitted to shareholders for examination.

(3) The articles of association of a public limited fund may not prescribe that adoption of the merger resolution requires more than three-quarters of the votes represented at the general meeting.

(4) If the articles of association of a public limited fund place the decision making on merger of a public limited fund within the competence of the supervisory board of the public limited fund, the provisions of §§ 321-323 of the Commercial Code concerning meetings and decisions of the supervisory board apply to decisions on approval of the merger, unless otherwise provided for in this Act.

(5) Merger of a public limited fund shall be decided by the general meeting of the public limited fund, unless otherwise provided for in the articles of association of the public limited fund.

Subdivision 4

Notification of unit-holders or Shareholders and Redemption of Units or Shares of Merging Funds

§ 155. Disclosure of authorisations for merger

(1) Funds being acquired and acquiring funds disclose promptly after receipt of an authorisation for merger a notice on the fund merger on the website of the fund manager of the common fund, the consolidation group to which the fund manager belongs or the public limited fund.

(2) The notice specified in subsection (1) of this section must set out at least the following:

- 1) the date of issue of the authorisation for merger;
- 2) the term for redemption or exchange of the units or shares of the fund;
- 3) the planned effective date of the merger provided for in the merger agreement.

§ 156. Merger information provided to unit-holders or shareholders

(1) The fund manager of a common fund being acquired and of an acquiring common fund or a public limited fund shall submit appropriate and accurate merger information concerning the circumstances of the merger to the unit-holders or shareholders of the fund which allows the unit-holders or shareholders to assess the impact of the merger and the need to exercise the right to redeem or exchange their units or shares.

(2) The merger information shall be submitted after receipt of an authorisation for merger but not later than 30 calendar days before the date of redemption or exchange of units or shares.

§ 157. Requirements for merger information

- (1) The merger information must set out:
- 1) the explanations of and reasons for the merger;
 - 2) the possible impact of the merger on unit-holders or shareholders, including material changes in respect of the investment policy, costs, expected outcome of the merger, periodic reporting and potential deterioration of financial performance, and if appropriate, warning about the changes in the taxation of the income of unit-holders or shareholders after the merger;
 - 3) an explanation to unit-holders or shareholders concerning the rights related to the merger;
 - 4) the terms and conditions of the merger process, including information concerning passing of the merger resolution and suspension of issue or redemption of units or shares and planned effective date of the merger;
 - 5) the terms and conditions of making payments to unit-holders or shareholders of the fund being acquired.
- (2) The merger information of a fund being acquired must include the following as regards the circumstances specified in clause (1) 2) of this section:
- 1) rights of the unit-holders or shareholders of the fund being acquired before and after the merger;
 - 2) comparison of material risks if the attached explanations or the key information of the fund being acquired and the acquiring fund show material differences in the synthetic risk and reward indicators in different categories;
 - 3) comparison of all fees, charges and expenses for the merging funds based on the amounts disclosed in their key information;
 - 4) if the fund being acquired applies a performance-related fee, an explanation of how it is applied up to the merger taking effect;
 - 5) if the acquiring fund applies a financial performance based fee after the merger takes effect, an explanation of how it is applied to ensure fair treatment of those unit-holders or shareholders who previously held units or shares in the fund being acquired;
 - 6) explanation on whether material changes are intended to be made in the composition of the assets of the fund being acquired before the merger takes effect.
- (3) The merger information of the acquiring UCITS must set out under the circumstances specified in clause (1) 2) of this section whether the merger has a material impact on the structure of the investments of the acquiring fund and whether it is intended to make material changes in the composition of the assets of the acquiring fund before or after the merger takes effect.
- (4) The synthetic risk and reward indicators specified in clause (2) 2) of this section are understood in the meaning of Article 8 of Commission Regulation (EU) No 583/2010.
- (5) The merger information must set out for the unit-holders or shareholders specified in clause (1) 3) of this section, among the rights related to merger, the right to:
- 1) receive additional information;
 - 2) receive the report specified in subsection 153 (4) of this Act and information concerning the method of receipt of the report;
 - 3) require redemption or exchange of units or shares without any additional fee and information concerning the end of the term for exercise of this right;
 - 4) obtain information concerning handling of accrued income for the account of the fund.
- (6) The merger information must set out together with the terms and conditions specified in clause (1) 4) of this section:
- 1) the details of intended suspension of transactions in units or shares;
 - 2) the time as of which the transactions of the fund being acquired shall be deemed conducted on account of the acquiring fund, the date of calculating the exchange ratio, and conditions for the merger taking effect.
- (7) The merger information of a fund being acquired must set out the following in addition to the information provided for in subsection (1) of this section:
- 1) the period during which issue and redemption of the units or shares of the fund being acquired is continued;
 - 2) the date on which the unit-holders or shareholders who do not exercise the right to redeem or exchange the units or shares specified in subsection 144 (1) of this Act become the unit-holders or shareholders of the acquiring fund;
 - 3) an explanation on that all the unit-holders or shareholders who did not exercise the right to redeem or exchange the units specified in subsection 144 (1) of this Act shall become the unit-holders or shareholders of the acquiring fund upon the merges taking effect, including in the case the unit-holder or shareholder voted against the merger proposal upon approval of the merger resolution or abstained from voting;
 - 4) a recommendation to examine the key information of the acquiring fund.

§ 158. Additional requirements for merger information upon cross-border merger of UCITS

In the case of a cross-border merger, the merger information must explain in a clear and understandable manner the conditions provided by the law of another EEA Member State which differ from the conditions and procedures provided for in this Act.

§ 159. Formal requirements for merger information

(1) The merger information shall be provided in a clear and understandable manner taking account of the interests and competence of the unit-holders or shareholders of the acquiring fund and fund being acquired.

(2) If a summary of the merger conditions is provided at the beginning of the merger information, it must refer to the parts of the document of the merger information where additional information is provided.

(3) The merger information is provided to unit-holders or shareholders on paper or other durable medium.

(4) The merger information may be provided on another durable medium if the following conditions are met:

- 1) provision of information corresponds to the manner in which the services between the unit-holder or shareholder and the fund being acquired or the acquiring fund or the fund manager is or is to be provided;
- 2) a unit-holder or shareholder has chosen another durable medium for provision of information, if there is more than one option available.

(5) Provision of information to unit-holders on another durable medium is in compliance with the method of provision of information specified in clause (4) 1) of this section if the unit-holder or shareholder specified the unit-holder's or shareholder's e-mail address for communication of information or otherwise confirmed the unit-holder's or shareholder's continuous access to Internet.

(6) The merger information must be in the Estonian language. If the merging fund is a UCITS which units are offered in another EEA Member State, the merger information must also be provided in the official language of the EEA Member State. With the consent of the financial supervision authority of the other EEA Member State, the merger information may be submitted in another language. The merger information in different languages must be identical in substance. The fund manager of a common fund or a public limited fund is responsible for the translation.

§ 160. Provision of key information upon merger

(1) The key information of an acquiring fund must be appended to the merger information of a fund being acquired.

(2) The key information of an acquiring fund must be appended to the merger information of an acquiring fund if it has been amended due to the merger.

(3) The merger information and key information of an acquiring fund shall be provided to each person who acquires the units or shares of a fund being acquired or acquiring fund or who wishes to obtain the rules, prospectus or key information of a merging fund.

Subdivision 5 Taking Effect of Merger and Merger Expenses

§ 161. General provisions on merger taking effect

(1) A merger takes effect on the date provided for in the merger agreement, unless otherwise provided for in this Act.

(2) Upon merger taking effect, the assets of the fund being acquired transfer to the acquiring fund.

(3) The fund manager of an acquiring fund or a public limited fund must notify, promptly after the merger taking effect, the depositary of the acquiring fund of transfer of the assets of the fund being acquired to the acquiring fund.

(4) A merger which has taken effect shall not be challenged.

§ 162. Date of merger of common fund taking effect

Merger of a common fund takes effect on the planned effective date of the merger provided for in the merger agreement but not earlier than on the date of calculation of the exchange ratio agreed upon in the merger agreement.

§ 163. Entry of merger of public limited fund in commercial register and taking effect of merger

(1) The provisions of §§ 400-403 and 405 of the Commercial Code apply to entry of merger of a public limited fund in the commercial register, unless otherwise provided in this Subdivision.

(2) A merging public limited fund may submit the application specified in subsection 400 (1) of the Commercial Code for entry of the merger of the public limited fund in the commercial register after the date of calculation of the exchange ratio of the shares specified in subsection 144 (2) of this Act.

(3) Upon merger together with foundation of a new public limited fund, the requirements provided for in § 34 of this Act also apply to an application of a public limited fund submitted to the commercial register and entry in the commercial register in addition to the provisions of this section.

(4) The final balance sheet of a public limited fund shall be prepared in accordance with the requirements for the balance sheet that constitutes part of an annual report of the public limited fund and the provisions of this Act concerning approval of annual reports and conduct of audits of public limited funds.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 164. Specifications for cross-border merger of UCITS taking effect

(1) If an acquiring UCITS is founded or established in Estonia, the provisions of §§ 161-163 of this Act apply to taking effect of cross-border merger of the UCITS. The fund manager of an acquiring UCITS or a public limited fund shall promptly notify the Financial Supervision Authority and the financial supervision authority of the home country of the UCITS being acquired of taking effect of cross-border merger of the UCITS.

(2) Subsections 433⁹(2)-(8) of the Commercial Code apply to cross-border merger of a public limited fund.

(3) Upon cross-border merger of a UCITS founded as a public limited fund with a UCITS which is a common fund, the merger of the public limited fund shall be entered in the commercial register on the basis of an application of the merging public limited fund. If the UCITS founded as a public limited fund is the fund being acquired, the merger shall take effect in accordance with the provisions of § 162 of this Act. If a UCITS founded as a public limited fund is the acquiring fund, the merger shall take effect in accordance with the provisions of subsection 163 (6) of this Act.

§ 165. Merger expenses

(1) Expenses related to merger of a fund shall be covered by the manager of the merging fund. Differently from the provisions of clause 58 (1) 3) of this Act, no legal, consultation or management fees related to the merger shall be paid for the account of the fund.

(2) No fee shall be charged for issue of the units or shares or cancellation of the units or shares of an acquiring fund.

(3) No fee shall be charged for redemption or exchange of units or shares upon merger, with the exception of compensation to cover the costs arising upon redemption or exchange of units or shares upon merger.

Subdivision 6 Specifications for Merger of Pension Funds

§ 166. Merger of pension funds

(1) A mandatory occupational pension fund may merge only with another mandatory pension fund.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(2) An occupational pension fund may merge only with another occupational pension fund.

(3) A voluntary pension fund, which is not an occupational pension fund, may merge only with a voluntary pension fund which is not an occupational pension fund.

(4) If the rate of return of a voluntary pension fund is guaranteed, a merger of such fund with another is not allowed.

(5) In addition to the provisions of subsection 147 (5) of this Act, the Financial Supervision Authority shall also promptly communicate to the registrar of the pension register the decision to issue of or refusal to issue an authorisation for merger to a pension fund.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(6) The merger information of a mandatory pension fund shall be submitted to investors after receipt of an authorisation for merger but not later than 100 calendar days before the date of the merger of the mandatory pension fund taking effect.

(7) A merger of a mandatory pension fund shall take effect on the working day following the working day of exchange of units provided for in subsection 24 (3) of the Funded Pensions Act but not earlier than 100 calendar days after publication of the notice specified in subsection 155 (1) of this Act.

(8) Unit-holders of a mandatory pension fund being acquired and acquiring mandatory pension fund have the right, until the merger of the funds takes effect, to demand exchange of their units without any redemption fee for the units of the other mandatory pension fund, taking account of the provisions concerning exchange of units in the Funded Pensions Act.

(9) The provisions of § 144 of this Act do not apply to a merger of a mandatory pension fund.

(10) Unit-holders of a voluntary pension fund being acquired and acquiring voluntary pension fund have the right to demand redemption of their units or exchange thereof for units of another voluntary pension fund in accordance with the provisions of subsection 144 (1) of this Act, taking account of the provisions concerning redemption and exchange of units of voluntary pension funds in the Funded Pensions Act.

Chapter 14

Dissolution and Solvency of Funds

Division 1

General Provisions

§ 167. Dissolution of common funds

(1) A common fund is dissolved:

- 1) by a decision of the fund manager;
- 2) a decision of the general meeting if the fund rules prescribe the general meeting;
- 3) by a decision of the depositary in the case provided for in subsection 184 (1) of this Act;
- 4) by declaration of insolvency of the common fund; or
- 5) by abatement of insolvency proceedings of the common fund before declaration of bankruptcy.

(2) Dissolution of a common fund is decided by the management board of the fund manager unless, pursuant to the fund rules, the supervisory board of the fund manager is competent to decide on dissolution of the fund.

(3) A common fund is dissolved by liquidation proceedings unless otherwise provided for in this Act. In order to liquidate a fund, the fund manager shall apply for an authorisation from the Financial Supervision Authority (hereinafter in this Chapter *authorisation for liquidation*).

(4) A common fund is liquidated by a fund manager, unless otherwise provided for in this Act.

(5) If a fund manager fails to complete the liquidation of a fund within the term provided for in this Act, the Financial Supervision Authority may appoint a depositary as a liquidator to complete the liquidation.

(6) If the dissolution of a fund was decided by a depositary, the depositary shall liquidate the fund in accordance with the provisions of § 184 of this Act. If the depositary fails to complete the liquidation of the fund within the term provided for in § 175 of this Act, the general meeting or in the absence thereof the Financial Supervision Authority may appoint, pursuant to § 185 of this Act, a liquidator of the fund to complete the liquidation.

(7) The provisions concerning common funds in this Chapter also apply to sub-funds of common funds.

§ 168. Specifications for dissolution of public limited funds

(1) In order to liquidate a public limited fund, the public limited fund shall apply for an authorisation for liquidation from the Financial Supervision Authority. In the case provided for in subsection 184 (1) of this Act, the depositary shall decide on liquidation of the public limited fund and the depositary shall be entered in the commercial register as the liquidator of the public limited fund.

(2) The decision of the Financial Supervision Authority on issue of an authorisation for liquidation shall be appended to the application for entry of the decision on dissolution of a public limited fund in the commercial register.

Division 2

Liquidation of Funds

Subdivision 1 Applications for Authorisations for Liquidation of Funds

§ 169. Authorisations for liquidation

In order to apply for an authorisation for liquidation, the fund manager of a common fund or a public limited fund shall submit, within 20 days after adopting a decision on liquidation of the fund, a written application to the Financial Supervision Authority and the following data and documents (application, data and documents jointly hereinafter in this Subdivision *application*):

- 1) a decision on dissolution of the fund, including the limit of the fund liquidation costs and, if any, the amount of additional liquidation costs and their reasons;
- 2) the reasons for the need to liquidate the fund and an assessment whether the liquidation of the fund is in the interests of the unit-holders or shareholders;
- 3) the opinion of the depositary of the fund to be liquidated;
- 4) the names, addresses and personal identification codes of unit-holders or shareholders, in the absence thereof their dates of birth or, if any, registry codes;
- 5) if a common fund is a unit-holder or shareholder of the fund, the business name, registry code and seat of the fund manager thereof or of the depositary in the absence of the latter;
- 6) the number, type and value of the units or shares held by the unit-holders or shareholders as at three working days before submission of the application;
- 7) the data on all the rights and obligations which are included in the assets of the fund;
- 8) a decision on liquidation of the sub-funds of the common fund, if any.

§ 170. Review of applications for authorisations for liquidation and decisions on issue of authorisations for liquidation

(1) If an application is not in compliance with the requirements provided for in § 169 of this Act, the Financial Supervision Authority shall demand elimination of the deficiencies by the applicant.

(2) The Financial Supervision Authority may demand submission of additional data and documents if it is not convinced on the basis of the data and documents specified in § 169 of this Act as to whether the liquidation complies with the requirements established by legislation or if other circumstances relating to the fund need to be verified.

(3) In order to verify the data submitted by an applicant, the Financial Supervision Authority may request submission of more specific data and documents, perform on-site inspections, order assessments and special audits, consult state databases, and request oral explanations from managers of fund managers or public limited funds, auditor firms, their representatives and third parties concerning the contents of the documents submitted and the facts which are relevant in making a decision on an authorisation for liquidation of the fund.

(4) The deficiencies specified in subsections (1)-(3) of this section shall be eliminated and the data and documents shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the applicant fails to eliminate deficiencies within the prescribed term or fails to submit the data or documents requested by the Financial Supervision Authority by the due date.

(6) The Financial Supervision Authority shall make a decision to issue or refuse to issue an authorisation for liquidation within two months after submission of all the necessary data and documents but not later than within six months after submission of the application.

(7) The Financial Supervision Authority shall promptly communicate the decision specified in subsection (6) of this section to the fund manager, public limited fund and depositary.

§ 171. Bases for refusal to issue authorisations for liquidation

The Financial Supervision Authority may refuse to issue an authorisation for liquidation if:

- 1) the data and documents submitted upon application for an authorisation for liquidation do not reflect fully, clearly and unambiguously all the circumstances of the liquidation of the fund;
- 2) the liquidation of the fund is not in compliance with the requirements of this Act.

§ 172. Notices of liquidation

(1) The fund manager of a common fund or a public limited fund shall publish, promptly after becoming aware of the decision to issue an authorisation for liquidation, a notice concerning the liquidation of the fund (hereinafter *notice of liquidation*) on the website of the fund manager, the consolidation group to which the fund manager belongs, or the public limited fund.

(2) A notice of liquidation must contain the following data:

- 1) the name of the fund to be liquidated;
- 2) the business name, registry code and seat of the fund manager;
- 3) the business name, registry code and seat of the depositary;
- 4) the term during which the creditors of the fund being liquidated must submit their claims against the fund;
- 5) the places and time of acceptance of claims and applications;
- 6) other necessary data.

(3) The term provided for in clause (2) 4) of this section shall not be shorter in the case of a sub-fund of a common fund than two months after publication of the notice of liquidation of the fund.

(4) Failure to notify on time of a claim specified in clause (2) 4) of this section does not affect the validity of the claim or restrict the right of the creditor to file an action with a court against the fund being liquidated.

(5) The fund manager of a common fund or a public limited fund shall notify the Financial Supervision Authority of publication of a notice of liquidation not later than on the day preceding the publication of the notice of liquidation.

§ 173. Suspension of issue and redemption of units and shares of funds

The issue and redemption of the units or shares of a fund to be liquidated shall be suspended as of the day following the publication of the notice of liquidation, and as of the same date, payments to unit-holders or shareholders may be made only pursuant to the procedure provided for distribution of the assets in this Chapter or in the case of a public limited fund in the Commercial Code.

§ 174. Coverage of liquidation costs

(1) Only actual costs of liquidation of a fund may be covered for the account of the fund.

(2) The limit of the costs of liquidation of a fund shall be set out in the decision on liquidation of the fund. The costs of liquidation of the fund may be covered for the account of the fund to the maximum extent of two per cent of the net asset value of the fund as at the day of adoption of the decision on liquidation of the fund, unless the liquidation decision sets out the amount of and reasons for additional liquidation costs.

(3) If a fund is liquidated by a depositary in the case provided for in subsection 184 (1) of this Act, the depositary shall state in the liquidation decision the limit of the costs of liquidation of the fund specified in subsection (2) of this section as at the day of adoption of the liquidation decision. If a depositary commences liquidation of a fund after the expiry of the term specified in subsection 184 (1) of this Act or the extended term specified in 184 (2) of this Act, the net asset value of the fund on the latest day by which the liquidation should have commenced is taken as the basis for calculation of the liquidation costs.

(4) If the actual costs of liquidation of a sub-fund of a fund or common fund exceed the limit of costs set out in the application, the fund manager or the person who acts as a fund manager shall be liable for the costs exceeding that limit.

(5) If a fund is liquidated by a depositary or liquidator specified in § 185 of this Act, the depositary or liquidator has the right to collect the costs which exceed the limit specified in the liquidation decision from the fund manager or a person who acts as a fund manager.

(6) In addition to the expenses specified in subsection (2) of this section, the fund manager or depositary as the statutory liquidator of a fund may charge the management fee and depositary's charges paid for the account of the fund and specified in clauses 58 (1) 1) and 2) of this Act. It is prohibited to charge any other fees for conducting the liquidation proceedings.

Subdivision 2

Liquidation Proceedings of Common Funds

§ 175. Term of liquidation proceedings

(1) Liquidation of a common fund commences on the day which follows the publication of a notice of liquidation and terminates by submission of a liquidation report pursuant to this Act. A fund is liquidated after submission of the liquidation report.

(2) Liquidation shall be completed within six months after publication of a notice of liquidation. Liquidation of a closed-end fund shall be completed within 12 months after submission of a notice of liquidation.

(3) With the permission of the Financial Supervision Authority, the term specified in subsection (2) of this section may be extended at the request of the fund manager of a common fund but the term of liquidation may not exceed 18 months as a result of the extension, and 24 months in the case of a closed-end fund.

§ 176. Transactions in liquidation proceedings

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

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

(3) During liquidation of a fund, the fund manager may only conduct for the account of the common fund the transactions which are necessary for liquidation of the fund.

(4) Until performance of the obligations specified in subsection (1) of this section, the funds received from transfer of assets upon liquidation may be placed in money market instruments or deposits of credit institutions in which UCITS are allowed to invest. Transactions with derivative instruments may be conducted only for the purposes of mitigation of risks arising from fluctuation of the value of the assets.

(5) In liquidation proceedings, the notation “*likvideerimisel*” [in liquidation] shall be appended to the name of the fund upon conduct of transactions in the name of the common fund.

§ 177. Notification of distribution of assets

(1) After performance of all the acts specified in subsection 176 (1) of this Act, the liquidator of a fund shall prepare the final balance sheet and plan for distribution of the assets of the fund.

(2) The liquidator of a common fund shall promptly publish a notice concerning distribution of the assets subject to distribution on the website of the fund manager or the consolidation group to which the fund manager belongs after preparation of the final balance sheet and asset distribution plan.

(3) The notice specified in subsection (2) of this section shall contain at least the following data:

- 1) the name of the fund to be liquidated;
- 2) the assets to be distributed per each unit;
- 3) the terms of and procedure for payment of the assets subject to distribution;
- 4) a list of the data and documents required upon payment of the assets subject to distribution.

§ 178. Distribution of assets

(1) The liquidator of a fund shall distribute the assets remaining upon liquidation between unit-holders on the basis of the class, number and net asset value of the units held by each unit-holder.

(2) Units shall be deleted and the rights and obligations associated therewith shall be terminated from the day on which payments are made. No redemption fee shall be charged upon deletion of units.

(3) If money or assets owned by a unit-holder cannot be paid to the unit-holder by the due date, the money or assets prescribed for payment shall be deposited in a depositary.

(4) Payments to unit-holders may only be made in money, unless if the fund is a closed-ended fund.

(5) The Financial Supervision Authority may allow distribution of assets before preparation of the final balance sheet and asset distribution plan specified in subsection 177 (1) of this Act if the fund manager of a common fund submits an interim balance sheet of the fund to the Financial Supervision Authority and the distribution of assets does not damage the interests of the creditors or unit-holders. Assets may be distributed on the basis of an interim balance sheet if the term for filing the claims of creditors has expired and the claims of creditors submitted on time have been satisfied.

§ 179. Liquidation reports

(1) Within one month after termination of the distribution of assets, the liquidator of the fund shall submit to the Financial Supervision Authority the final balance sheet, asset distribution plan and report on its activities upon liquidation of the fund.

(2) If the liquidation of a fund has been outsourced in accordance with § 184 or 185 of this Act, the liquidation report shall be submitted by the depositary or liquidator who conducted the liquidation.

(3) The requirements for liquidation reports shall be established by a regulation of the minister responsible for the area.

Subdivision 3

Specifications for dissolution of public limited funds

§ 180. Notices of liquidation of public limited funds

A public limited fund shall publish the notice specified in subsection 375 (1) of the Commercial Code at the same time with the notice of liquidation specified in § 172 of this Act.

§ 181. Submission of applications concerning dissolution of public limited funds to commercial register

(1) A public limited fund shall submit, promptly after publication of the notice specified in subsection 180 of this Act, an application for entry of the dissolution decision and liquidator of the fund to the commercial register.

(2) The following documents shall be appended to the application for entry of the decision of dissolution and liquidator of a public limited fund in the commercial register:

- 1) the decision of the Financial Supervision Authority on issue of an authorisation for liquidation of the public limited fund;
- 2) the data concerning publication of the notice of liquidation.

§ 182. Specifications for opening balance sheets and final balance sheets of liquidation of public limited funds

(1) The liquidator of a public limited fund shall prepare the opening balance sheet of liquidation and annual report specified in subsection 374 (2) of the Commercial Code within two months after becoming aware of the decision on issue of the authorisation for liquidation.

(2) The supervisory board of the public limited fund shall approve the opening balance sheet of the liquidation and the annual report of the public limited if this right has been transferred from the general meeting to the supervisory board of the public limited fund by the articles of association of the public limited fund.

(3) A public limited fund shall publish the opening liquidation balance sheet and annual report at the seat of the public limited fund, the seats of its branches and on the website of the public limited fund promptly after approval of the opening balance sheet or annual report.

(4) Requirements for opening liquidation balance sheets and annual reports of a public limited fund may be established by a regulation of the minister responsible for the area.

(5) The liquidator of a public limited fund shall submit, within one month after termination of the distribution of assets and before submission of an application to the commercial register for deletion of the public limited fund from the register, the final balance sheet, asset distribution plan of the fund and report on its activities upon liquidation of the fund to the Financial Supervision Authority.

(6) If the liquidation of a public limited fund has been outsourced in accordance with § 184 or 185 of this Act, the liquidation report shall be submitted by the depositary or liquidator which conducted the liquidation.

(7) The requirements for final balance sheets of public limited funds may be established by a regulation of the minister responsible for the area.

§ 183. Continuation of activities of dissolved public limited funds

The activities of a dissolved public limited fund cannot be continued.

Subdivision 4

Depositaries as Liquidators or Liquidators appointed by Financial Supervision Authority and Liability of Liquidators

§ 184. Liquidator of depositary fund

(1) A depositary shall decide on liquidation of a fund if it fails, within three months after termination of the management authority of a fund, on the basis specified in subsection 305 (7) of this Act:

- 1) to transfer the management of the fund to another fund manager; or
- 2) to decide on the merger of the fund with a fund being acquired.

(2) With the permission of the Financial Supervision Authority, the term specified in subsection (1) of this section may be extended at the request of the depositary but the term for making of the decision on dissolution of a fund may not exceed six months as a result of the extension.

(3) A depositary must liquidate a fund if the liquidator of the fund has failed to liquidate the fund during the term specified in § 175 of this Act and the Financial Supervision Authority has issued a precept to complete the liquidation of the fund.

(4) A depositary may apply to the Financial Supervision Authority for an authorisation for liquidation of a fund on the basis specified in subsection (1) of this section within three months after transfer of the management authority to the depositary.

(5) A depositary shall liquidate a fund pursuant to the procedure provided for in this Act and the fund rules or articles of association.

(6) In the case provided for in subsection (3) of this section, the depositary shall liquidate a fund within six months after the Financial Supervision Authority has issued a respective precept. With the permission of the Financial Supervision Authority, the specified term may be extended at the request of the depositary but, as a result of the extension, the term for liquidation shall not exceed 18 months, and in the case of a closed-end funds 24 months.

(7) If a depositary decides to merge a fund with a fund being acquired, the provisions of this Act concerning fund managers apply to the depositary upon deciding on the merger of the fund, application for an authorisation for merger and conduct of the merger.

§ 185. Appointment of liquidators of funds by general meeting or Financial Supervision Authority

(1) If a depositary fails to complete the liquidation of a fund within the term specified in subsection 175 (2) or 184 (6), the general meeting or in the absence thereof the Financial Supervision Authority may appoint a liquidator. The liquidator shall complete the liquidation of the fund during the term determined by the Financial Supervision Authority pursuant to the procedure provided for in this Act.

(2) All the rights and obligations related to the liquidation of a fund shall transfer to the liquidator appointed pursuant to subsection (1) of this section.

(3) Upon appointment of a liquidator pursuant to subsection (1) of this section, payment of remuneration to the liquidator for conduct of the liquidation proceedings must be decided. In this case, the limit provided for in subsection 174 (2) of this Act does not apply.

§ 186. Extent of liability if liquidators of funds

A depositary and a liquidator of a fund specified in subsection 185 (1) of this Act are liable to the unit-holders, shareholders, fund manager and creditors of the fund to the extent of the claims against the fund which have arisen after transfer of the liquidation of the fund to the depositary or liquidator.

Subdivision 5 Specifications for Dissolution of Pension Funds

§ 187. Deciding on dissolution and liquidation proceedings of pension funds

(1) Dissolution of a pension fund may be decided only if transfer of the management thereof to another fund manager pursuant to the procedure provided for in this Act has been impossible.

(2) Upon liquidation of a mandatory pension fund, the provisions of §§ 37-39 of the Funded Pensions Act apply to distribution of the assets and no payments shall not be made to unit-holders.

§ 188. Authorisations for liquidation of pension funds

(1) Upon liquidation of a pension fund, a report of the fund manager on acts performed for the transfer of the management of the pension fund together with the documents certifying the acts must be appended to the application specified in § 169 of this Act.

(2) The Financial Supervision Authority may refuse to issue an authorisation for liquidation of a pension fund, in addition to the case provided for in § 171 of this Act, if the fund manager has failed to use all the options to transfer the management of the pension fund in the opinion of the Financial Supervision Authority.

(3) The Financial Supervision Authority shall promptly also communicate the decision specified in subsection 170 (6) of this Act to the registrar of the pension register.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(4) The fund manager shall notify the registrar of the pension register of publication of the notice of liquidation of a pension fund not later than on the day preceding the publication of the notice of liquidation.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(5) The Financial Supervision Authority may, by a decision to issue an authorisation for liquidation of a mandatory pension fund, establish the following conditions for the liquidation:

- 1) a term which is longer than the term for the submission of applications which is specified in subsection 37 (2) of the Funded Pensions Act;
- 2) an obligation to submit reports, including reports approved by a sworn auditor, in the course of liquidation proceedings;
- 3) other conditions which the Financial Supervision Authority deems necessary to protect the legitimate interests of the unit-holders.

(6) A notice of liquidation of a mandatory pension fund must contain the term for submission of the application specified in subsection 37 (2) of the Funded Pensions Act and the consequences of failure to submit the petition for the specified term in addition to the provisions of subsection 172 (2) of this Act.

Division 3 Insolvency of funds

Subdivision 1 General Provisions

§ 189. Application of Division

(1) An application for declaring a common fund insolvent is submitted, insolvency is declared and insolvency is eliminated in accordance with the provisions of the Bankruptcy Act, unless otherwise provided for in this Division.

(2) The provisions of this Division concerning funds apply to sub-funds of common funds, unless otherwise provided for in this Division.

(3) The provisions of this Division concerning a liquidator of a fund also apply to a depositary of a fund if liquidation of the fund was decided by the depositary and the Financial Supervision Authority has assigned the fund to the liquidator.

§ 190. Submission of applications for declaration of insolvency of common funds and insolvency proceedings

(1) An application for declaring a common fund insolvent may be submitted by a manager or liquidator of the fund in addition to its creditors. The provisions of the Bankruptcy Act concerning bankruptcy petitions of debtors apply to applications of fund managers or liquidators and insolvency proceedings of common funds. The provisions of the Bankruptcy Act concerning bankruptcy petitions apply to applications submitted by creditors of common funds for declaration of insolvency.

(2) If a common fund is insolvent, the fund manager must, as soon as possible but not later than 20 days after onset of insolvency, submit an application for declaring the fund insolvent.

(3) If it becomes evident during the liquidation of a fund that the fund is insolvent, the liquidator of the fund must promptly file an application for declaring the fund insolvent.

(4) The fund manager or liquidator of a fund shall promptly submit a copy of the application for declaring the fund insolvent to the Financial Supervision Authority.

(5) Upon submission of an application for declaration of insolvency, the fund manager or liquidator of a common fund shall represent it. The provisions of §§ 85-90 of the Bankruptcy Act extend to fund managers or liquidators.

(6) After onset of insolvency, the fund manager shall not make payments for the account of the fund, except payments which making in the state of insolvency is in line with due diligence. The fund manager is required to compensate to the fund for any payments made for the account of the fund after the insolvency of the company became evident which, under the circumstances in question, were not made in line with due diligence.

(7) Upon submission of an application for declaration of insolvency, issue and redemption of the units of the fund shall be promptly suspended and notification thereof shall be given in accordance with the provisions of subsections 57 (3) and (6) of this Act.

(8) In order to submit an application for declaration of insolvency of a common fund or sub-funds thereof, an insolvency caution shall be submitted to the common fund or sub-funds thereof through the fund manager. An application for declaration of insolvency must indicate with respect to which fund the application is submitted. Submission of an application with respect to a sub-fund of a common fund shall not result in insolvency proceeding of the common fund.

(9) An application for declaration of insolvency shall be submitted according to the seat of the common fund.

§ 191. Bankruptcy of public limited funds

(1) A public limited fund or liquidator shall promptly submit a copy of a bankruptcy petition to the Financial Supervision Authority.

(2) Upon submission of a bankruptcy petition, issue and redemption of the shares of the fund shall be promptly suspended and notification thereof shall be given in accordance with the provisions of subsections 57 (3) and (6) of this Act.

Subdivision 2

Insolvency Proceedings and Satisfaction of Claims of Funds

§ 192. Proceedings of Insolvency Petitions and Declaration of Insolvency

(1) In this Subdivision, bankruptcy petitions, bankruptcy proceedings of a fund and bodies in bankruptcy proceedings also denote applications for declaring a common fund insolvent, insolvency proceeding and bodies in insolvency proceedings thereof.

(2) If an application was submitted by a creditor of a fund, a court shall hold a preliminary hearing and the Financial Supervision Authority, fund manager and liquidator shall be summoned to the hearing in the case the application was submitted by the liquidator. A copy of the application shall be forwarded to the Financial Supervision Authority together with the notice specified in subsection 16 (2) of the Bankruptcy Act.

(3) In addition to the persons specified in subsection 25 (2) of the Bankruptcy Act, a court shall also summon the Financial Supervision Authority to the hearing where the bankruptcy petition is reviewed. A representative of the Financial Supervision Authority shall provide an opinion at the court hearing concerning the fund which submitted the bankruptcy petition.

(4) A court shall appoint interim trustees and trustees in bankruptcy of funds on the proposal of the Financial Supervision Authority. The provisions of § 61 of the Bankruptcy Act do not apply to trustees in bankruptcy of funds.

(5) Interim trustees in bankruptcy or trustees in bankruptcy of funds promptly submit to the Financial Supervision Authority the data requested by it and enable examination of the documentation concerning the bankruptcy proceedings of the fund.

(6) In addition to as specified in § 68 of the Bankruptcy Act, a court may release a trustee in bankruptcy on the proposal of the Financial Supervision Authority. If a trustee in bankruptcy is released, a new trustee in bankruptcy shall be appointed pursuant to the procedure prescribed in subsection (4) of this section.

(7) On the proposal of the Financial Supervision Authority, a court shall not terminate proceedings by abatement on the basis specified in subsection 29 (1) or (2) of the Bankruptcy Act. In this case, the fund

manager shall pay a deposit to cover the costs of bankruptcy proceedings to the bank account prescribed for that purpose in the amount determined by the court.

§ 193. Obligations and rights of trustees in bankruptcy

- (1) In addition to the provisions of the Bankruptcy Act, a trustee in bankruptcy shall:
- 1) publish a bankruptcy notice or notice of declaration of insolvency of a public limited fund at least in one national daily newspaper and on the website of the fund manager, the consolidation group to which the fund manager belongs or of the public limited fund;
 - 2) promptly submit to the Financial Supervision Authority the data requested by it and enable examination of the documentation concerning the bankruptcy proceedings of the fund;
 - 3) as appropriate or if prescribed by the legislation of another EEA Member State, inform the commercial register, registrar of the land register or similar registrar in the EEA Member State, where the fund has assets, of the court ruling on declaration of bankruptcy of the fund.

(2) The provisions of subsection 34 (2) of the Bankruptcy Act do not apply to notification of known creditors and unit-holders or shareholders of a fund.

§ 194. Bankruptcy committee, sale of bankruptcy estate, satisfaction of claims of unit-holders of common funds and bankruptcy reports

- (1) The bankruptcy committee of a fund shall comprise five members, three of whom are appointed by the Financial Supervision Authority.
- (2) The provisions of subsection 74 (7) of the Bankruptcy Act do not apply to bankruptcy proceedings of a fund.
- (3) A trustee in bankruptcy has the right to sell all the assets of the fund as a whole with the consent of the bankruptcy committee.
- (4) Claims arising from the units of a common fund shall be satisfied pursuant to the provisions of § 156 of the Bankruptcy Act concerning assets to be returned to debtors.
- (5) After termination of the bankruptcy proceedings of a fund, the trustee in bankruptcy shall submit a report to the Financial Supervision Authority which is in compliance with the requirements provided for final reports as specified in § 162 of the Bankruptcy Act.

Subdivision 3 Insolvency proceedings of pension funds

§ 195. Insolvency proceedings of pension funds

- (1) No application can be submitted for declaring a pension fund insolvent and no insolvency proceedings can be conducted.
- (2) If it becomes evident during liquidation of a pension fund that the liabilities of the pension fund exceed its assets, the fund manager or a person who operates as the fund manager shall be liable for all the claims which are submitted against the fund and not satisfied.
- (3) A depositary shall be liable for any claims against a pension fund which have arisen after transfer of the management or liquidation of the pension fund to the depositary.
- (4) A liquidator shall be liable for the claims against a pension fund which have arisen after transfer of liquidation of the pension fund to the liquidator.

Chapter 15 Master UCITS and Feeder UCITS

Division 1 General Provisions

§ 196. Application of Chapter and Specifications for Offers of Master UCITS

- (1) This Chapter provides for the conditions for investment of the assets of a UCITS which is a feeder fund (hereinafter *feeder UCITS*) in a UCITS which is a master fund (hereinafter *master UCITS*).

(2) The provisions of this Act concerning offers of a UCITS of another EEA Member State do not apply to a master UCITS which is established or founded in another EEA Member State and which units or shares are not publicly offered in Estonia but in which the assets of a feeder UCITS established or founded in Estonia have been invested.

(3) If at least two feeder UCITS invest in a master UCITS, the units or shares of the master UCITS need not be offered publicly for the purposes of this Act.

(4) The provisions concerning common funds in this Division also apply to sub-funds of common funds.

§ 197. Additional restrictions on investments of feeder UCITS

(1) The assets of a feeder UCITS may be invested to the extent of up to 15 per cent of the assets of the fund in:

- 1) deposits in credit institutions;
- 2) derivative instruments for the purposes of risk mitigation, taking account of the provisions of §§ 105, 111 and 113 of this Act.

(2) Upon investment of the assets of a feeder UCITS in derivative instruments, the risk specified in clause (1) 2) of this section may be combined, upon calculation of the open risk position specified in subsection 105 (3) of this Act, with:

- 1) the actual risk position of the derivative instruments of the master UCITS in proportion to the investment of the feeder UCITS in the master UCITS; or
- 2) the potential maximum risk position of the derivative instruments of the master UCITS provided for in the fund rules, articles of association or prospectus of the master UCITS in proportion to the investments made by the feeder UCITS in the master UCITS.

Division 2

Approval of Investments of Master UCITS

§ 198. Approval of investments of master UCITS by feeder UCITS

(1) In order to invest in a master UCITS, the fund manager of a feeder UCITS or a public limited fund which is a feeder UCITS must apply to the Financial Supervision Authority for an authorisation (hereinafter in this Division *investment authorisation*).

(2) The fund manager of a feeder UCITS or a public limited fund which is a feeder UCITS shall submit, for obtaining an investment authorisation, an application and the following data and documents (application, data and documents jointly hereinafter in this Division *application*) to the Financial Supervision Authority:

- 1) the rules or articles of association of the feeder and master UCITS;
- 2) the prospectuses and key information of the feeder and master UCITS;
- 3) the information specified in subsection 200 (1) of this Act for unit-holders or shareholders;
- 4) the agreement for making investments specified in § 201 of this Act or the internal rules of the fund manager or public limited fund specified in subsection 201 (10) of this Act;
- 5) the information exchange agreement between the depositaries specified in § 203 of this Act;
- 6) the information exchange agreement between auditors specified in § 204 of this Act.

(3) If a master UCITS has been established or founded in another EEA Member State, a confirmation of the financial supervision authority of the home country of the master UCITS that the master UCITS is a UCITS which is managed by a fund manager, which is in compliance with the conditions specified in subsection 3 (3) of this Act, must be appended to the application for an investment authorisation.

(4) The data and documents specified in subsection (2) of this section, with the exception of the information to unit-holders or shareholders, shall be submitted to the Financial Supervision Authority in Estonian or English. The Financial Supervision Authority has the right, as appropriate, to require translation into Estonian of the data and documents submitted in English. The information to unit-holders or shareholders specified in clause (2) 3) of this section shall be submitted in the Estonian language.

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§ 199. Processing of applications for investment authorisations and decisions

(1) If an application is not in compliance with the requirements provided for in subsection 198 (2) of this Act, the Financial Supervision Authority shall request elimination of deficiencies by the applicant.

(2) The Financial Supervision Authority may demand submission of additional data and documents if it is not convinced on the basis of the data and documents specified in subsection 198 (2) of this Act as to whether

the conditions of investment in the units or shares of a fund fulfil the requirements established by this Act or legislation issued on the basis thereof or if other circumstances relating to the fund need to be verified.

(3) In order to verify the data submitted by an applicant, the Financial Supervision Authority may request submission of more specific data and documents, perform on-site inspections, order assessments and special audits, consult state databases, request oral explanations from managers of fund managers or public limited funds, auditor firms, their representatives and third parties concerning the contents of the documents submitted and the facts which are relevant in making a decision on approval of the fund rules, articles of association or prospectus of the fund.

(4) The data and documents specified in subsections (1)-(3) of this section shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the applicant has failed to eliminate the deficiencies specified in subsection (1) of this section within the prescribed term or has not submitted the data, documents or information requested by the Financial Supervision Authority by the due date.

(6) The Financial Supervision Authority shall adopt a decision on issue or refusal to issue an investment authorisation within 15 working days after receipt of all the necessary data and documents and notify the fund manager of the feeder UCITS, public limited fund and depositary promptly thereof.

(7) The Financial Supervision Authority may refuse to issue an investment authorisation to a feeder UCITS if the activities or the data and documents describing the activities of the feeder UCITS, its fund manager, depositary, auditor firm or master UCITS do not meet the conditions provided by legislation for master UCITS or feeder UCITS.

§ 200. Notification of unit-holders or shareholders of feeder UCITS

(1) If an operating UCITS is transformed into a feeder UCITS or investments by a feeder UCITS in the units or shares of a master UCITS are terminated and investments are made in the units or shares of another master UCITS, the manager of the operating UCITS or the manager of the feeder UCITS investing in another master UCITS or the feeder UCITS shall provide the following information to all the unit-holders or shareholders of the UCITS:

- 1) a confirmation that an investment authorisation has been issued to the UCITS;
- 2) the key information of the feeder and the master UCITS;
- 3) the date on which investment of the assets of the UCITS in the master UCITS is commenced or on which the investment exceeds the limits provided for in subsection 117 (1) of this Act if the assets of the feeder UCITS have already been invested in the master UCITS;
- 4) a statement that the unit-holders or shareholders have the right to request redemption of their units or shares within 30 calendar days after submission of the information specified in this subsection for which no fee shall be charged, except compensation to cover the costs arising from redemption or exchange of units or shares.

(2) The information specified in subsection (1) of this section shall be submitted at least 30 calendar days before the date specified in clause (1) 3) of this section.

(3) If the units or shares of a UCITS are offered in another EEA Member State, the information specified in subsection (1) of this section shall also be submitted in the official language of the EEA Member States. With the consent of the financial supervision authority of another EEA Member State, the information may be submitted in another language. The translation of the information must be identical with the original document as to its substance. The feeder UCITS manager or the public limited fund which is a feeder UCITS shall be responsible for the translation.

(4) The information specified in subsection (1) of this section is provided to unit-holders or shareholders on paper or other durable medium. The information may be provided on another durable medium if the following conditions are met:

- 1) provision of the information corresponds to the manner in which the services between the unit-holder or shareholder and the fund or the fund manager is or is to be provided; and
- 2) if there is more than one option, a unit-holder or shareholder chose another durable medium for provision of information.

(5) Provision of the information specified in subsection (1) of this section on another durable medium requires in addition to the conditions specified in subsection (4) of this section that the unit-holder or shareholder has stated their e-mail address for the provision of the service or confirmed their continuous access to Internet in another manner.

(6) The assets of a feeder UCITS may be invested in a master UCITS in excess of the limit provided for in subsection 117 (1) of this Act upon expiry of 30 calendar days after submission of the information specified in subsection (1) of this section.

§ 201. Agreements for making investments in units or shares of master UCITS

(1) In order to make investments, a feeder and master UCITS enter into an agreement for making investments (hereinafter *agreement for making investments*) on the basis of which the master UCITS submits to a feeder UCITS all the documents and other information which is required for compliance with the requirements provided for in this Act for feeder UCITS in connection with:

- 1) access to information;
- 2) bases for termination of making investments;
- 3) procedure for issue and redemption of units or shares and establishment of the net asset value and for other transactions;
- 4) events which have an impact on the procedure of transactions;
- 5) sworn auditor's report;
- 6) changes in the procedure concerning the operation of master UCITS;
- 7) choice of applicable law.

(2) Concerning the provisions of clause (1) 1) of this section, the following shall be stated in an agreement for making investments:

- 1) how and when the master UCITS submits to the feeder UCITS the fund rules or articles of association, prospectus and key information of the master UCITS or the amendments thereto;
- 2) how and when the master UCITS notifies the feeder UCITS of outsourcing of the investment management and risk control functions to third parties;
- 3) how and when the master UCITS submits to the feeder UCITS the documentation related to the management of the master UCITS, including risk management rules and compliance reports;
- 4) violation by the master UCITS of the conditions provided by legislation, fund rules, articles of association of the fund or the agreement for making investments of which the master UCITS shall notify the feeder UCITS and how and when this is done;
- 5) in the case the assets of the feeder UCITS are invested for the purposes of risk mitigation in derivative instruments, how and when the master UCITS shall provide information to the feeder UCITS concerning the risk position related to the derivative instruments of the master UCITS which allows to calculate the total open risk position per feeder UCITS in accordance with clause 197 (2) 1) of this Act;
- 6) confirmation that the master UCITS shall notify the feeder UCITS of any other arrangements agreed upon with third parties for exchange of information and, if applicable, how and when the master UCITS allows the feeder UCITS to examine the above mentioned procedure for exchange of information.

(3) Concerning the provisions of clause (1) 2) of this section, the following data shall be stated in an agreement for making investments:

- 1) in which classes of units or shares of the master UCITS the assets of the feeder UCITS may be invested;
- 2) the costs covered by the feeder UCITS and the conditions of reduction or refund of charges or expenses by the master UCITS;
- 3) if applicable, the terms of transfer of assets from the feeder UCITS to the master UCITS.

(4) Concerning the provisions of clause (1) 3) of this section, the following data shall be stated in an agreement for making investments:

- 1) process of coordination of the frequency and time of establishment of the net asset value of the UCITS and publication of the prices of units or shares;
- 2) coordination of transmission of transaction orders of feeder UCITS and the role of third parties therein;
- 3) required information or procedure concerning trading, if the units or shares of one or both UCITS are traded on a regulated market;
- 4) other measures used for the performance of the duty of ensuring the frequency and time of establishment of the net asset value of the UCITS and timing of publication of the prices of units or shares specified in § 202 of this Act;
- 5) basis for conversion of transaction orders if the units or shares of UCITS are denominated in different currencies;
- 6) frequency of issue and redemption of the units or shares of the master UCITS and conditions of payment for the units or shares, including conditions of settlement, in the case of dissolution or merger of the master UCITS, upon redemption of the units or shares of the feeder UCITS for transfer of the assets to the feeder UCITS;
- 7) procedure for responding to the enquiries of unit-holders or shareholders and for settlement of complaints;
- 8) statement that the fund rules or articles of association or prospectus of the master UCITS limit or forego certain rights and powers provided to the unit-holders or shareholders of the feeder UCITS.

(5) Concerning the provisions of clause (1) 4) of this section, following shall be stated in an agreement for making investments:

- 1) how and when notification is given of suspension or resumption of the issue or redemption of the units or shares of the UCITS;
- 2) how a notification is made of errors in determining the value of the assets of the master UCITS and how these errors are resolved.

(6) Concerning the provisions of clause (1) 5) of this section, the agreement for making investments shall set out:

- 1) procedure for cooperation with regard to preparation of periodic reports of the feeder and the master UCITS if the periods of the financial year of the UCITS are the same;
- 2) how the necessary information concerning the master UCITS is submitted to the feeder UCITS for timely preparation of the periodic reports of the feeder UCITS, and the report of the sworn auditor of the feeder UCITS as at the final date of the financial year of the feeder UCITS in accordance with subsection 204 (3) of this Act, if the periods of the financial years of the UCITS are different.

(7) Concerning the provisions of clause (1) 6) of this section, an agreement for making investments shall set out how and when notification is given:

- 1) by the master UCITS of the intended amendments to the fund rules or articles of association, prospectus and key information and these amendments taking effect if this procedure differs from the procedure of notification of the unit-holders or shareholders of the master UCITS;
- 2) of the intended merger, division or dissolution of the master UCITS if the master UCITS has been established or founded in another EEA Member State;
- 3) of expiry of the authority of the master UCITS or feeder UCITS or the manager thereof to manage the assets of the fund;
- 4) of replacement of the manager of the master UCITS or feeder UCITS, depositary, audit firm thereof or other such third party who performs the asset management or risk control function;
- 5) of other changes in the conditions relating to management of the master UCITS.

(8) The agreement for making investments shall indicate that the Estonian law shall apply to the agreement and any disputes arising therefrom if both the feeder as well as the master UCITS have been established or founded in Estonia. If a feeder and master UCITS have been established or founded in different EEA Member States, the law of the home country of the feeder or master UCITS shall apply to the agreement for making investments and to any disputes arising therefrom in accordance with the provisions of the agreement for making investments.

(9) Agreements for making investments shall be available to the unit-holders or shareholders of a feeder and master UCITS free of charge at the request of the latter.

(10) If a feeder and master UCITS have the same fund manager, the investment conditions may be governed by the internal rules of the fund manager or public limited fund by providing the conditions specified in subsection (1) of this section and additionally measures which are used for mitigation of conflicts of interests between the feeder and the master UCITS or unit-holders or shareholders of the feeder and the master UCITS.

(11) The assets of a feeder UCITS shall not be invested in a master UCITS in excess of the limit provided for in subsection 117 (1) of this Act before the agreement for making investments or the internal rules of the fund manager specified in subsection 10 of this section or a public limited fund take effect.

§ 202. Coordination of conditions of issue and redemption of units or shares

(1) A feeder and master UCITS shall adopt appropriate measures to coordinate the time of establishment of the net asset value and the publication thereof to prevent arbitrage opportunities relating to market timing upon acquisition and transfer of the units or shares of the UCITS by investors.

(2) If the fund manager of a master UCITS or a public limited fund which is a master UCITS suspends redemption or issue of the units or shares of the master UCITS in accordance with the provisions of § 57 of this Act or it is suspended at the request of the Financial Supervision Authority or the financial supervision authority of the home country of the master UCITS established or founded in another EEA Member State, the feeder UCITS may suspend redemption or issue of its units or shares for the same period as the master UCITS.

§ 203. Exchange of information between depositaries

(1) If a feeder and master UCITS have different depositaries, the depositaries of the feeder and master UCITS enter into an information exchange agreement for the performance of their obligations (hereinafter *information exchange agreement between depositaries*) which must set out the following information:

- 1) documents and categories of information shared by the depositaries and whether the specified information and documents are submitted regularly or based on the request of the other party;
- 2) manner and deadlines of submission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;
- 3) involvement of the depositaries in the establishment of the net asset value of the UCITS and coordination of the measures specified for in subsection 202 (1) of this Act;
- 4) involvement of the depositaries in the coordination of the settlement for transactions of issue or redemption of the units or shares of the feeder UCITS by the master UCITS, settlement of such transactions and the procedure for transfer of the assets;
- 5) coordination of activities of the end of a financial year;
- 6) details of the violations of legislation, fund rules, articles of association or prospectus by the master UCITS of which the depositary of the master UCITS shall notify the depositary of the feeder UCITS, and how and when this will be done;
- 7) procedure for filling in a request for assistance submitted by one depositary to another;

8) random or unforeseeable events of which one depositary has to notify the other depositary and the manner and time of notification;

9) choice of applicable law in accordance with subsection 201 (8) of this Act.

(2) The assets of a feeder UCITS shall not be invested in a master UCITS before the information exchange agreement between the depositaries enters into force.

(3) The fund manager of a feeder UCITS shall be responsible for submission to the depositary of the feeder UCITS of such information concerning the master UCITS which is required for the performance of the duties of the depositary of the feeder UCITS.

(4) The depositary of a master UCITS shall promptly notify the Financial Supervision Authority, the feeder UCITS and the depositary thereof if the operation of the master UCITS is, according to the data known to the depositary, manifestly contrary to the legislation, fund rules, articles of association or prospectus of the fund and agreements entered into and may have an unfavourable impact on the feeder UCITS, which *inter alia* includes:

- 1) errors or mistakes in the establishment of the net asset value of the master UCITS;
- 2) errors or mistakes of the feeder UCITS in the transactions of or settlements for acquisition or transfer of the units or shares of the master UCITS;
- 3) errors or mistakes in the payment or capitalisation of income arising from the master UCITS;
- 4) errors or mistakes in withholding taxes;
- 5) failure to comply with the investment policy described in the fund rules or articles of association, prospectus and key information of the master UCITS;
- 6) violation of the investment restrictions provided by legislation, fund rules or articles of association, prospectus and key information of the master UCITS.

(5) When transmitting information pursuant to the information exchange agreement between the depositaries, the depositary does not violate the duty to maintain confidentiality of the data provided for in the legislation or agreement.

§ 204. Exchange of information between audit firms

(1) If a feeder and master UCITS have different audit firms, the audit firms of the feeder and master UCITS enter into an information exchange agreement for the performance of their duty to audit the UCITS which must set out the following data:

- 1) documents and categories of information shared by the audit firms and whether the specified information and documents are submitted regularly or based on the request of the other party;
- 2) manner and deadlines of submission of information by the audit firm of the master UCITS to the audit firm of the feeder UCITS;
- 3) coordination of the activities of audit firms in the activities of the end of a financial year;
- 4) facts disclosed in the report of the sworn auditor of the master UCITS which have to be presented in the report in accordance with subsection (4) of this section;
- 5) procedure for filling in the request for assistance submitted by one audit firm to another, including a request for obtaining additional information concerning the violations stated in the report of the sworn auditor of the master UCITS;
- 6) conditions of fulfilment of the obligation to conduct audit of the annual report and information concerning the fulfilment of the obligations specified in subsection (3) of this section and the method and deadlines for submission to the feeder UCITS of the report of the sworn auditor of the master UCITS or the drafts thereof;
- 7) choice of applicable law in accordance with subsection 201 (8) of this Act.

(2) The assets of a feeder UCITS may not be invested in a master UCITS before the information exchange agreement of the auditors enters into force.

(3) The auditor firm of a feeder UCITS shall proceed upon preparation of the sworn auditor's report from the report of the sworn auditor of the master UCITS. If the feeder and the master UCITS have different periods of a financial year, the sworn auditor's report of the master UCITS has to be prepared as at the final date of the financial year of the feeder UCITS.

(4) The report of the sworn auditor of a feeder UCITS must set out all the extraordinary circumstances indicated in the report of the sworn auditor of the master UCITS and their impact on the feeder UCITS.

(5) Upon forwarding of data pursuant to the information exchange agreement between auditor firms, the auditor firm does not violate the duty to maintain confidentiality of the data provided for in the legislation or agreement.

Division 3

Additional Requirements for Management of Master UCITS and Feeder UCITS

§ 205. Information to be disclosed concerning feeder UCITS

(1) In addition to the provisions of § 74 of this Act, the following data shall be indicated in the prospectus of a feeder UCITS:

- 1) notation that the UCITS is a feeder UCITS and the assets thereof are invested permanently and at least to the extent of 85 per cent in the units or shares of a master UCITS;
- 2) brief description of the master UCITS, its organisational structure, investment objective and policy and risk level and information about how the prospectus of the master UCITS can be examined;
- 3) information of whether the risk level and the rate of return of the feeder and master UCITS are the same or how they differ and a description of the investments made pursuant to subsection 197 (1) of this Act;
- 4) summary of the agreement for making investments specified in subsection 201 (1) of this Act or of the internal rules of the fund manager or public limited fund specified in subsection 201 (10) of this Act;
- 5) information concerning where and how the unit-holders or shareholders can obtain additional information concerning the master UCITS and the agreement for making investments;
- 6) complete list of the fees, charges and expenses incurred in connection with investments in the master UCITS paid on account of the feeder UCITS and the total amount of the fees of investments in the units or shares of the feeder and master UCITS;
- 7) information concerning the taxation impact of investments in the units or shares of the master UCITS on the feeder UCITS.

(2) The annual accounts of the feeder UCITS shall provide the calculation of the total amount of the fees for investment in the units or shares of the feeder UCITS and master UCITS.

(3) The annual and semi-annual reports of a feeder UCITS shall provide information concerning where the annual reports and the semi-annual reports of the master UCITS can be examined. The fund manager of a feeder UCITS or a public limited fund which is a feeder UCITS shall give the prospectus and annual and semi-annual reports of the master UCITS on paper to the unit-holders or shareholders free of charge at the request of the latter.

(4) The fund manager of a feeder UCITS or a public limited fund which is a feeder UCITS must submit to the Financial Supervision Authority the prospectus, key information of the master UCITS and any amendments thereto and the annual reports and semi-annual reports, if the master UCITS has been established or founded in another EEA Member State.

(5) Any advertising of a feeder UCITS must include a notation stating that the assets of the UCITS may be invested to the extent of at least 85 per cent in the units or shares of another UCITS.

(6) Disclosure of the rate of return of a UCITS pursuant to clause (1) 3) of this section must comply with the provisions of § 82 of this Act.

§ 206. Requirements for activities of feeder UCITS

(1) The fund manager of a feeder UCITS or a public limited fund which is a feeder UCITS shall monitor the activities of a master UCITS with due diligence, relying on the information and documents received from the fund manager, depositary and audit firm of the master UCITS, unless there is reason to doubt the accuracy thereof.

(2) The fee or any other benefit paid, for the purpose of making investments in the units or shares of a master UCITS, to the fund manager of a feeder UCITS or a public limited fund which is a feeder UCITS or another person who operates as a feeder UCITS or in the name of its fund manager must be included in the assets of the feeder UCITS.

§ 207. Requirements for activities of master UCITS

(1) The fund manager of a master UCITS or a public limited fund which is a master UCITS shall promptly communicate to the Financial Supervision Authority the data of each feeder UCITS which invests in the master UCITS.

(2) If a feeder UCITS has been established or founded in another EEA Member State, the Financial Supervision Authority shall promptly notify, in the case provided for in subsection (1) of this section, the financial supervision authority of the home country of the feeder UCITS of making an investment in the units of a master UCITS.

(3) A master UCITS shall not charge any issue or redemption fee to a feeder UCITS for issue or redemption of units or shares.

(4) The fund manager of a master UCITS or a public limited fund which is a master UCITS shall make available to the feeder UCITS or the fund manager, depositary and audit firm thereof in due time all the information which has to be submitted on the basis of the provisions of §§ 201-204 of this Act or the fund rules, articles of association or prospectus of the master UCITS.

Division 4

Specifications for Merger and Dissolution of Master UCITS and Feeder UCITS

§ 208. Specifications for merger of master UCITS

(1) The merger of a master UCITS takes effect provided that the master UCITS has submitted to all the unit-holders or shareholders of the master UCITS and the Financial Supervision Authority or the financial supervision authority of the home country of the feeder UCITS established or founded in another EEA Member State, at least 60 calendar days before the planned date of the merger taking effect, the merger information specified in subsection 156 (1) of this Act.

(2) Upon merger of a master UCITS, the feeder UCITS shall have the right to demand redemption of its units or shares in accordance with § 144 of this Act, unless the Financial Supervision Authority or the financial supervision authority of the home country of the feeder UCITS established or founded in another EEA Member State has issued the authorisation specified in clause 209 (1) 1) of this Act to it to continue as the feeder UCITS of the master UCITS.

§ 209. Continuation of activities of feeder UCITS upon merger of master UCITS

(1) If a master UCITS in respect of which a feeder UCITS has an investment authorisation merges with another UCITS, the feeder UCITS must be liquidated, unless the Financial Supervision Authority has:

- 1) issued an authorisation for continuation of the feeder UCITS as the feeder UCITS of the same master UCITS, if the master UCITS is the acquiring UCITS;
- 2) issued an authorisation to invest the units or shares of the feeder UCITS in the master UCITS founded as a result of the merger, if the master UCITS is the UCITS being acquired and as a result of the merger the feeder UCITS becomes a unit-holder or shareholder of the acquiring UCITS;
- 3) issued an authorisation to the feeder UCITS to invest in another master UCITS which is not involved in the merger; or
- 4) approved the amendments to the fund rules, articles of association or prospectus of the feeder UCITS according to which the UCITS is no longer a feeder UCITS.

(2) The provisions of subsection (1) of this section also apply to division of a master UCITS established or founded in another EEA Member State in respect of which the feeder UCITS established or founded in Estonia has an investment authorisation.

(3) A feeder UCITS shall submit the following documents to the Financial Supervision Authority to continue as a feeder UCITS of a master UCITS in accordance with clause (1) 1) of this section:

- 1) an application for continuing as the feeder UCITS of the master UCITS;
- 2) the application specified in subsections 37 (2) of this Act for approval of the amendments to the fund rules or articles of association;

(4) For making an investment in the units of the master UCITS established as a result of the merger or another master UCITS in accordance with clauses (1) 2) or 3) of this section, the feeder UCITS shall submit the following documents to the Financial Supervision Authority:

- 1) an application for an investment authorisation for making an investment in the units of the master UCITS established or founded as a result of the merger or another master UCITS and the data and documents specified in subsection 198 (2) of this Act;
- 2) the application specified in subsections 37 (2) of this Act for approval of the amendments to the fund rules or articles of association;

(5) In order to amend the fund rules or articles of association of a feeder UCITS in accordance with clause (1) 4) of this section, the feeder UCITS shall submit an application to the Financial Supervision Authority in accordance with the provisions of § 37 of this Act.

(6) A feeder UCITS must submit to the Financial Supervision Authority the application specified in subsection (3), (4) or (5) of this section or the application for liquidation authorisation specified in § 169 of this Act within one month after receipt of information on merger from the feeder UCITS.

(7) If a master UCITS has given information on a merger of feeder UCITS more than four months before the planned date of the merger taking effect, the feeder UCITS must submit the documents specified in subsection

(4) of this section at the latest three months before the planned date of the merger of the master UCITS taking effect.

§ 210. Proceedings of authorisation for merger of feeder UCITS and approval of amendments to fund rules or articles of association

(1) In the case the applications or documents specified in subsections 209 (3), (4) or (5) of this Act do not confirm with the requirements, the Financial Supervision Authority shall demand elimination of the deficiencies by the applicant.

(2) The Financial Supervision Authority may demand submission of additional data and documents if it is not convinced on the basis of the data and documents specified in subsection 209 (3), (4) or (5) of this Act whether a fund or investment in the units or shares of a fund fulfils the requirements established by legislation, or if other circumstances relating to the application need to be verified.

(3) In order to verify the data submitted by an applicant, the Financial Supervision Authority may request submission of more specific data and documents, perform on-site inspections, order assessments and special audits, consult state databases, request oral explanations from managers of fund managers or public limited funds, auditor firms, their representatives and third parties concerning the contents of the documents submitted and the facts which are relevant in making a decision on approval of the fund rules or articles of association.

(4) The data and documents specified in subsections (1)-(3) of this section shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the applicant has failed to eliminate the deficiencies specified in subsection (1) of this section within the prescribed term or has not submitted the data, documents or information requested by the Financial Supervision Authority by the due date.

(6) The Financial Supervision Authority shall make a decision on issue of refusal to issue the authorisation or approval specified in subsection 209 (1) of this Act within 15 working days after receipt of all the necessary data and documents and promptly inform the manager of the feeder UCITS and the public limited fund, which is a UCITS, and the depositary thereof.

(7) The Financial Supervision Authority may refuse to issue the authorisation or approval specified in clauses 209 (1) 2)-4) of this Act if investment of the financial or other resources received upon redemption of the units or shares from the master UCITS do not ensure sufficient liquidity of the assets of the feeder UCITS before making an investment in the units of the master UCITS established or founded upon merger or another master UCITS or continuation of the activities of the feeder UCITS as a UCITS which is not a feeder UCITS.

(8) The fund manager of a feeder UCITS or a public limited fund which is a feeder UCITS shall promptly notify the master UCITS of the decision specified in subsection (6) of this section.

(9) A feeder UCITS must promptly notify its unit-holders or shareholders in accordance with the provisions of § 200 of this Act after obtaining the authorisation specified in clause 209 (1) 2) or 3) of this Act and notification of the master UCITS thereof.

§ 211. Redemption of units or shares of feeder UCITS from master UCITS

(1) If the Financial Supervision Authority has not decided on issue of an authorisation or approval specified in clauses 209 (1) 2)-4) of this Act by the penultimate working day when a feeder UCITS has the right to apply for redemption of the units or shares of the feeder UCITS from a master UCITS in accordance with § 144 or subsection 208 (2) of this Act, the feeder UCITS must redeem all its units or shares from the master UCITS in the case this is necessary for the fulfilment of the obligation to redeem the units or shares of the feeder UCITS and in line with the interests of the unit-holders or shareholders of the feeder UCITS.

(2) Upon redemption of the units or shares of a feeder UCITS from a master UCITS, payments shall be made in money or other assets. Payments shall be made in full or in part in other assets if the feeder UCITS has granted consent for this purpose and this arises from the agreement on making investments between the feeder and the master UCITS.

(3) A feeder UCITS may transfer the assets received on the basis of subsection (2) of this section at any time for obtaining financial resources.

§ 212. Specifications for liquidation of master UCITS

(1) Liquidation proceedings of a master UCITS may be commenced three months after publication of the notice of liquidation of the master UCITS. If a feeder UCITS has been established or founded in another EEA Member State, a notice of liquidation must also be submitted, in addition to the provisions of the first sentence of this subsection, to the financial supervision authority of the home country of the feeder UCITS which assets have been invested in the units or shares of the master UCITS.

(2) Upon distribution of the assets of a master UCITS, the payments shall be made in money or other assets. Payments may be made from the master UCITS to a feeder UCITS in part or in full in other assets if this confirms to the agreement on making investments between the feeder and master UCITS and the decision of dissolution of the master UCITS.

(3) A feeder UCITS may transfer the assets received on the basis of subsection (2) of this section at any time for obtaining financial resources.

§ 213. Specifications for dissolution of feeder UCITS

(1) In the case of dissolution of a master UCITS in respect of which a feeder UCITS has an investment authorisation, the feeder UCITS must be dissolved, unless the Financial Supervision Authority has:

1) issued an investment authorisation for investment of the assets of the feeder UCITS in another master UCITS; or

2) approved the amendments to the fund rules, articles of association or prospectus of the feeder UCITS according to which the UCITS is no longer a feeder UCITS.

(2) A feeder UCITS shall submit the following documents to the Financial Supervision Authority in order to invest in the units or shares of another master UCITS in accordance with clause (1) 1) of this section:

1) an application for an investment authorisation for making an investment in the units of another master UCITS and the data and documents specified in subsection 198 (2) of this Act;

2) the application specified in subsections 37 (2) of this Act for approval of the amendments to the fund rules or articles of association;

(3) In order to amend the fund rules or articles of association of a feeder UCITS in accordance with clause (1) 2) of this section, the feeder UCITS shall submit an application to the Financial Supervision Authority in accordance with § 37 of this Act.

(4) A feeder UCITS shall submit to the Financial Supervision Authority an application for the authorisation specified in clause (1) 1) of this section or for the approval specified in clause 2) or for the authorisation for liquidation specified in § 169 of this Act at the latest twelve months after publication of the notice of liquidation of the master UCITS.

(5) If the notice of liquidation of a master UCITS was published more than five months before commencement of the liquidation proceedings of the master UCITS, the feeder UCITS must submit an application specified in clause (1) 1) of this section or approval specified in clause 2) or authorisation for liquidation specified in § 169 of this Act at least three months before the date of commencement of the liquidation proceedings.

§ 214. Proceedings of authorisation for merger of feeder UCITS upon dissolution of master UCITS and approval of amendments to fund rules

(1) If an application for the authorisation specified in clause 213 (1) 1) of this Act or for the approval specified in clause 2) does not comply with the requirements, the Financial Supervision Authority shall demand elimination of the deficiencies by the applicant.

(2) The Financial Supervision Authority may demand submission of additional data and documents if it is not convinced on the basis of an application for the authorisation specified in clause 213 (1) 1) of this Act or for the approval specified in clause 2) whether a fund or making of an investment fulfils the requirements established by legislation or if other circumstances relating to the application need to be verified.

(3) In order to verify the data submitted by an applicant, the Financial Supervision Authority may request submission of more specific data and documents, perform on-site inspections, order assessments and special audits, consult state databases, request oral explanations from managers of fund managers or public limited funds, auditor firms, their representatives and third parties concerning the contents of the documents submitted and the facts which are relevant in making a decision on approval of the rules, articles of association or prospectus of the fund.

(4) The data and documents specified in subsections (1)-(3) of this section shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) The Financial Supervision Authority may refuse to review an application if the applicant has failed to eliminate the deficiencies specified in subsection (1) of this section within the prescribed term or has not submitted the data or documents requested by the Financial Supervision Authority by the due date.

(6) The Financial Supervision Authority shall make a decision on issue of or refusal to issue an authorisation or approval on the basis of the application for authorisation specified in clause 213 (1) 1) of this Act or for approval specified in clause 2 within 15 working days after receipt of all the necessary data and documents and promptly notify the feeder UCITS, the fund manager and depositary thereof.

(7) The Financial Supervision Authority may refuse to issue an authorisation or approval on the basis of the application for authorisation specified in clause 213 (1) clause 1) of this Act or for approval specified in clause 2), if investment of the financial or other resources received upon redemption of the units or shares from a master UCITS does not ensure sufficient liquidity of the feeder UCITS before investment in the units or shares of another master UCITS or continuation of the activities of the feeder UCITS as a UCITS which is not a feeder UCITS.

(8) A feeder UCITS shall promptly notify a master UCITS of the decision specified in subsection (6) of this section.

(9) A feeder UCITS must promptly notify its unit-holders or shareholders in accordance with the provisions of § 200 of this Act promptly after obtaining the authorisation specified in clause 213 (1) 1) of this Act or the approval specified in clause 2).

§ 215. Obligations of Financial Supervision Authority to notify in connection with feeder UCITS and master UCITS

(1) The Financial Supervision Authority shall promptly notify a feeder UCITS established or founded in Estonia of any decision related to a master UCITS, its fund manager, depositary or auditor firm, measures implemented, failure to comply with the conditions provided for in this Chapter or information provided based on subsection 87 (1) of this Act.

(2) If a feeder UCITS established or founded in another EEA Member State has invested in a master UCITS, the Financial Supervision Authority shall promptly notify the financial supervision authority of the home country of the feeder UCITS of investment in the units or shares of the master UCITS and the circumstances provided for in subsection (1) of this section.

(3) If the financial supervision authority of the home country of a master UCITS established or founded in another EEA Member State communicates the information provided for in subsection (2) of this section to the Financial Supervision Authority, the Financial Supervision Authority shall promptly notify the feeder UCITS thereof.

Chapter 16 Defined-benefit Occupational Pension Funds

Division 1 Foundation

§ 216. Foundation and articles of association of defined-benefit occupational pension funds

(1) Upon foundation of a defined-benefit occupational pension fund as a public limited company which is offered to employees, public servants and members of the managing and controlling bodies of employers of an EEA Member State, the founders shall approve a depositary contract.

(2) Before registration of a defined-benefit occupational pension fund in the commercial register, the public limited company must apply for an activity licence pursuant to the provisions of this Division.

(3) A defined-benefit occupational pension fund shall promptly notify the Financial Supervision Authority of making an entry in the commercial register.

(4) The articles of association of a defined-benefit occupational pension fund must include the data specified in clauses 29 (1) 2), 8), 13) and 15), clauses (2) 1) and 3) and clauses 43 (1) 2) and 5) of this Act and:

- 1) the business name of the fund;
- 2) the agreed amount of payments to persons covered by the pension scheme, including amount of the payments in the case contributions to the fund are terminated before the due date established in the articles of association;
- 3) the list of the fees, charges and expenses paid for the account of all the persons covered by the pension scheme and the rates and procedure of calculation thereof;
- 4) the procedure for calculation of surrender value of the assets of the fund belonging to the persons covered by the pension scheme.

(4¹) The articles of association of a defined-benefit occupational pension fund must specify in the description of the investment policy of the fund whether and how the principles of responsible investment are complied with and whether and how environmental, climate, social and governance factors are taken into consideration in making investment decisions.

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(5) The articles of association of a defined-benefit occupational pension fund may also prescribe other conditions which are not contrary to legislation.

(6) Persons covered by a pension scheme are employees, public servants and members of managing and controlling bodies for whom an employer of an EEA Member State makes contributions to a defined-benefit occupational pension fund and persons for whom contributions are no longer made but to whom the fund has obligations, including persons to whom payments are made from the fund.

§ 217. Application for activity licences of defined-benefit occupational pension funds

(1) Upon application for an activity licence of a defined-benefit occupational pension fund, the Financial Supervision Authority must be submitted a written application and:

- 1) the data and documents provided for in clauses 313 (1) 1)-9) and 11) of this Act;
- 2) the data concerning the actuary of the fund which includes the name and personal identification code, in the absence thereof the date of birth or registry code of the of the actuary;
- 3) the depositary contract.

(2) The business plan of a defined-benefit occupational pension fund must contain the management structure of the fund and description of the rights, obligations and liabilities of the persons connected to the fund as well as a forecast and analysis of all the important economic indicators of the fund for at least three years, including concerning the following circumstances:

- 1) the amount and list of the own funds of the applicant;
- 2) the principles and methods of calculation of the technical reserves provided for in § 228 of this Act;
- 3) the revenue and expenditure of the applicant;
- 4) the balance sheet and income statement of the applicant;
- 5) the estimated volume of contributions to the fund, claims with respect to the fund and operating expenses and the portion of reinsurance therein and the amount of technical provisions by planned commitments.

(3) The accuracy of the data and documents of natural persons specified in clause 313 (1) 7) of this Act and clause (1) 2) of this section shall be confirmed by these persons by their signatures.

§ 218. Processing of applications for and decisions on activity licences

(1) If obvious deficiencies are found in a submitted application for an activity licence, the Financial Supervision Authority may refuse to review the application.

(2) If amendments are made to the data or documents specified in § 217) of this Act during processing of an application for an activity licence, the applicant shall promptly submit the respective amended data and documents to the Financial Supervision Authority. If an amendment is substantial, the Financial Supervision Authority may deem the day of receipt of information concerning this substantial amendment to be the beginning of the time limit of proceedings. In this case, the Financial Supervision Authority must notify the applicant of a new time limit of the proceedings.

(3) The Financial Supervision Authority may demand submission of additional data and documents within a reasonable term determined by it if it is not convinced on the basis of the data and documents specified in § 217 of this Act as to whether the applicant for an activity licence meets the requirements established for defined-benefit occupational pension fund in this Act.

(4) In order to verify the data submitted by an applicant, the Financial Supervision Authority may require that more specific data and documents be submitted, perform on-site inspections, order expert assessments or special audit, consult databases, request oral explanations from the managers, auditor firms of a defined-benefit occupational pension fund, their representatives and third parties concerning the contents of documents and facts which are relevant in the making of a decision on the issue of an activity licence.

(5) The provisions of subsection 315 (1) and the first sentence of subsection (3) of this Act apply to processing of the applications for activity licences and decisions of the Financial Supervision Authority.

§ 219. Bases for refusal to issue authorisation

(1) In addition to the provisions of clauses 33 1), 2), 5) and 8)-11) of this Act, the Financial Supervision Authority may refuse to issue an activity licence to a defined-benefit occupational pension fund if:

- 1) the applicant does not comply with the requirements provided by legislation for defined-benefit occupational pension funds;
- 2) the applicant does not have the necessary resources or experience to operate with continuity as a defined-benefit occupational pension fund;
- 3) a member of the management board or supervisory board of the applicant, its audit firm or shareholder does not comply with the requirements provided by legislation;
- 4) the actuary of the applicant does not comply with the requirements provided for in this Act;

- 5) close links between the applicant and another person prevent sufficient supervision over the applicant, or the requirements provided for by legislation or implementation of legislation of the state where the persons with whom the applicant has close links has been founded prevent sufficient supervision over the defined-benefit occupational pension fund;
- 6) the internal rules specified in § 224 of this Act are not sufficiently accurate or unambiguous for governing the activities of the defined-benefit occupational pension fund.

(2) The following shall be *inter alia* considered upon assessment of as provided for in clause (1) 2) of this section:

- 1) the level of the organisational and technical administration of the activities of the applicant;
- 2) the education, work experience, business contacts, trustworthiness and reputation of the persons related to the management of the applicant;
- 3) the business plan provided for in subsection 217 (2) of this Act and sufficiency thereof;
- 4) the activities, financial situation and reputation of the applicant, its parent company and persons which belong to the same consolidation group as the applicant.

§ 220. Amendment of articles of association

(1) Amendments to the articles of association of a defined-benefit occupational pension fund must be approved by the Financial Supervision Authority.

(2) The articles of association of a defined-benefit occupational pension fund may not be amended so that the fund no longer is a defined-benefit occupational pension fund for the purposes of this Act.

(3) A defined-benefit occupational pension fund shall have a decision to amend the articles of association approved by employers making contributions to the fund.

§ 221. Approval of amendments to articles of association

(1) In order to have the amendments to the articles of association approved, a defined-benefit occupational pension fund shall submit a written application, consent of employers making contributions to the fund to amendment of the articles of association of the fund and the documents specified in clauses 37 (2) 1), 2) and 4) of this Act (hereinafter in this section *application*) to the Financial Supervision Authority.

(2) The provisions of §§ 218 and 219 of this Act apply to review of applications, making of decisions to approve amendments and refusal to make this decision.

(3) Upon bringing the articles of association of a defined-benefit occupational pension fund into compliance with legislation, the amendments need not be approved by the Financial Supervision Authority, if the following conditions are met:

- 1) only such provisions are amended which the fund is required to amend pursuant to amendments made to legislation or by which corrections are made in the wording of the articles of association and which have no impact on the rights and obligations of the person covered by the pension scheme;
- 2) the amended articles of association shall be promptly submitted to the Financial Supervision Authority.

§ 222. Amendment of articles of association

(1) In the case the articles of association are amended, a defined-benefit occupational pension fund shall disclose, promptly after registration of the amendments, the amended text of the articles of association of the fund to the persons covered by the pension scheme and communicate the date of disclosing the amendments to the Financial Supervision Authority.

(2) If amendments to the articles of association need not be approved by the Financial Supervision Authority pursuant to this Act, a defined-benefit occupational pension fund shall disclose the amended text of the articles of association thereof to the persons covered by the pension scheme promptly after submission of the amendments to the articles of association to the Financial Supervision Authority.

(3) A defined-benefit occupational pension fund may be offered on the basis of the amended articles of association, after the entry into force of the amendments but not before one month has passed from disclosure of the amended text of the articles of association, to persons covered by the pension scheme.

(4) The term of disclosure provided for in subsection (3) of this section does not apply to bringing the articles of association of a defined-benefit occupational pension fund into compliance with legislation.

Division 2

Activities of Funds and Management of Funds

§ 223. Activities and management of defined-benefit occupational pension funds

(1) A defined-benefit occupational pension fund must take the provisions of §§ 309, 340, 341 and 343 of this Act into account in its activities, and the provisions concerning unit-holders and shareholders of funds apply to persons covered by the pension scheme.

(2) The provisions of subsections 48 (2)-(4), clause 49 (1) 2) and subsection (2), §§ 310-312, 342, 354 and subsections 362 (4)-(7) concerning defined-benefit occupational pension funds or public limited funds govern the management of occupational pension funds, and the provisions concerning unit-holders and shareholders of funds apply to persons covered by pension schemes.

(3) The key functions of a defined-benefit occupational pension fund provided for in subsection 347 (3) of this Act also include the function of an actuary and the actuary, who must possess and, as appropriate, be able to certify the knowledge and experience in the field of insurance and financial mathematics which correspond to the nature, scale and complexity of the risks inherent in the activities of the fund, shall be responsible for the performance of this function.

(4) An actuary of defined-benefit occupational pension funds shall:

- 1) coordinate and monitor the calculation of technical provisions;
- 2) assess relevance of the assumptions and methods used upon calculation of technical provisions and the models constituting the basis for these calculation;
- 3) assess sufficiency and quality of data used upon calculation of technical provisions;
- 4) compare, upon calculation of technical provisions, the assumption used and the actuary's hitherto experience;
- 5) notify the management board and members of the supervisory board of the fund of reliability and adequacy of the calculation of the technical provisions;
- 6) gives an opinion on the principles of assessment of mortality, survival and incapacity for work risks if the fund covers the specified risks;
- 7) gives an opinion on the relevance of the reinsurance programs, if used;
- 8) participate in the implementation of the fund's risk management system.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 224. Internal rules, internal control systems and mitigation and avoidance of conflicts of interests of defined-benefit occupational pension funds

(1) A defined-benefit occupational pension fund must have internal rules which comply with the requirements provided for in § 344 of this Act.

(2) The internal rules of a defined-benefit occupational pension fund also determine the principles and methods for calculation of technical provisions.

(3) The internal control system of a defined-benefit occupational pension fund must comply with the provisions of §§ 347-350 and § 363¹ of this Act, thereupon the provisions concerning unit-holders and shareholders of funds apply to persons covered by the pension scheme.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(4) A defined-benefit occupational pension fund must establish a procedure with regard to its fund manager for mitigation and avoidance of conflicts of interests which is in compliance with the requirements provided for in §§ 351-353 of this Act and complies with the requirements provided for in the specified sections, and the provisions concerning unit-holders and shareholders of funds apply to persons covered by the pension scheme.

(5) The risk control function of a defined-benefit occupational pension fund must enable, in addition to the provisions of subsection 363¹(1) of this Act, the monitoring and measuring of any risks associated with the formation of the technical provisions and, in the case the fund covers mortality, survival and or incapacity for work risks, the risks in turn associated with the management of these risks.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(6) A defined-benefit occupational pension fund must arrange the assessment of its risks according to § 363² of this Act and cover the following:

- 1) assessment of the measures adopted for mitigation and prevention of conflicts of interests, if the fund manager has outsourced the performance of the function of an actuary to an employer making contributions to the fund;
- 2) measures taken to restore general solvency and, as appropriate, the amount of the assets covering technical provisions;

3) assessment of the risks related to making of payments to persons covered by the pension scheme together with the terms and conditions for adopting the measures provided for in subsection 228 (11) of this Act and the assessment of the efficiency of these measures, potential indexing of payments and the impact thereof, and the impact assessment of the guarantees of employers making contributions issued in accordance with subsection 226 (5) of this Act or of the use of reinsurance.
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

Division 3

Shares, Share Capital and Prudential Requirements of Funds

§ 225. Shares, share capital and initial capital of defined-benefit occupational pension funds

- (1) A defined-benefit occupational pension fund may not issue preferred shares.
- (2) The initial capital of a defined-benefit occupational pension fund is at least three million euros.
- (3) The provisions of subsections 337 (3)-(6) of this Act apply to reduction of the share capital of a defined-benefit occupational pension fund and the provisions of subsections (7)-(9) of the same section apply to increase of the share capital.

§ 226. Own funds of defined-benefit occupational pension funds

- (1) The provisions of subsection 334 (1) of this Act apply to own funds of a defined-benefit occupational pension fund.
- (2) A defined-benefit occupational pension fund must have own funds for ensuring its liabilities at least at the level of the minimum solvency margin and the required solvency margin.
- (3) The minimum solvency margin of a defined-benefit occupational pension fund is three million euros and the required solvency margin shall be found in accordance with § 227 of this Act.
- (4) A defined-benefit occupational pension fund shall submit the calculation of the required solvency margin to the Financial Supervision Authority together with the annual report and in other cases provided by law.
- (5) The provisions of subsections (2)-(4) of this Act do not apply to a defined-benefit occupational pension fund if the rate of return or payments to persons covered by the pension scheme are guaranteed by an employer of an EEA Member State making contributions to this fund.

§ 227. Required solvency margin of defined-benefit occupational pension funds

- (1) The required solvency margin of a defined-benefit occupational pension fund shall be determined according to the liabilities thereof as the sum of the components found on the basis of subsections (2) and (5)-(7) of this section.
- (2) The required solvency margin shall be equal to the sum of the following two components:
 - 1) the amount of technical provisions which has first been multiplied by the coefficient 0.04 and thereafter by a coefficient which is the ratio of the amount of the technical provisions less the reinsurer's share and the total amount of the technical reserves, and the minimum value thereof is 0.85;
 - 2) in the case of liabilities which risk capital is positive, the amount of the risk capital which has first been multiplied by the coefficient 0.003 and thereafter by a coefficient which is the ratio of the risk capital less the reinsurer's share and the total amount of risk capital, and the minimum value thereof is 0.5.
- (3) By way of derogation from the provisions of clause (2) 2) of this section, the risk capital shall be multiplied as follows in the case of liabilities that cover a death risk:
 - 1) in the case of liabilities with a term of up to three years which risk capital is positive, first by the coefficient 0.001 and thereafter by the coefficient which is the ratio of the risk capital less the reinsurer's share and the total amount of risk capital, and the minimum value thereof is 0.5;
 - 2) in the case of liabilities with a term from three to five years which risk capital is positive, first by the coefficient 0.0015 and thereafter by the coefficient which is the ratio of the risk capital less the reinsurer's share and the total amount of risk capital, and the minimum value thereof is 0.5.
- (4) For the purposes of this section, risk capital is the amount paid from which the amount of the technical provisions corresponding to the amount of liabilities to persons covered by a pension scheme has been deducted.
- (5) In the case of liabilities which correspond to the type of life assurance specified in clause 13 (1) 10) of the Insurance Activities Act, the value of the respective assets shall be multiplied by the coefficient 0.01.
- (6) In the case of liabilities which correspond to the types of life assurance specified in clauses 13 (1) 8) and 12) of the Insurance Activities Act, the required solvency margin is equal to the sum of the following products:

- 1) the amount of technical provisions for liabilities in the case of which a defined-benefit occupational pension fund bears the investment risk shall be multiplied by the coefficient 0.04;
- 2) the amount of technical provisions for the liabilities in the case of which a defined-benefit occupational pension fund does not bear the investment risk and which management fees have been fixed for a period exceeding five years shall be multiplied by the coefficient 0.01;
- 3) the amount of administrative expenditure reduced by the management or other fees repaid to a defined-benefit occupational pension fund on the investments made by it for liabilities in the case of which the fund bears no investment risk and which management fee has been fixed for a period exceeding five years shall be multiplied by the coefficient 0.25;
- 4) in the case of liabilities which cover a death risk, it shall be first multiplied by the coefficient 0.003 and thereafter by the coefficient which is the ratio of the risk capital less the reinsurer's share and the total amount of the risk capital, and the minimum value thereof is 0.5.

(7) In the case of liabilities which correspond to the types of non-life insurance specified in clauses 12 1) and 2) of the Insurance Activities Act, the required solvency margin is the higher of the amounts calculated on the basis of subsections (8) and (9) or (10) and (11) of this section.

(8) The higher of gross written premiums or gross earned premiums of a financial year shall be multiplied by the coefficient 0.18 for an amount extending up to 50 million euros, and by the coefficient 0.16 for an amount in excess of that amount.

(9) The results obtained pursuant to subsection (8) of this section shall be added together and multiplied by the coefficient which is the ratio of the sum of the claims of the previous financial year less the reinsurer's share and the total amount of the claims of the same period. The minimum value of the specified coefficient is 0.5.

(10) The amount of the claims of the last three financial years shall be divided by three and multiplied by the coefficient 0.26 for an amount extending up to 35 million euros, and by the coefficient 0.23 for an amount in excess of that amount.

(11) The results obtained pursuant to subsection (10) of this section shall be added together and multiplied by the coefficient which is the ratio of the sum of the claims of the previous financial year less the reinsurer's share and the total amount of claims during the same period. The minimum value of the specified coefficient is 0.5.

(12) If the required solvency margin calculated on the basis of subsection (7) of this section is less than the required solvency margin calculated a year earlier, the required solvency margin is the largest of the required solvency margin calculated on the basis of subsection (7) of this section and the required solvency margin calculated on the basis of subsection (13) of this section.

(13) The required solvency margin calculated a year before the calculation of the required solvency margin shall be multiplied by a coefficient which is found when the provision for outstanding claims as at the end of a financial year less the reinsurer's share is divided by the provision for outstanding claims as at the end of the preceding financial year less the reinsurer's share. The maximum value of the specified coefficient is 1.

§ 228. Technical provisions of defined-benefit occupational pension funds and assets corresponding thereto

(1) Technical provisions of a defined-benefit occupational pension fund must correspond at any moment to the amount of liabilities to persons covered by the pension scheme which the fund can reasonably foresee.

(2) Calculation of the amount of the technical provisions of a defined-benefit occupational pension fund shall be based on reliable economic and actuarial estimates, taking account of the risks associated with changes in the conditions which constituted the basis for these estimates and taking account of the liabilities to persons covered by the pension scheme, including:

- 1) all guaranteed indemnities;
- 2) bonuses determined or guaranteed during the past periods;
- 3) potential liabilities of the fund arising from the choices of persons covered by the pension scheme established by the articles of association of the fund;
- 4) expenses.

(3) When calculating the technical provisions, a defined-benefit occupational pension fund shall use, upon discounting of the future cash flows arising from the obligations to persons covered by the pension scheme, the interest rates shown on the current interest rate term structure of the debt securities of the central governments of the euro area countries with the highest credit rating published on the website of the European Central Bank on the last settlement day before the calculation.

(4) If the interest rate term structure of the debt securities specified in subsection (3) of this section does not show the interest rates of debt securities with the duration necessary to calculate the technical provisions, the

Financial Supervision Authority must be previously notified of the method of extrapolation of the interest rate term structure.

(5) If the interest rate term structure of the debt securities specified in subsection (3) of this section and published on the website of the European Central Bank is unavailable due to any technical problems related to the website, a defined-benefit occupational pension fund shall use the best known data concerning the interest rates shown on the interest rate term structure of the specified debt securities for calculation of the technical provisions and notify the Financial Supervision Authority previously thereof.

(6) A defined-benefit occupational pension fund shall disclose the principles and methods of calculation of the technical provisions on its website and give reasons to the Financial Supervision Authority for the changes made in the principles and methods of calculation of the technical reserves.

(7) The amount of the assets of a defined-benefit occupational pension fund corresponding to the technical provisions must at all times cover at least the amount of the technical provisions of the fund.

(8) Investment of the assets covering the technical provisions shall be based on the provision of § 232 of this Act, taking account of the nature and duration of the obligations assumed by a defined-benefit occupational pension fund. Upon investment of the assets covering the technical provisions, the investments must be of high quality and the safety, liquidity and profitability of the investments must be ensured, maintaining at the same time diversity and spread of the investments.

(9) A defined-benefit occupational pension fund must submit to the Financial Supervision Authority a report of an actuary covering the following areas at the latest at the time of disclosure of its annual report:

- 1) sufficiency of technical provisions and the principles and methods of calculation thereof;
- 2) assets covering the technical reserves;
- 3) sufficiency of contributions;
- 4) sufficiency of own funds of the fund and their compliance with the requirements established in this Act.

(10) If the technical provisions of a defined-benefit occupational pension fund do not comply with the provisions of subsection (1) of this section, the Financial Supervision Authority may prohibit, by a precept, carrying out of transactions or performing of acts involving the assets of the fund or restrict the volume of the transactions or acts related to the assets thereof.

(11) If the amount of the assets covering the technical provisions of a defined-benefit occupational pension fund is less than the amount of the technical provisions, the defined-benefit occupational pension fund may increase, by the agreement of the employer making contributions to the fund, its contributions to the fund, or by agreement with the specified employer and persons covered by the pension scheme reduce the amount of the payment agreed upon in the articles of association of the fund, and allow to exit from the pension scheme on the basis of the principles of calculation of the surrender value that differs from those provided for in the articles of association.

Division 4

Offers of Defined-benefit Occupational Pension Funds, Information to be Disclosed and Reporting

§ 229. Offers of defined-benefit occupational pension funds

(1) A defined-benefit occupational pension fund may be offered only to employees, public servants and members of management and control bodies of such an employer of such an EEA Member State where offer of the respective pension scheme is permitted.

(2) A defined-benefit occupational pension fund may not be offered to employees, servants or members of the managing and controlling bodies of Estonian employers.

(3) The provisions of §§ 437 and 438 of this Act apply to cross-border activities of a defined-benefit occupational pension fund and offer in other EEA Member States.

§ 230. Disclosure of information concerning defined-benefit occupational pension funds

(1) The information to be disclosed concerning a defined-benefit occupational pension fund must be true and unambiguous and not misleading.

(2) Employers who wish to commence making of or who make contributions to a defined-benefit occupational pension fund and each person covered by the pension schemes thereof must have an opportunity to examine the documents specified in clauses 81 (2) 1)-3) of this Act at the seat, branches and on website thereof.

(3) In addition to the provisions of subsection (2) of this section, a defined-benefit occupational pension fund must submit once a year to each person covered by its pension scheme a pension statement in a format which can be reproduced in writing in compliance with the requirements provided for in subsections 94¹(1)-(4) and

(6)-(9) of this act and apply the provisions concerning unit-holders of funds to persons covered by the pension scheme.

(4) Pension statements of a defined-benefit pension fund must contain the following information in addition to the provisions of subsection 94¹(1) of this Act.

1) the nature of the guarantees in the pension scheme, including the sums payable in the future to persons covered by the pension scheme which amounts are guaranteed by the defined-benefit occupational pension fund or the employer making contributions to such fund, together with a reference to where it is possible to obtain additional information about the guarantees;

2) the amount of the technical provisions corresponding to the pension scheme and the assets corresponding to them;

3) the annuity rate, term of the annuity used upon calculation of the amount of payments to persons covered by the pension scheme, and other prerequisites if the payments are made in the form of an annuity;

4) the amount of payments to persons covered by the pension scheme in the case contributions to the fund are terminated before the due date provided for in the articles of association.

(5) At the request of a person covered by a pension scheme and at the latest six months before commencement of payments, the defined-benefit occupational pension fund shall notify the person covered by the pension scheme of the modes of payment offered to the person.

(6) If payments are made to a person covered by a pension scheme, the defined-benefit occupational pension fund shall notify the person at least once a year of the payments to which the person is still entitled, and the mode of payment chosen.

(7) Documents specified in clauses 81 (2) 1)-3) of this Act and subsection (3) of this section must be disclosed in the official language of the contracting state where the defined-benefit occupational pension fund is offered. The Financial Supervision Authority shall have the right to demand from the defined-benefit occupational pension fund translation of the documents specified in this section into the Estonian language.

(8) A defined-benefit occupational pension fund shall provide free copies of the documents specified in clauses 81 (2) 1)-3) of this Act and subsection (3) of this section to persons covered by the pension scheme at their request.

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§ 231. Accounting and reporting of defined-benefit occupational pension funds

(1) A defined-benefit occupational pension fund is required to keep separate accounting concerning the contributions made for each pension covered by the pension scheme, rights earned and surrender value of the assets of the fund as well as payments made to the person.

(2) The financial year of a defined-benefit occupational pension fund is a calendar year and its accounting and reporting shall be organised on the basis of the Accounting Act, this Act, other legislation and the internal rules of the fund.

(3) The provisions of subsection 81 (4) of this Act apply to disclosure of annual reports and semi-annual reports of a defined-benefit occupational pension fund.

(4) The provisions of §§ 86, 87 and 371 of this Act apply to audits of a defined-benefit occupational pension fund.

(5) The auditor firm of a defined-benefit occupational pension fund must also assess sufficiency of the technical provisions of the fund.

(6) The provisions of subsections 370 (1)-(8) of this Act apply to reports submitted to the Financial Supervision Authority concerning a defined-benefit occupational pension fund.

Division 5

Management and Investment of Assets of Defined-benefit Occupational Pension Funds

§ 232. Requirements for investment of assets of defined-benefit occupational pension funds

(1) Investments of the assets of a defined-benefit occupational pension fund, including assets covering technical reserves shall be based on the provisions of this Act concerning investment of assets of occupational pension

funds, and the provisions concerning unit-holders and shareholders of funds apply to persons covered by pension schemes.

(2) A defined-benefit occupational pension fund shall invest the assets covering technical provisions in the same currency in which the liabilities were assumed. The assets covering the technical reserves may be invested in other currencies to the total extent of up to 30 per cent of the amount of the technical reserves.

§ 233. Partial outsourcing of functions of defined-benefit occupational pension funds

(1) A defined-benefit occupational pension fund may only engage in the management of its assets and may not provide fund management services or other services to any third parties.

(2) Outsourcing of the functions of a defined-benefit occupational pension fund shall be based on the provisions of §§ 364-367 of this Act and the provisions concerning unit-holders and shareholders of funds apply to persons covered by the pension scheme.

(3) A defined-benefit occupational pension fund may also outsource investment of the assets of the fund, in addition to the persons specified in clause 365 (1) 2) of this Act, to insurers which are founded in Estonia or a foreign state and which hold an activity licence for the classes of life insurance specified in clause 13 (1) 12) of the Insurance Activities Act.

(4) A defined-benefit occupational pension fund has to inform the Financial Supervision Authority, upon outsourcing the functions related to the performance of the actuary function or other key functions provided for in subsection 347 (3) of this Act to a third party, before the entry into force of the contract for outsourcing of these functions.

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§ 233¹. Transfer of liabilities to persons covered by pension schemes and assets

(1) A defined-benefit occupational pension fund (hereinafter in this Division *transferor*) may transfer, under the terms and conditions provided for in this Act, its liabilities to persons covered by a pension scheme and assets or any part thereof (hereinafter in this Division *liabilities and assets*) to a defined-benefit occupational pension fund established in Estonia or any other contracting state or to an insurer which holds an activity licence for the class of life insurance specified in clause 13 (1) 12) of the Insurance Activities Act (hereinafter both in this Division *recipient*).

(2) The liabilities and assets shall be transferred by a contract for transfer of liabilities and assets in which the rights and obligations of the transferor and recipient are provided for. The terms and conditions provided for in the contract for transfer of liabilities and assets must not damage the interests of the persons covered by the pension scheme, and the contract may not prescribe covering of any costs related to the transfer for the account of persons covered by other pension schemes of the transferor or the recipient.

(3) A transferor shall notify the persons covered by its pension scheme of the terms and conditions of transfer of the liabilities and assets.

(4) In order to transfer the liabilities and assets of a defined-benefit occupational pension fund, the consent of the employer making contributions to the pension fund and the majority of the persons covered by the pension scheme is required, including the majority of the persons covered by the pension scheme and to whom payments are already made.

(5) In order to obtain an authorisation for transfer of liabilities and assets, the recipient has to submit a written application and the following information and documents (hereinafter together in this Division *application*) to the Financial Supervision Authority:

- 1) the business name and address of the seat of the transferor and the recipient and the other contracting state, if the transferor on a defined-benefit occupational pension fund of any other contracting state;
- 2) the business name and address of the seat of the employer which makes contributions to the defined-benefit occupational pension fund and in relation to the pension scheme of which the liabilities and assets are transferred;
- 3) the consent to transfer the liabilities and assets by the employer which makes contributions to the defined-benefit occupational pension fund and the majority of the persons covered by the pension scheme, including the majority of the persons covered by the pension scheme and to whom payments are already made;
- 4) other contracting states which social and labour law is applied to the pension scheme the liabilities and assets related to which are transferred;
- 5) the contract for transfer of the liabilities and assets;
- 6) the application and documents specified in subsections 221 (1) of this Act for approval of amendments to the articles of association of the defined-benefit occupational pension fund;
- 7) relevant terms and conditions of the pension scheme the liabilities and assets related to which are transferred;
- 8) the list and amount of the technical provisions and other liabilities transferred and the assets corresponding to them.

(6) The recipient has to notify the Financial Supervision Authority immediately of any changes made during the proceedings in the information and documents specified in subsection (5) of this section.

(7) If the transferor is a defined-benefit occupational pension fund of another contracting state, the Financial Supervision Authority shall notify the financial supervision authority of this contracting state of receipt of an application for an authorisation to transfer liabilities and assets and, send it to the latter.

(8) Subsections 137³(1)-(9) and (13) of this Act apply to proceedings of an application for authorisation to transfer liabilities and assets and to grant of authorisation, and the provisions concerning fund managers are implemented to defined-benefit occupational pension funds and the provisions concerning unit-holders of funds are implemented to persons covered by pension schemes.

(9) Subsection 229 (3) of this Act shall not apply to cross-border offers of defined-benefit occupational pension funds associated with transfer of liabilities and assets.

(10) If the recipient is a defined-benefit occupational pension fund established in another contracting states or an insurer which holds an activity licence for the class of life insurance specified in clause 13 (1) 12) of the Insurance Activities Act, the authorisation of the financial supervision authority of this other contracting state is required to transfer the liabilities to persons covered by the pension scheme and assets.

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Division 6

Division, Transformation, Merger and Dissolution of Defined-benefit Occupational Pension Funds

§ 234. Division and transformation of defined-benefit occupational pension funds

(1) Division of a defined-benefit occupational pension fund is not permitted.

(2) A defined-benefit occupational pension fund may not be transformed into a company of a different type.

§ 235. Merger of defined-benefit occupational pension funds

(1) A defined-benefit occupational pension fund may only merge with another defined-benefit occupational pension fund founded under the Estonian law.

(2) The provisions of subsection 393 (2) and §§ 399 and 433¹-433⁹ of the Commercial Code do not apply to mergers of defined-benefit occupational pension funds.

(3) A merger agreement of defined-benefit occupational pension funds may not be entered into with a suspensive or resolute condition, except in the case the condition is to obtain an authorisation for merger from the Financial Supervision Authority. Rights and obligations shall arise from the merger agreement after issue of an authorisation for merger, unless a later term is provided for in the agreement or authorisation for merger.

(4) Within three days after entry into a merger agreement, the management boards of merging defined-benefit occupational pension funds must notify the Financial Supervision Authority and submit a joint merger plan concerning the acts related to the merger which includes the merger schedule, processes and activities planned in the framework of the merger and the structure of the fund after the merger.

(5) The report of a sworn auditor on the merger agreement of defined-benefit occupational pension funds must include an opinion as to whether the acquiring fund or fund being founded has proper technical provisions and assets covering these.

§ 236. Authorisation for merger of defined-benefit occupational pension funds

(1) In order to merge, a defined-benefit occupational pension fund shall apply to the Financial Supervision Authority for an authorisation (hereinafter in this section *authorisation for merger*) and submit a written application and the following data and documents (hereinafter application, data and documents jointly in this section *application*):

- 1) the merger agreement;
- 2) the merger report;
- 3) the report of a sworn auditor specified in subsection 235 (5) of this Act.

(2) The Financial Supervision Authority shall issue an authorisation for merger if the interests of the persons covered by the pension schemes of the merging defined-benefit occupational pension funds are sufficiently

protected and the required solvency margin and assets covering the technical provisions of the fund comply with the requirements.

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

- 1) the data or documents submitted upon application for authorisation for merger do not fulfil the requirements established by this Act or are inaccurate, misleading or incomplete;
- 2) the defined-benefit occupational pension fund fails to submit in due time the data, documents or information subject to submission to the Supervision Authority upon applying for authorisation for merger or other data, documents or information required by the Financial Supervision Authority;
- 3) the financial condition of the acquiring defined-benefit occupational pension fund does not comply with the requirements provided for in this Act;
- 4) the merger is likely to damage the legitimate interests of the persons covered by the pension schemes of the merging defined-benefit occupational pension funds.

(4) The Financial Supervision Authority shall make a decision to issue or refuse to issue an authorisation for merger within one month after submission of all the necessary and proper data and documents but not later than three months after submission of the application.

§ 237. Notification of merger of defined-benefit occupational pension funds

(1) An acquiring defined-benefit occupational pension fund and a defined-benefit occupational pension fund being acquired shall publish, promptly after receipt of an authorisation for merger, a notice concerning the merger of the fund on its website and indicate the data concerning the date of issue of the authorisation for merger and the planned effective date of the merger provided for in the merger agreement.

(2) An acquiring defined-benefit occupational pension fund and a defined-benefit occupational pension fund being acquired are required to notify the employers making contributions to the fund and the persons covered by their pension schemes, taking account of the provisions of subsections 159 (3)-(5) of this Act concerning submission of information to unit-holders, and submit:

- 1) the explanations of and reasons for the merger;
- 2) the terms and conditions of the merger process, including information about passing the merger resolution and the planned effective date of the merger resolution;
- 3) the rights of employers and persons covered by the pension schemes, including terms and conditions for making payments.

§ 238. Voluntary dissolution and compulsory dissolution of defined-benefit occupational pension funds

(1) The general meeting of a defined-benefit occupational pension fund may decide to dissolve the fund only if all the obligations to the persons covered by the pension scheme and the assets have been transferred to another defined-benefit occupational pension fund or the insurer which holds an activity licence for the class of life insurance specified in clause 13 (1) 12) of the Insurance Activities Act, or all the obligations to the persons covered by the pension scheme have been fulfilled and the assets of the fund are sufficient to fully satisfy the justified claims of all creditors.

(2) The provisions of §§ 131-136 of the Insurance Activities Act concerning transfer of insurance portfolios apply to transfer of obligations to persons covered by pension schemes and assets to another defined-benefit occupational pension fund or insurer.

(3) A defined-benefit occupational pension fund shall submit within 20 days after adopting a decision of dissolution of the fund an application to the Financial Supervision Authority for an authorisation for voluntary dissolution of the fund together with the opinion of the depositary and the data which certify compliance with the conditions specified in subsection (1) of this section.

(4) The Financial Supervision Authority shall issue an authorisation for voluntary dissolution of a defined-benefit occupational pension fund only if the condition provided for in subsection (1) of this section is met.

(5) Compulsory dissolution of a defined-benefit occupational pension fund shall be initiated by the Financial Supervision Authority.

(6) The Financial Supervision Authority may file a petition with a court for compulsory dissolution of a defined-benefit occupational pension fund if the activity licence of the fund has been revoked.

(7) The provisions §§ 162-164 of the Insurance Activities Act concerning compulsory dissolution of insurers apply to compulsory dissolution of defined-benefit occupational pension funds.

(8) The provisions §§ 172 and 180 of this Act apply to notices of liquidation of defined-benefit occupational pension funds and the provisions of § 181 of this Act apply to submission of applications to the commercial register concerning liquidation of funds.

(9) The Financial Supervision Authority shall promptly notify the financial supervision authorities of the EEA Member States to the employees, public servants and members of the managing and controlling bodies of the employer of which a defined-benefit occupational pension fund is offered of the decision to dissolve the fund

and explain the consequences of the decision and other matters which have relevance to the case in the opinion of the Financial Supervision Authority.

§ 239. Bankruptcy of defined-benefit occupational pension funds

(1) Filing of and proceedings of a bankruptcy petition of a defined-benefit occupational pension fund, declaration of bankruptcy and bankruptcy proceedings thereof shall be carried out pursuant to the procedure provided for in the Bankruptcy Act, taking account of the specifications provided for fund managers in §§ 389-393 and 395 of this Act and the specifications provided for in this Chapter.

(2) The Financial Supervision Authority shall promptly notify the financial supervision authorities of the EEA Member States to the employees, public servants and members of the managing and controlling bodies of the employer of which a defined-benefit occupational pension fund is offered of declaration of bankruptcy.

(3) Claims of persons covered by a pension scheme shall be given priority over the claims specified in subsection 153 (1) of the Bankruptcy Act. Claims arising from pension schemes shall be met to the extent of the technical provisions covering the obligations to each person covered by the pension scheme.

(4) Transactions conducted in the course of the bankruptcy proceedings of a defined-benefit occupational pension fund in connection with obligations to persons covered by the pension scheme and transfer of assets to another defined-benefit occupational pension fund or insurer which holds an activity licence for the classes of life assurance specified in clause 13 (1) 12) of the Insurance Activities Act shall not be subject to recovery before declaration of bankruptcy of the fund.

(5) A bankruptcy committee with the consent of the trustee in bankruptcy shall have the right to sell the assets of the defined-benefit occupational pension fund as a whole. The bankruptcy committee shall grant its consent only in the case the buyer secures all the claims of creditors.

Part 3 NON-PUBLIC FUNDS

Chapter 17 General Provisions

§ 240. Application of Part

(1) This Part applies to non-public funds established or founded in Estonia pursuant to this Act. The provisions of §§ 267-271 of this Act apply to non-public funds managed by alternative fund managers.

(2) The requirements provided for in §§ 453 and 454 of this Act apply to submission of information to the Financial Supervision Authority, unless additional requirements arise from this Act to fund managers for submission of information.

Chapter 18 Establishment and Foundation of Non-public Funds

Division 1 Conditions of Establishment and Foundation of Non-public Funds

§ 241. Establishment of common funds

(1) The establishment of a common fund is decided and the fund rules are approved by the management board of the fund manager.

(2) Fund rules enter into force and a common fund is deemed to have been established after making of the relevant decision, unless the fund rules prescribe a later date for entry into force.

§ 242. Foundation and entry in register of public limited funds

(1) The following must be additionally included in an application for entry of a public limited fund in the commercial register and entered in the commercial register concerning the public limited fund:

- 1) a notation that the public limited fund is a fund founded pursuant to this Act which amount of share capital corresponds to the amount of the net asset value of the fund;
- 2) the amount of share capital paid up upon foundation of the fund;
- 3) the business name, registry code and address of the fund manager;
- 4) the business name, registry code and address of the person maintaining the share register of the public limited fund.

(2) A notation must be appended to the application for entry of a public limited fund in the commercial register stating that an activity licence has been issued to a fund manager for management of the fund.

(3) A public limited company may be transformed into a public limited fund if all the shareholders of the public limited company are in favour of the respective amendment to the articles of association. The future fund manager of the public limited company must be designated at the general meeting where the transformation into a public limited fund is decided. Upon transformation of a public limited company into a public limited fund, the general meeting of the public limited company shall approve the management contract.

§ 243. Foundation and entry in register of limited partnership funds

(1) The following must be additionally included in an application for entry of a limited partnership fund in the commercial register and entered in the commercial register concerning the limited partnership fund:

- 1) a notation that the limited partnership fund is a fund established pursuant to this Act;
- 2) the business name, registry code and seat of the general partner of the limited partnership fund;
- 3) if the fund is managed by a fund manager on the basis of a management contract, the business name, registry code and address of the fund manager;
- 4) the business name, registry code and address of the registrar of the shares of the limited partnership fund.

(2) A confirmation of the Financial Supervision Authority must be appended to the application for entry of a limited partnership fund in the commercial register that an activity licence for the management of a fund has been issued to at least one general partner of the limited partnership fund or appointed fund manager of a limited partnership fund or it has registered its activities with the Financial Supervision Authority in accordance with the provisions of Part 5 of this Act.

(3) The provisions of clause 84 (4) and § 127 of the Commercial Code do not apply to entry of a limited partnership fund in the commercial register.

(4) An operating limited partnership may not be transformed into a limited partnership fund.

(5) An application for entry of a limited partnership fund in the commercial register and other applications submitted to the commercial register shall be signed by all general partners of the limited partnership fund and the fund manager of the limited partnership fund.

[RT I, 31.12.2016, 3 - entry into force 01.01.2017]

Division 2

Rules, Articles of Association and Partnership Agreements of Funds

§ 244. Requirement for fund rules, articles of association and partnership agreements of funds

(1) The fund rules must set out:

- 1) the name of the fund and information that the fund was established as a common fund;
- 2) the seat of the fund;
- 3) in the case of a fixed-term fund the closing date of the fund;
- 4) the business name, registry code and host country of the fund manager;
- 5) a notation if the fund is a feeder fund or master fund;
- 6) general characteristics of the investment policy of the fund, including economic sector, geographical area of the investments and the assets in which investment of the assets of the fund is permitted as well as information concerning the principles of use of leverage and borrowing;
- 7) the conditions of issue and redemption of units;
- 8) the classes of units if the fund has different classes of units;
- 9) the fees and charges paid for the account of the fund and the rates thereof and the procedure for making payments to partners for the account of the income of the fund;
- 10) the procedure for establishment of the net asset value of the fund and disclosure thereof;
- 11) the registrar of the units of the fund and the registration procedure;
- 12) the right of unit-holders to participate in the general meeting of the common fund and the conditions relating to obtaining of this right, the procedure for calling the general meeting of unit-holders and adoption

of decisions, including the venue of the general meeting and the conditions for covering the costs of holding a general meeting;

- 13) the procedure for election of a representative of the general meeting, if any;
- 14) the conditions of outsourcing of the activities related to the management of the fund to third parties;
- 15) information that the fund is not public, therefore the investor protection requirements of public funds do not expand to this fund;
- 16) the procedure for amendment of the fund rules;
- 17) the bases and procedure for dissolution and liquidation of the fund.

(2) The information specified clause 244 (1) 3¹) of the Commercial Code shall not be set out in the articles of association of a public limited fund. In addition to the information provided for in the Commercial Code, the articles of association of a public limited fund must contain the following information:

- 1) a notation that the fund was founded pursuant to this Act as a public limited fund and the amount of the share capital thereof corresponds to the amount of the net asset value of the fund;
- 2) the amount of the share capital paid upon foundation of the fund and the amount of the minimum and maximum capital and a notation that, to the extent of the minimum and maximum capital, the public limited fund may issue and redeem shares at any time;
- 3) in the case of a fixed-term fund the closing date of the fund;
- 4) the business name, registry code and host country of the fund manager;
- 5) a notation if the fund is a feeder fund or master fund;
- 6) general characteristics of the investment policy of the fund, including economic sector, geographical area of the investments and the assets in which investment of the assets of the fund is permitted as well as information concerning the principles of use of leverage and borrowing;
- 7) the fees and charges paid for the account of the fund and the rates thereof and the procedure for making payments to shareholders for the account of the income of the fund;
- 8) the procedure for establishment of the net asset value of the fund and disclosure thereof;
- 9) the person maintaining the share register of the fund and the registration procedure;
- 10) the conditions of outsourcing of the activities related to the management of the fund to third parties;
- 11) information that the fund is not public, therefore the investor protection requirements of public funds do not expand to this fund;
- 12) the specifications for the competences of the managing bodies of the fund compared to the provisions of the Commercial Code and this Act;
- 13) the obligations of the fund manager provided for in the management contract;
- 14) the procedure for amendment of the basic document;
- 15) the bases and procedure for dissolution and liquidation of the fund.

(3) In addition to the information provided for in the Commercial Code, the partnership agreement of a limited partnership fund must contain the following information:

- 1) a notation that the fund has been founded pursuant to this Act as a limited partnership fund;
- 2) in the case of a fixed-term fund the closing date of the fund;
- 3) the business name, registry code and host country of the fund manager;
- 4) a notation if the fund is a feeder fund or master fund;
- 5) general characteristics of the investment policy of the fund, including economic sector, geographical area of the investments and the assets in which investment of the assets of the fund is permitted as well as information concerning the principles of use of leverage and borrowing;
- 6) the conditions of issue and redemption of shares;
- 7) classes of shares if the fund has different classes of shares;
- 8) the fees and charges paid for the account of the fund and the rates thereof and the procedure for making payments to partners for the account of the income of the fund;
- 9) the procedure for establishment of the net asset value of the fund and disclosure thereof;
- 10) the registrar of the shares of the fund and the registration procedure;
- 11) the conditions of outsourcing of the activities related to the management of the fund to third parties;
- 12) information that the fund is not public, therefore the investor protection requirements of public funds do not expand to this fund;
- 13) the procedure for amendment of the partnership agreement;
- 14) the bases and procedure for dissolution and liquidation of the fund.

(4) The seat of a common fund shall be the seat of its fund manager or the seat of its Estonian branch. If a common fund established on the basis of this Chapter is managed by a foreign fund manager by means of providing cross-border services, the seat of the common fund shall be the seat of the person with whom the fund manager has entered into a contract for organisation of purchase and sale of units of funds. If the foreign fund manager has not entered into a contract for organisation of purchase and sale of the units of the common fund, the seat of the common fund shall be the seat of the fund manager.

(5) If a common fund established on the basis of this Chapter is managed by a fund manager of an alternative fund of an EEA Member State by means of providing cross-border services, the seat of the fund is the seat of the depositary or Estonian branch of the depositary of the fund.

(6) If the assets of a fund which does not need to have a depositary pursuant to this Act are held by a third party, the fund rules or articles of association must specify that the depositary's rights, obligations and liability of this third party are provided for in the depositary contract entered into between the parties.

(7) The rules of a fund must prescribe the right of unit-holders to adopt decisions relating to the activities of the fund at the general meeting of unit-holders (hereinafter in this Division *general meeting*).

(8) The fund rules, articles of association or partnership agreement of a fund may prescribe other rules which are not contrary to legislation.

(9) If the assets of a common fund are divided into sub-funds, the information specified in this section shall also be submitted concerning each sub-fund, if applicable, and if this information differs from that provided for the fund in the fund rules.

[RT I, 31.12.2016, 3 - entry into force 01.01.2017]

§ 245. Amendment of fund rules

(1) Amendment of fund rules shall be resolved by the general meeting, unless otherwise provided for in the fund rules.

(2) The fund manager shall notify the unit-holders and depositary of the fund, if any, of amendments to the fund rules promptly after making a decision on amendment of the fund rules.

§ 246. Amendment of articles of association of public limited funds

(1) Amendment of the articles of association of a public limited fund shall be decided by the general meeting, unless otherwise provided in the articles of association of the public limited fund.

(2) In order to amend the articles of association of a public limited fund, the public limited fund shall promptly notify its shareholders and depositary, if any. The shareholders need not be notified of amendment of the articles of association of the public limited fund if amendment of the articles of association is decided by the general meeting pursuant to the articles of association of the public limited fund.

§ 247. Amendment of partnership agreements of limited partnership funds

A limited partnership fund shall notify the partners and depositary of the fund of amendment of the partnership agreement of the limited partnership fund promptly after making a decision on amendment of the partnership agreement of the limited partnership fund.

Chapter 19 Management of Non-public Funds

Division 1 Management of Common Funds

§ 248. General meetings of unit-holders

(1) unit-holders shall exercise their rights with respect to a common fund at a general meeting, unless otherwise provided by law.

(2) The costs of holding a general meeting shall be covered by the fund manager, unless otherwise provided for in the fund rules.

§ 249. Competence of general meetings

(1) A general meeting shall have the following competences:

- 1) to amend the fund rules, unless otherwise provided for in the fund rules;
- 2) to decide on the merger of the fund, unless otherwise provided for in this Act;
- 3) to decide on dissolution of the fund or submission of an application for declaring the fund insolvent;
- 4) to approve exchange of the depositary of the fund, if any;
- 5) to elect and remove a representative of the general meeting, if any;
- 6) to replace the fund manager;
- 7) other issues placed within the competence of the general meeting by the fund rules.

(2) The decisions specified in subsection (1) of this section are adopted by the general meeting on the initiative of the fund manager or the general meeting itself.

(3) The right to make the decision specified in clauses (1) 1), 4), 6) or 7) of this section may be granted to the supervisory board or management board of the fund manager of a common fund by the fund rules or decision of

the general meeting. If so prescribed by the fund rules, the general meeting may reintroduce the respective rights into the competence of the general meeting. The decision of the general meeting on transfer or reintroducing of the making of decisions is adopted if at least two-thirds of the votes represented at the general are in favour, unless the fund rules prescribe a greater majority requirement.

§ 250. Representatives of general meetings

(1) If so prescribed by the fund rules or if the fund has no fund manager holding the authority to manage the respective fund, the general meeting may elect an authorised representative of the general meeting for representation of the general meeting and for information exchange with the fund manager (hereinafter *general meeting representative*). The procedure for election of a general meeting representative shall be provided for in the fund rules.

(2) The powers of a general meeting representative remain valid indefinitely, unless the general meeting has decided otherwise.

(3) The rights of a general meeting representative are prescribed in the fund rules. Unless otherwise provided for in the fund rules, a general meeting representative has the right, for the purpose of compliance with the decisions of the general meeting or preparation of calling the general meeting, to:

- 1) obtain information from the fund manager which the fund manager is required to submit to unit-holders pursuant to the law or the fund rules;
- 2) examine the register of units and data of unit-holders;
- 3) call the general meeting;
- 4) chair the general meeting and take its minutes, unless otherwise provided for in the fund rules;
- 5) file an application with a court for declaring the fund insolvent.

(4) A general meeting representative is required to:

- 1) communicate information to the fund manager and unit-holders concerning holding of the general meeting and the decisions taken at it;
- 2) cooperate with the fund manager and the general meeting;
- 3) keep confidential the personal data which became known to them during their powers and after expiry of their powers in the performance of their duties and any information related to the common fund and fund manager which is identified as confidential in the fund rules;
- 4) perform other functions prescribed in the fund rules.

§ 251. Calling of general meetings

(1) A general meeting is called by the fund manager or general meeting representative.

(2) A general meeting is called and issues are entered on the agenda of the general meeting if this is required by the unit-holders whose units represent at least one-tenth of the votes.

(3) If the fund manager fails to call a general meeting upon receipt of the request of unit-holders or if the right of the fund manager to manage the fund has expired, the unit-holders or the general meeting representative have the right to call the general meeting.

(4) If the net asset value of a common fund is negative or zero, the fund manager must call a special general meeting as soon as possible but at the latest within ten days after the respective circumstances become known. If the fund manager fails to call a general meeting, the general meeting representative must immediately call the general meeting.

(5) In the case specified in subsection (4) of this section, a special general meeting must decide on:

- 1) adoption of measures to ensure satisfaction of creditors' claims;
- 2) merger of the common fund;
- 3) dissolution of the common fund; or
- 4) submission of an application for declaring the common fund insolvent.

§ 252. Notices calling general meetings

(1) Unit-holders shall be informed of holding of a general meeting pursuant to the provisions of the fund rules.

(2) A notice calling a general meeting shall be sent in a format which can be reproduced in writing to the addresses of the unit-holders indicated in the register of the units of the fund.

(3) A notice calling a general meeting shall set out at least the following:

- 1) the time and place of the general meeting;
- 2) the agenda of the general meeting;

3) the place where it is possible to examine the documents constituting the basis for the agenda of the general meeting, including the draft fund rules if amendment of the fund rules is on the agenda of the general meeting.

(4) If electronic participation or voting is permitted pursuant to the fund rules, information shall be provided in the notice concerning the procedure of electronic participation and voting and the term of electronic voting.

§ 253. Holding of general meetings and decisions of general meetings

(1) If the law or the fund rules are materially violated upon calling of a general meeting, the general meeting does not have the right to adopt decisions, unless all unit-holders participate in or are represented at the general meeting.

(2) A list of unit-holders participating in the general meeting which shall set out the names of the unit-holders, the number of votes attached to their units and the names of the representatives of unit-holders shall be prepared at the general meeting. The powers of attorneys of representatives shall be appended to the minutes of the general meeting.

(3) The number of the votes of unit-holders at the general meeting shall be determined as the ratio of the number of votes arising from units belonging to the unit-holder and the number of votes arising from all the units which have been issued and are not redeemed before the general meeting is held.

(4) A general meeting may adopt decisions if over one-half of the votes represented by units are present, unless the fund rules prescribe a greater representation requirement.

(5) If less than one-half of the votes represented by units are represented at the general meeting, a new meeting with the same agenda may be called within three weeks but not earlier than seven days after the general meeting. The new general meeting is competent to adopt decisions regardless of the votes represented at the meeting.

(6) An issue initially not on the agenda of a general meeting may be entered on the agenda with the consent of at least nine-tenths of the unit-holders who participate in the general meeting if their units represent at least two-thirds of the votes represented.

(7) If a general meeting is called by unit-holders, the unit-holders shall appoint their representative to call the general meeting and perform the acts related to it and appoint the chair and recording secretary of the general meeting by a decision of the general meeting, unless otherwise prescribed by the fund rules.

(8) A decision of a general meeting shall be adopted if over one-half of the votes represented at the general meeting are in favour, unless the law or the fund rules prescribe a greater majority requirement.

(9) A list of unit-holders shall serve as the basis for the calculation of votes.

(10) If an issue relating to a sub-fund is decided at a general meeting, only the units granting rights with respect to this sub-fund shall be taken into account in holding a general meeting in this issue, including upon determination of the quorum of the general meeting and votes of unit-holders or exercise of other rights of unit-holders. A decision of a general meeting relating to a sub-fund shall be adopted if over one-half of the votes representing this sub-fund at the general meeting are in favour, unless the law or the articles of association prescribe a greater majority requirement.

(11) On request of a unit-holder, general meeting representative or fund manager, a court may revoke a decision of a general meeting which is in conflict with law or the fund rules if the request is filed within three months after adoption of the decision.

§ 254. Electronic participation in general meetings and electronic voting

(1) The fund rules may prescribe that:

(1) Unit-holders may participate in a general meeting and exercise their rights using electronic means without physically attending the general meeting and without appointing a representative if it is possible in a technically secure manner (hereinafter *electronic participation*);

(2) Unit-holders may vote on draft decisions prepared in respect to the items on the agenda of a general meeting using electronic means prior to the general meeting or during the general meeting if it is possible in a technically secure manner (hereinafter *electronic voting*).

2) For the purposes of this Act, electronic voting means participation in a general meeting by means of real-time two-way communication throughout the general meeting or in another similar electronic way which enables the unit-holder to watch the general meeting from a remote location, vote using electronic means throughout the general meeting on each draft decision and address the general meeting at the time determined by the chair of the meeting.

(3) The fund rules prescribe the precise procedure for organisation of electronic participation which must ensure identification and electronic participation of unit-holders, including security and reliability of voting, and be proportionate for the achievement of the these objectives.

(4) The unit-holder who voted using electronic means shall be deemed to have taken part in the general meeting and the votes represented by the unit-holder's units shall be accounted as part of the quorum of the general meeting, unless otherwise provided by law. If only draft decisions which were not disclosed before a general meeting and in respect to which the shareholder did not submit any votes during the general meeting are voted at the general meeting, the unit-holder shall not be deemed to have taken part in the general meeting.

(5) The fund rules may prescribe the time until which it is possible to vote using electronic means prior to the general meeting or during the general meeting.

(6) The fund rules or a decision of the fund manager may prescribe that the general meeting shall be transmitted in full or in part in real time using two-way communication or any other technically secure method. Watching of the transmission shall not be considered participation in the general meeting for the purposes of this Act, unless otherwise provided by law.

§ 255. Minutes of general meetings

(1) Minutes shall be taken of a general meeting. The minutes shall set out:

- 1) the name of the fund;
- 2) the business name and seat of the fund manager;
- 3) the time and place of the meeting;
- 4) the names of the chair and recording secretary of the meeting;
- 5) the agenda of the meeting;
- 6) the decisions adopted at the meeting together with the voting results and voting methods;
- 7) on the request of a unit-holder who maintains a dissenting opinion with regard to a decision of the meeting, the unit-holder's dissenting opinion;
- 8) other material circumstances at the general meeting.

(2) Written proposals and applications submitted to the general meeting and the list of unit-holders who participated in the meeting shall be appended to the minutes. If the unit-holder has voted electronically prior to the meeting, the list must also specify the voting date. The minutes shall be signed by the chair and the recording secretary of the meeting. A dissenting opinion shall be signed by the person who presented it.

(3) The minutes must be made accessible to the unit-holders seven days after the end of the general meeting and unit-holders have the right to obtain a copy of the minutes or any part thereof.

(4) At the request of the fund manager or unit-holders whose units represent at least one-tenth of the votes, the minutes of the general meeting must be notarized.

Division 2 Management of Public Limited Funds

§ 256. Specifications for competence of general meetings of public limited funds

(1) A general meeting of a public limited fund is not competent to increase and reduce its share capital and issue convertible bonds.

(2) By the articles of association or decision of the general meeting of a fund, the right to make the decisions which are in the competence of the general meeting may be granted to the supervisory board for a certain term, unless this generates a conflicts of interests between the fund, shareholders and the supervisory board. If so prescribed by the articles of association of the fund, the supervisory board may transfer the respective rights back to the competence of the general meeting by its decision and notify the general meeting thereof.

(3) Upon transfer of the right to make decisions, the procedure for mitigation and avoidance of conflicts of interests must be appended to the articles of association. Potential conflicts of interests must be identified and disclosed and managed and monitored in the manner provided for in the procedure of the fund for mitigation and avoidance of conflicts of interests.

§ 257. Extraordinary calling of general meetings

(1) If the net asset value of a public limited fund is less than 25,000 euros, the management board of the public limited fund must promptly inform the shareholders of the public limited fund in writing and call an extraordinary general meeting of shareholders. The provisions of § 301 of the Commercial Code do not apply upon decrease of assets of public limited funds.

(2) Calling of an extraordinary general meeting and entering of issues to the agenda of the general meeting may also be requested by the manager or depositary, if any, of a public limited fund.

- (3) An extraordinary general meeting of shareholders must decide on:
- 1) taking of measures to bring the asset value of the public limited fund into compliance with the requirements of this Act;
 - 2) merger of the public limited fund; or
 - 3) dissolution or submission of the bankruptcy petition of the public limited fund.

§ 258. Specifications for competence of supervisory boards

Unless otherwise specified in the articles of association of a public limited fund, the supervisory board of the public limited fund is competent to:

- 1) approve and amend the terms and conditions of the management contract and terminate the management contract;
- 2) approve and amend the terms and conditions of the depositary contract and terminate the depositary contract, if the fund has a depositary.

§ 259. Specifications for competence of management boards and competence of fund managers upon management of public limited funds

(1) The management board of a public limited fund exercises supervision, to the extent and pursuant to the procedure prescribed in the management contract, over the activities of the fund manager related to the fund and performance by third parties of other functions which are related to the management of the fund and have been outsourced.

(2) The management board of a public limited fund is competent to issue and redeem shares of the public limited fund.

(3) Investment of assets in accordance with the provisions of § 305 of this Act is in the competence of the fund manager of a public limited fund. The assets of a fund are disposed of by a fund manager to the extent prescribed by law and the management contract.

(4) A fund manager shall be liable for the damage caused to a public limited fund or the shareholders thereof by violation of the functions of the fund manager.

Division 3 Management of Limited Partnership Funds

§ 260. Adoption of decisions of partners of limited partnership funds

(1) The partnership agreement of a limited partnership fund may prescribe the activities for the performance of which the managing partner or fund manager needs the decision of the partners. If the specified activities are listed in the partnership agreement, the provisions of § 89 of the Commercial Code do not apply to the limited partnership fund.

(2) A decision of the partners shall be adopted if over one-half of the votes of all partners are in favour and unless the law or the partnership agreement prescribes a different majority requirement.

§ 261. Management of limited partnership funds and liability of partners

(1) The right to manage a limited partnership fund is deemed to have been transferred to a limited partner of the limited partnership fund only in the case such partner has the right and obligation, pursuant to the partnership agreement, to participate in the day-to-day management of the limited partnership fund. The following activities of a limited partner shall not be included in the day-to-day management of the limited partnership fund:

- 1) representation of the limited partnership fund within the limits of the powers granted to the limited partner;
- 2) exercise of the general rights of a limited partner provided by legislation or the partnership agreement;
- 3) counselling of the general partner or fund manager in the issues related to the management of the limited partnership fund, with the exception of issue of binding orders for the management of the limited partnership fund;
- 4) ensuring the obligations of the limited partnership fund;
- 5) making decisions on amendment of the partnership agreement.

(2) In addition to the provisions of subsection (1) of this section, the day-to-day management of a limited partnership fund shall not be deemed to include voting or expressing of a position in another manner in the following issues:

- 1) dissolution of the fund or continuation of the activities thereof;
- 2) conduct of transactions for the account of the fund for obtaining assets;
- 3) transfer and encumbrance of units;
- 4) amendment of the investment polity of the limited partnership fund;
- 5) merger of the limited partnership fund;
- 6) merger of a partner with the fund;
- 7) departure or exclusion of a partner;

8) conduct of a transaction for the account of the fund with a partner.

(3) The provisions of subsections 132 (2)-(4) and § 133 of the Commercial Code do not apply to refunding and reduction of contributions of limited partners of limited partnership funds.

(4) The provisions of subsections 102 (2) and (3) of the Commercial Code do not apply to limited partners departing from limited partnership funds.

(5) A limited partner who has paid a contribution in full shall not be liable for the obligations of the limited partnership. If a limited partner has not paid its contribution in full and the obligation of the limited partnership fund cannot be performed for the account of the assets of the limited partnership fund, the limited partner shall be liable to the limited partnership fund to the extent of the unpaid contribution. Payment of a contribution to the limited partnership fund may also be submitted by a creditor, taking into consideration the terms and conditions of the partnership agreement concerning payment of the contributions. §§ 101 and 124 and subsection 132 (1) of the Commercial Code do not apply to the liability of a limited partner.
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 262. Application of requirements for acquisition of qualifying holdings in fund managers to limited partnership funds managing assets of limited partnership funds themselves

If a general partner of a limited partnership fund has been issued an activity licence of a small fund manager, the provisions of § 448 of this Act concerning acquisition of qualifying holdings in fund managers apply to limited partners of limited partnership funds who manage the assets of the limited partnership funds themselves and who participate in the day-to-day management of the funds.
[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

Chapter 20

Registration of Units or Shares of Funds and Net Asset Value

§ 263. Registration of units or shares

(1) The register of the units or shares of a fund shall be maintained by a fund manager, unless otherwise provided for in the fund rules, articles of association or partnership agreement of the fund.

(2) The following data shall be entered in the register of units or shares of a fund:

- 1) the business name, seat and registry code of the fund manager and public limited fund;
- 2) the name of the fund;
- 3) the name, address and personal identification code or, in the absence of the latter the date of birth of the unit-holder or shareholder, or the registry code of the unit-holder or shareholder if the unit-holder or shareholder has a registry code;
- 4) if the unit-holder or shareholder is a fund, the name or business name of the fund and the seat and registry code thereof, if any, the business name, seat and registry code of the manager of this fund, if the fund manager has a registry code;
- 5) the number and class, currency of the units or shares held by unit-holders or shareholders, and the nominal value thereof, if any;
- 6) the date of acquisition and issue price of units or shares and the issue price and date of redemption and redemption price of units or shares if the units or shares have been redeemed;
- 7) other rights attached to units or shares and the time of creation, changing and extinction of the rights;
- 8) other data which the registrar deems necessary.

(3) The following data shall be entered in the register of units of a fund:

- 1) the business name, address of the seat and registry code of the limited partnership fund;
- 2) the fund manager, if any;
- 3) the name of the fund;
- 4) the name, address and personal identification code of the partner, in the absence thereof date of birth, or registry code, if any, and contact details;
- 5) if the partner is a fund, the name or business name of the fund and seat and registry code, if any, and the business name, seat and registry code of the fund manager, if any;
- 6) the amount of the contributions of the partners;
- 7) other data which the registrar deems necessary.

(4) Fund managers, the Financial Supervision Authority, depositaries, if any, and the following entitled persons and agencies have the right to examine the data entered in the register of units or shares:

- 1) courts in the cases and pursuant to the procedure provided for in the Acts concerning judicial proceedings;
- 2) pre-trial investigation authorities and the prosecutor's office in criminal proceedings already initiated, relevant bodies upon adjudication of international applications for legal assistance, for the performance of

obligations provided by the European Union law for compliance with international conventions or other international agreements, or cooperation agreements of the police or other similar competent authorities;

3) security authorities for the performance of the functions provided for in the Security Authorities Act and carrying out the security checks specified in the State Secrets and Classified Information of Foreign States Act;

4) the Estonian Tax and Customs Board in accordance with the provisions of the Taxation Act, including in commenced misdemeanour proceedings on the basis of a reasoned ruling, or for exercising of state supervision for the performance of the functions provided for in the Gambling Act;

5) bailiffs for the performance of the functions provided for in the Code of Enforcement Procedure;

6) interim trustees and trustees in bankruptcy for the performance of the functions provided for in the Bankruptcy Act;

7) the State Audit Office for the performance of the functions provided for in the State Audit Office Act;

8) persons appointed by the Guarantee Fund pursuant to the Guarantee Fund Act;

9) persons entitled to succeed or persons authorised by the latter, notaries in connection with notarial acts, persons making the inventory of an estate at the appointment of a notary or court, administrators of an estate appointed by a court, and consular representations of foreign states in the course of succession proceedings upon submission of relevant written documents in connection with estates and data relating thereto;

10) persons who control the declarations of economic interests on the basis of the Anti-corruption Act in order to verify the data stated in the declaration;

11) the Financial Intelligence Unit and the Estonian Internal Security Service for the performance of the functions provided for in the Money Laundering and Terrorist Financing Prevention Act and International Sanctions Act;

12) credit institutions;

13) financial institutions holding the activity licence issued by the Financial Supervision Authority;

14) other persons who prove that the objective of obtaining the data is prevention of money laundering or terrorism.

(5) Unit-holders, shareholders and partners have the right to examine only their data entered in the register of units or shares, unless otherwise provided for in this Act or the basic document of the fund.

(6) A general meeting representative has the right to examine the data entered in the register concerning the unit-holders of a common fund.

(7) Where the units or shares belonging to unit-holders, shareholders or partners are held for them by a third party who has the right provided by law to hold the units or shares in its own name and for the account of another person, the data of the third party may be entered in the register as the data specified in clause (2) 3) or clause (3) 4) of this section. The third party specified in the first sentence of this section has the right to give information to fund managers concerning the investors whose units or shares are held by the specified third party.

§ 264. Establishment of net asset value of units or shares of funds

(1) Fund managers, public limited funds or limited partnership funds establish the net asset value of the funds and disclose it to unit-holders, shareholders or partners at the dates and pursuant to the procedure prescribed in the fund rules, articles of association or partnership agreement of the fund.

(2) If the assets of a common fund are divided into sub-funds, the net asset value of each sub-fund of the fund shall be established and disclosed.

(3) Unless otherwise provided for in the fund rules, articles of association or partnership agreement of a fund, the procedure for establishment of the net asset value of units or shares of a public fund provided for in § 54 of this Act shall apply to establishment of the net asset value of a fund.

Chapter 21

Submission of Information concerning Funds and Accounting

§ 265. Information submitted to investors

(1) The fund manager of a common fund, public limited fund or limited partnership fund shall make at least the following data and documents available to investors at the request of the latter:

- 1) the fund rules, articles of association or partnership agreement of the fund;
- 2) the latest annual accounts or annual report of the fund.

(2) The data and documents specified in subsection (1) shall be made available to investors either in the Estonian or English language, unless otherwise provided for in the Accounting Act or the basic documents of the fund.

§ 266. Organisation of accounting of funds

(1) The accounting and reporting of a fund shall be organised on the basis of the Accounting Act, this Act, other legislation issued on the basis thereof and the provisions concerning accounting of funds in the accounting

policies and procedures of a public limited fund or fund manager. In the case of a conflict between this Act and other legislation, this Act applies.

(2) An audit firm must be appointed to a fund if this arises from the fund rules, articles of association, partnership agreement of the fund, this Act or the Auditors Activities Act.

(3) If the assets of a common fund are divided into sub-funds, the provisions of this Act concerning annual accounts also apply to preparation of the reports of sub-funds, unless otherwise provided for in this Act. Reports are prepared and information submitted separately for a common fund and each sub-fund.

(4) The provisions of § 14, subsection 15 (2) and subsection 18 (3) and §§ 25 and 26 of the Accounting Act do not apply to the accounting and reporting of common funds and their sub-funds.

(5) The accounting of a common fund shall be arranged by a fund manager and it must be kept separate from the accounting of the fund manager and other funds of the fund manager.

(6) The financial year of a common fund is a calendar year, unless otherwise provided for in the fund rules. A fund manager, public limited fund or limited partnership fund shall make the annual accounts or the annual report of the fund available to the investors within six months after the end of a financial year.

(7) The requirements for the contents of the annual accounts and annual reports of a fund and the methods of preparing thereof shall be established by a regulation of the minister responsible for the area.

Chapter 22

Requirements for Offers of Alternative Funds managed by Alternative Fund Managers, Disclosure of Information concerning Funds, Reporting and Investments

§ 267. Application of Chapter

(1) The provisions of this Chapter apply to alternative funds managed by alternative fund managers which are offered in the EEA Member States.

(2) The provisions concerning alternative funds in this Chapter also apply to sub-funds of common funds.

§ 268. Additional requirements for commencement of offer of funds managed by alternative fund managers

(1) The fund manager of an alternative fund shall submit, before commencement of offer of the fund, a written offer notice to the Financial Supervision Authority to which the following data and documents (the notice, data and documents hereinafter jointly in this section *notice*) are appended:

- 1) the fund rules, articles of association or partnership agreement of the fund;
- 2) the information concerning the depositary of the fund;
- 3) the information specified in § 269 of this Act which shall be provided to the investors about each fund;
- 4) if the fund is a feeder fund or if the assets of the fund are invested to a large extent in another fund, the information concerning the seat of the master fund or the specified other fund;
- 5) the information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of provision of investment services.

(2) The Financial Supervision Authority shall notify the fund manager within 20 working days after receipt of a proper notice whether the fund offer in Estonia is acceptable. The Financial Supervision Authority may make a decision to prohibit the offer of the fund if the management of the fund or the activities of the fund manager do not comply with the provisions of this Act. The fund manager may commence the offer of the fund in Estonia after receipt of a decision from the Financial Supervision Authority on acceptability of the offer of the fund.

(3) The fund manager shall notify the Financial Supervision Authority in writing of any material amendment of the documents appended to the notice at least one month before the amendments enter into force or promptly after making any unforeseen changes.

(4) The Financial Supervision Authority may make a decision by which it prohibits the making of any material amendments to the documents appended to a notice if the activities of the fund manager no longer comply with this Act as a result of the amendments taking effect.

(5) If any amendments to the documents appended to a notice take effect before notification of the Financial Supervision Authority in accordance with subsection (3) of this section, the Financial Supervision Authority shall have the right to implement all the measures specified in this Act in order to bring the activities of the fund manager into compliance with law, including to prohibit the offer of the fund.

(6) If a fund manager notifies of an intention to offer in Estonia a fund established in another EEA Member State, the Financial Supervision Authority shall also notify the financial supervision authority of the home country of the fund of acceptability of the offer of the fund in accordance with § 411 of this Act.

(7) If this is in accordance with the fund rules, articles of association or partnership agreement, the fund may be a feeder fund which assets are invested on a large scale basis, i.e. to the extent of at least 85 per cent in the units or shares of a master fund. The provisions of in this section apply to commencement of the offer of a feeder fund if the manager of the master fund is the fund manager of an alternative fund.

(8) The data and documents specified in (1) of this section need not be submitted to the Financial Supervision Authority if the fund manager has already earlier submitted these to the Financial Supervision Authority and they have not been amended.

§ 269. Additional requirements for submission of information to investors by managers of alternative funds

(1) A fund manager shall make at least the following information concerning the funds managed available to investors:

- 1) information concerning the investment policy of the fund;
- 2) procedure for amendment of the investment policy of the fund;
- 3) jurisdiction for settlement of disputes;
- 4) data concerning the fund manager, depositary, audit firm and the third parties to whom any functions related to the management of the fund or holding of the assets thereof have been outsourced, and the procedure for mitigation and avoidance of conflicts of interests;
- 5) information concerning compliance of the fund manager with the own funds requirement;
- 6) procedure for valuation of the assets of the fund and establishment of the net asset value of a unit or share;
- 7) description of the liquidity risk management of the fund, including conditions of redemption of units or shares under normal and exceptional circumstances;
- 8) list of all the fees and expenses paid for the account of the fund or investors and the limits thereof;
- 9) information concerning application of the requirement for equal treatment of investors, the bases conferring the right of preferential treatment and favoured investors and their connections to the fund and the fund manager;
- 10) procedure for issue and sale of the units or shares of the fund;
- 11) net asset value of the fund or the latest market price of the unit or share;
- 12) past performance of the fund, if available;
- 13) data concerning the prime broker, if any, and the significant agreements entered into with the prime broker, including agreements for transfer of liability, description of the measures for mitigation and avoidance of conflicts of interests and the terms and conditions for transfer of the assets of the fund and reuse of the assets of the fund in the depositary contract;
- 14) procedure of providing the information specified in subsections (3)-(5) of this section.

(2) At least the following information shall be made available to investors concerning the investment policy of a fund in accordance with clause (1) 1) of this section:

- 1) information concerning the seat of the master fund or other fund in which the assets of the fund are invested if the fund is a feeder fund or a fund in the case of which all the assets are invested in other funds, i.e. a fund of funds;
- 2) information concerning the assets in which the assets of the fund are invested, the investment techniques and the risks related to the assets and investment restrictions.

(3) In addition to the information specified in subsection (1) of this section, a fund manager shall promptly notify investors of all the agreements by which the depositary has freed itself from liability in accordance with subsection 298 (4) of this Act and of any changes in connection with the depositary's liability.

(4) The fund manager shall make the following information regularly available to the investors of the fund:

- 1) the percentage of illiquid assets in the assets of the fund to which the special arrangements arising from their illiquid nature are applied pursuant to Commission Delegated Regulation (EU) No 231/2013;
- 2) the arrangements for managing the liquidity of the fund and amendments thereto;
- 3) the risk profile of the fund and description of the risk management system used to manage the risks.

(5) The following information shall be published on a regular basis concerning a fund employing leverage:

- 1) information concerning the principles of employing leverage and borrowing, including the methods of employing leverage, risks related to use of leverage, procedure for reuse of assets and collaterals, and restrictions on the use of leverage;
- 2) changes in the maximum level of leverage which the fund is entitled to employ;
- 3) the right to reuse collaterals or other guarantees issued under leveraging arrangements;
- 4) the total amounts of leverage of the fund.

(6) The information specified in subsections (1)-(5) of this section need not be made separately available in the case it is stated in the fund rules, articles of association, partnership agreement of the fund or other documents submitted to investors.

(7) In the case provided for in Commission Delegated Regulation (EU) No 231/2013, a fund manager has to promptly inform investors of changes in the information specified in subsections (1)-(5) of this section, including changes in the procedure for redemption of units or shares for management of the liquidity of the fund pursuant to clause (4) 2) of this section and changes in the information specified in clauses (5) 1) and 2) of this section.

(8) Requirements for disclosure of information concerning funds are provided for in Commission Delegated Regulation (EU) No 231/2013.

§ 270. Additional requirements for disclosure of reports

(1) Annual accounts or annual reports of funds managed by alternative fund managers (hereinafter in this section *annual accounts*) shall be made available to investors and the Financial Supervision Authority within six months after the end of a financial year, unless otherwise provided for in this Act.

(2) The annual accounts of a fund consist of at least the balance sheet, income and expense statement and management report. In addition to that specified in the previous sentence, the annual accounts of a fund must also set out the following data:

- 1) amendments to the information provided to investors in accordance with § 269 of this Act;
- 2) the total amount of remuneration paid by the alternative fund manager during the financial year, making a distinction between the total amount of the basic pay and performance pay, the number of beneficiaries and fees and the share of the profits of the fund paid to the manager of the alternative fund;
- 3) the amount of remuneration paid during the financial year to the managers and other employees of the alternative fund manager whose duties include taking of the risks which have a material impact on the risk profile of the fund.

(3) The balance sheet and the revenue and expenditure report presented in the annual accounts of a fund must be audited.

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(4) If the annual accounts are disclosed in accordance with the requirements in the Securities Market Act applicable to issuers, the information specified in subsection (2) of this section must be appended to the annual accounts, unless it is disclosed in the issuer's annual accounts.

(5) The annual accounts of another pool of assets or legal entity established for collective investments and managed by an alternative fund manager must be audited and the report of a sworn auditor shall be appended to the annual accounts of this pool or legal entity.

(6) Requirements for the contents and form of annual accounts are provided for in Commission Delegated Regulation (EU) No 231/2013.

§ 271. Additional information submitted to Financial Supervision Authority concerning alternative funds

The fund manager of an alternative fund shall regularly prepare and submit information to the Financial Supervision Authority in accordance with the provisions of § 92 of this Act.

Chapter 23

Transformation, Merger, Dissolution and Insolvency of Funds

§ 272. Application of Chapter to sub-funds

The provisions of this Chapter concerning funds apply to division, transformation, merger and dissolution of sub-funds of common funds, unless otherwise provided for in this Chapter.

Division 1

Division, Transformation and Merger of Fund Managers

§ 273. Prohibition of division

Division of funds is not permitted.

§ 274. Merger of funds

(1) A fund (hereinafter in this Chapter *fund being acquired*) may merge with another fund (hereinafter in this Chapter *acquiring fund*), unless otherwise provided for in this Act. The provisions of this Act concerning merger of a public fund apply to merger of a non-public fund with a public fund.

(2) A sub-fund may merge with a sub-fund of the same fund or another fund or sub-fund, taking account of the provisions of this Act.

§ 275. Conditions of mergers of common funds

(1) A common fund may merge with another common fund established or being established in Estonia.

(2) Merger of a common fund shall be decided by the general meeting of the common fund on the proposal of the management board of the fund manager.

(3) A merger agreement shall be concluded for merger of a common fund.

(4) Upon merger of a common fund, the assets of the fund being acquired are transferred to the acquiring fund and the fund being acquired is deemed dissolved.

(5) Common funds may be merged by establishing of a new fund. In this case the assets of the funds being acquired are transferred to the new fund being established and the funds being acquired are deemed dissolved.

(6) Upon merger of a fund, the number of the units of the fund being acquired issued to a unit-holder of the fund shall be such that the net asset value of the units corresponds to the net asset value of the units of the fund being acquired which were owned by the unit-holder. Upon merger of a closed-end fund, the value of the units issued may differ from the net asset value under the conditions provided for in subsections 143 (5) and (6) of this Act. Upon establishment of a new fund, the unit-holders of the funds being acquired shall become the unit-holders thereof.

(7) Unit-holders shall pay for the units issued with the assets which corresponds to their share in the fund being acquired.

(8) The units of an fund being acquired belonging to the assets of the fund being acquired and the units of a fund being acquired belonging to the assets of the acquiring fund shall be redeemed before merger.

(9) Merger shall cancel the units of the fund being acquired.

(10) A fund being acquired is deemed to be dissolved after issue of the units of the acquiring fund to the unit-holders of the fund being acquired and cancellation of the units of the fund being acquired. The provisions of this Act concerning dissolution of funds do not apply to mergers.

(11) No issue fee shall be charged upon issue of units or shares of an acquiring fund.

(12) All the costs of a fund related to merger shall be covered by the fund manager, unless otherwise prescribed by the fund rules.

(13) The provisions of this Act concerning merger of common funds apply to merger of sub-funds of common funds.

§ 276. Merger of public limited funds or limited partnership funds

(1) A public limited fund may merge with another public limited fund founded in Estonia. Public limited funds may also be merged by means of establishment of a new public limited fund.

(2) A limited partnership fund may merge with another limited partnership fund founded in Estonia. Limited partnership funds may also be merged by means of establishment of a new limited partnership fund.

(3) A public limited fund or a limited partnership fund may merge with another investment company which is managed by a fund manager of a small fund under the condition that the public limited fund or the limited partnership fund is the acquiring fund.

(4) All the costs related to merger shall be covered by the fund manager of the public limited fund, unless otherwise prescribed by the articles of association or partnership agreement.

Division 2

Dissolution and Solvency of Funds

§ 277. Dissolution of common funds

- (1) A common fund is dissolved:
 - 1) by a decision of the general meeting;
 - 2) by declaration of insolvency of the fund;
 - 3) by abatement of insolvency proceedings of the fund before declaration of bankruptcy;
 - 4) on other basis provided for in the fund rules.
- (2) Upon dissolution of a common fund by a decision of the general meeting or on other basis provided for in the fund rules, the common fund shall be liquidated.
- (3) The general meeting shall appoint the liquidator of a fund and the remuneration thereof.
- (4) A common fund is liquidated by a fund manager, unless otherwise resolved by a decision of the general meeting.
- (5) A fund manager or general meeting representative shall promptly notify the unit-holders of the fund of dissolution of the fund in a format which can be reproduced in writing.
- (6) The liquidator of a fund shall transfer, as soon as possible and in accordance with the interests of the unit-holders, the assets of the fund, collect the debts of the fund, satisfy the claims of the creditors of the fund and distribute the assets remaining upon liquidation between unit-holders in accordance with the class, number and net asset value of the units held by each unit-holder.
- (7) In the case of revocation the activity licence of a fund manager, compulsory dissolution of a fund manager, declaration of bankruptcy of a fund manager, abatement of the bankruptcy proceeding commenced against a fund manager or issue of a precept by the Financial Supervision Authority by which the fund management authority of a fund manager was terminated, the general meeting of the fund manager must be called within three months after this decision and at least the approval of a new fund manager or dissolution of the fund, appointment of the liquidator of the fund and determination of the remuneration of the liquidator must be decided.
- (8) The provisions of this Division concerning notifications of dissolution of common funds, insolvency of funds and dissolution of funds also apply to dissolution of sub-funds of common funds, unless otherwise provided for in this Division.

§ 278. Specifications for dissolution of public limited funds

In the case of revocation of the activity licence of a fund manager of a public limited fund, compulsory dissolution of a fund manager and declaration of bankruptcy of a fund manager, abatement of the bankruptcy proceedings commenced against a fund manager or issue of a precept by the Financial Supervision Authority by which the fund management authority of a fund manager is terminated, approval of a new fund manager or dissolution of the fund, appointment of the liquidator of the fund and determination of the remuneration of the liquidator must be decided at the general meeting within three months from termination of the fund management authority.

§ 279. Specifications for dissolution of limited partnership funds

- (1) A limited partnership fund is dissolved by a decision of its partners in favour of which more than three quarters of the votes were cast, unless the partnership agreement excludes the possibility of dissolving the fund on the basis of a decision of the partners or establishes of different conditions for dissolution.
- (2) At the request of a partner or the Financial Supervision Authority, a court may decide on compulsory dissolution of a limited partnership fund if:
 - 1) dissolution of the fund is mandatory in accordance with the partnership agreement or legislation;
 - 2) the fund manager or the general partner entitled to manage the fund has materially violated the obligations provided for by the partnership agreement or legislation and such violation cannot be eliminated; or
 - 3) the limited partnership fund has failed to adopt the decision specified in subsection (5) of this section.
- (3) Voluntary dissolution of a limited partnership fund upon expiry of the term, achievement of the objectives or on other bases may be agreed upon in a partnership agreement. In addition to the bases for dissolution of a limited partnership fund prescribed in the partnership agreement, the partnership agreement may allow to decide on continuation of the limited partnership fund or merger thereof in accordance with the procedure established by the partnership agreement. A decision on the continuation of the activities of the limited partnership fund shall be submitted to the commercial register jointly by the general partners entitled to manage the fund.

(4) An entry in the commercial register on dissolution of a limited partnership fund or exclusion of a partner shall be made on the basis of a common application of the general partners entitled to manage the fund to which the decision of the partners or judicial decision constituting the basis for the entry shall be appended.

(5) If the general partner or fund manager of a limited partnership fund does not comply with the requirements provided for in subsection 8 (2) of this Act, in the case of compulsory dissolution of the fund manager, declaration of bankruptcy of the fund manager, abatement of bankruptcy proceedings commenced against the fund manager or issue of a precept by the Financial Supervision Authority by which the authority of the fund manager to manage the limited partnership fund is terminated, the partners of the limited partnership fund must decide within three months after termination of the fund management authority on admission of a general partner who complies with the requirements provided for in subsection 8 (2) of this Act to the limited partnership fund, approval of a new fund manager, transformation of the limited partnership fund into a limited partnership fund which manages its own assets or dissolution of the fund and appointment of the liquidator.

§ 280. Insolvency of funds

An application for declaration of a common fund insolvent is submitted, insolvency is declared and insolvency is eliminated pursuant to the procedure provided for in the Bankruptcy Act, unless otherwise provided in this Division.

§ 281. Specifications for insolvency of common funds

(1) An application for declaration of a common fund insolvent may be submitted by a manager or liquidator of the fund in addition to its creditors. The provisions of the Bankruptcy Act concerning bankruptcy petitions of debtors apply to applications of fund managers or liquidators submitted for declaration of insolvency and to insolvency proceedings of common funds.

(2) If a common fund is insolvent and insolvency is not temporary based on the economic situation of the fund, the fund manager must, as soon as possible but not later than 20 days after onset of insolvency, submit an application for declaring the fund insolvent.

(3) If it becomes evident during the liquidation of a fund that the fund is insolvent, the liquidator of the fund must promptly file an application for declaring the fund insolvent.

(4) Upon submission of an application for declaration of insolvency, the fund manager or liquidator of the common shall represent it. The provisions of §§ 85-90 of the Bankruptcy Act extend to fund managers or liquidators.

(5) In order to submit an application for declaration of insolvency of a common fund or sub-funds thereof, an insolvency caution shall be submitted to the common fund or sub-funds thereof through the fund manager. An application for declaration of insolvency must indicate with respect to which fund the application is submitted. Submission of an application with respect to a sub-fund of a common fund shall not result in insolvency proceeding of the common fund.

(6) After onset of insolvency, the fund manager shall not make payments for the account of the fund, except payments which making in the state of insolvency is in line with due diligence. The fund manager is required to compensate to the fund for any payments made for the account of the fund after the insolvency of the company became evident which, under the circumstances in question, were not made in line with due diligence.

(7) Upon submission of an application for declaring a fund insolvent, the issue and redemption of the units of the fund must be promptly suspended.

(8) An application for declaration of insolvency shall be submitted according to the seat of the common fund.

§ 282. Specifications for bankruptcy of public limited funds

Upon submission of a bankruptcy petition, the issue and redemption of the shares of the fund must be promptly suspended.

§ 283. Obligations and rights of trustees in bankruptcy

In addition to the provisions of § 55 of the Bankruptcy Act, a trustee in bankruptcy shall:

1) publish a bankruptcy notice or notice of declaration of insolvency of a fund at least in one national daily newspaper and on the website of the fund manager, the consolidation group to which the fund manager belongs or the public limited fund;

2) as appropriate or as prescribed by the legislation of another EEA Member State, inform the commercial register, registrar of the land register or similar registrar in the EEA Member State where the fund has assets of the court ruling on declaration of bankruptcy of the fund.

§ 284. Sale of bankruptcy estate and ranking of claims

(1) A trustee in bankruptcy shall have the right to sell all the assets of a fund at once.

(2) Claims arising from the units of a common fund shall be satisfied pursuant to the provisions of § 156 of the Bankruptcy Act concerning assets to be returned to debtors.

Part 4 DEPOSITARY

Chapter 24 Requirements for Depositaries of Funds

§ 285. Application of Chapter and mandatory nature of depositaries

(1) Each fund must have a depositary, except for funds managed by small fund managers and non-public funds managed by managers of UCITS. If a fund managed by a small fund manager or a non-public fund managed by a fund manager of a UCITS has a depositary, the provisions of this Part concerning depositaries and depositary contracts do not apply to them.

(2) The provisions of subsection 286 (3) of this Act apply to depositaries of funds founded in another EEA Member State and offered in Estonia. The provisions of §§ 288 and 297-299 of this Act apply to depositaries of funds founded in third countries and offered in Estonia.

(3) The provisions of this Chapter concerning funds also apply to sub-funds of funds.

§ 286. Persons entitled to perform fund depositary functions

(1) Credit institutions or investment firms may be depositaries. A depositary of a UCITS may also be the central bank of an EEA Member State.

(2) The depositary of a fund established or founded in Estonia must be entered in the Estonian commercial register as a public limited company or a branch of a foreign company.

(3) The depositary of a fund offered in Estonia and established or founded in an EEA Member State may be a foreign credit institution or investment firm if it has the right pursuant to the law of its home country to provide services equivalent to the securities of holding services specified in clause 44 1) of the Securities Market Act and the level of supervision exercised over it is equivalent to supervision exercised over a credit institution or investment firm of the European Union.

(4) The depositary of a non-public alternative fund, which units or shares are not redeemed within five years after founding or establishment of the fund and pursuant to the investment policy of which the assets of the fund are in general not invested in securities traded on regulated securities markets, may be other legal entities, which perform depositary functions as part of their professional or business activities and in respect of which such entities are subject to mandatory professional registration, in addition to credit institutions and investment firms.

(5) The level of the organisational and technical administration of the persons specified in subsection (4) of this section, their financial situation, competence and experience of the employees engaged in performance of the depositary functions and their other resources must be adequate to ensure performance of the depositary functions specified in this Act and the depositary contract.

(6) The persons specified in subsection (4) of this section must notify the Financial Supervision Authority before commencement of provision of the services of a depositary. The specified notification shall be deemed by the Financial Supervision Authority to grant the right to act as a depositary. Upon exercise of supervision over the persons specified in subsection (4) of this section, the Financial Supervision Authority shall have the right to implement all the measures provided for in this Act.

§ 287. Requirements for depositaries

(1) The level of the organisational and technical administration of the activities of a depositary, its financial situation, the competence and experience of the employees engaged in performance of depositary functions and its technical systems and facilities must be sufficient to ensure performance of the functions prescribed for depositaries in this Act or by the depositary contract.

(2) Upon performance of its functions, a depositary shall act honestly, fairly, professionally, independently from the fund manager and in the interests of the fund, the unit-holders or shareholders of the fund.

(3) A depositary may offer the fund or fund manager only the services which do not create conflicts of interests between the fund manager, fund, unit-holders, shareholders and depositary. Provision of a service which may cause a conflict of interests, including provision of the service of a prime broker acting as a counterparty of the fund is permitted only in the case the organisational structure and the level of technical systems of the depositary allow to separate the depositary functions from the services which may cause conflicts of interest. Potential conflicts of interests must be identified, managed, tracked and the unit-holders and shareholders of the fund must be notified thereof in the manner provided for in the internal rules of the depositary.

(4) A depositary shall also perform the functions provided for in this Act after termination of the depositary contract if the depositary contract is terminated upon expiry of the fund management authority on the basis specified in subsection 305 (7) of this Act and if the assets of the fund are not transferred to another depositary after termination of the depositary contract. For the activities specified in this subsection, the depositary shall have the right to charge a fee provided for in the depositary contract.

(5) After giving a prior notice to the Financial Supervision Authority, a depositary shall have the right to cancel the depositary contract in the case of a material violation by the fund manager or waive performance of the functions provided for in this Act upon termination of the depositary contract.

(6) A depositary and employees of the depositary have to report of violations of the requirements provided for in this Act according to subsection 343 (1) of this Act. The provisions of subsection 343 (2) of this Act apply to persons reporting of violations.

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(6¹) A depositary shall establish a procedure for its employees for reporting of any violations of the requirements provided for in this Act which allows independent and autonomous reporting of violations of law.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(7) The requirements specified in this section also apply to third parties to whom holding of the assets of a fund has been outsourced.

§ 288. Requirements for depositaries of alternative funds of third countries offered in Estonia

(1) The home country of the depositary of an alternative fund of a third country offered in Estonia may be the home country of the alternative fund or the alternative fund manager or the EEA Member State identified by the alternative fund manager.

(2) The depositary of an alternative fund offered in Estonia may be a person founded in a third country, if all the following conditions are met:

- 1) a cooperation and information exchange agreement has been entered into between the third country and the Financial Supervision Authority in the case the home country of the fund manager is not Estonia;
- 2) effective prudential requirements similar to the requirements of the EEA Member States apply to the depositary, including minimum capital requirements, and effective supervision over compliance with these requirements is ensured;
- 3) sufficient measures for prevention of money laundering and terrorist financing are implemented in the third country or in the territory of the seat of the depositary and this country or territory cooperate internationally in the area of prevention of money laundering and terrorist financing;
- 4) an agreement in accordance with Article 26 of the OECD Model Tax Convention on Income and on Capital has been entered into between the third country and Estonia, including multilateral tax agreement which ensures effective exchange of information in tax issues;
- 5) pursuant to the agreement, the depositary is liable to the alternative fund or partners and shareholders of the alternative fund in accordance with § 298 of this Act and undertakes to comply with the requirements for outsourcing of depositary functions provided for in § 297 of this Act.

(3) The prudential requirements and principles of supervision specified in clause (2) 2) of this section have been established by Commission Delegated Regulation (EU) No 231/2013.

§ 289. Depositary functions

(1) A depositary:

- 1) holds the money, securities and other assets which can be held, and keeps records of the remaining assets;
- 2) settles transactions conducted with the assets of the fund;
- 3) ensures that the net asset value of the assets and units or shares of the fund is calculated in accordance with the legislation and basic document of the fund;
- 4) ensures distribution of income of the fund in accordance with the legislation and basic document or prospectus of the fund;
- 5) executes the orders of the fund manager and assesses compliance thereof with the legislation and the basic document or prospectus of the fund;
- 6) performs other functions in accordance with the provisions of the legislation and depositary contract.

(2) Upon performance of its obligations, a depositary shall ensure that the rules of procedure established by the fund manager and agreements entered into with the fund manager are in compliance with the legislation and

basic document of the fund. The depositary shall periodically verify compliance of the activities of the fund manager with the legislation, basic document of the fund and the internal rules of the fund manager.

(3) The functions of the depositary of an alternative fund are established in Commission Delegated Regulation (EU) No 231/2013.

§ 290. Depositary functions upon holding of assets of funds

(1) The obligation of a depositary to hold the assets is delimited in the case of securities with such securities which can be reflected in the securities account opened with a depositary or which can be physically transferred to the depositary. The requirements specified in § 88¹ of the Securities Market Act apply to holding of securities.

(2) In the case of other assets, the obligation of a depositary to keep the assets means assessment of the right of ownership of the assets and maintenance of records of the assets. The assessment of the right of ownership by the depositary shall be based on the information and documents submitted by the fund manager and, as appropriate, on other external evidence. Maintaining of a record of the right of ownership of the assets shall comply with the information and documents submitted by the fund manager and other external evidence.

(3) A depositary shall submit overviews to the fund manager of a UCITS on all the assets regularly and at least once a year.

(4) The requirements of this section also apply to third parties to whom the depositary has outsourced the holding of the assets of a fund.

(5) The requirements for holding of assets applicable to depositaries of alternative funds are established in Commission Delegated Regulation (EU) No 231/2013.

§ 291. Depositary functions upon conduct of transactions with assets of funds and monitoring of cash flows

(1) A fund manager or third party to whom the functions of holding of the assets of a fund have been outsourced may conduct transactions with the assets of the fund only through a depositary or with a prior consent of the depositary.

(2) Money from the issue of units or shares and transfer of the assets of a fund and dividends, interest and other financial resources must be promptly transferred to the bank account of the fund opened in the name of the fund, depositary or fund manager.

(3) A depositary may make payments from the bank account of a fund only on the order of the fund manager in accordance with the legislation, depositary contract, management contract and basic document or prospectus of the fund.

(4) The depositary shall ensure upon transfer of fund assets and acquisition of assets for a fund that all transactions are performed in full and within the term prescribed by legislation or, in the absence of a term, within the term ordinarily necessary for transfers.

(5) A depositary shall ensure that units or shares are issued, transferred, redeemed, repurchased, cancelled and compensated for in accordance with the requirements prescribed in the legislation and basic document of the fund.

(6) A depositary shall ensure monitoring of the cash flows of the fund and receipt of payments made upon subscription for units or shares in the bank account of the fund which is opened in the name of the fund, fund manager or depositary either with the central bank or credit institutions of an EEA Member State. A bank account may be opened with a credit institution of a third country in the case it is required in order to comply, in accordance with the law of the home country of the credit institution, with the principles for protection of the assets of clients provided for in § 88 of the Securities Market Act.

§ 292. Restrictions of reuse of assets of UCITS and other publicly offered funds

(1) A depositary must not reuse any assets of a UCITS and other publicly offered funds in holding, including it is prohibited to transfer, pledge or lend the assets, except in the case provided for in subsection (2) of this section.

(2) A depositary may reuse the assets of UCITS and other publicly offered funds in holding of the depositary only upon compliance with all of the following conditions:

- 1) transactions with the assets of the fund are conducted for the account of the fund;
- 2) the depositary executes the orders of the fund manager in the name of the fund;
- 3) the assets of the fund are used in the interests of the fund, unit-holders or shareholders of the fund;

4) transactions with the assets of the fund are secured by a high quality and liquid collateral which the fund has acquired.

(3) The market value of the collateral specified in clause (2) 4) of this section must at all times exceed the market value of the assets of the fund used at least to the extent of the determined premium.

(4) The restrictions on reuse of the assets of a fund specified in this section also apply to third parties to whom holding of the assets of a fund has been outsourced.

§ 293. Rights and obligations of depositaries

(1) A depositary has the right to submit, in its own name, the claims of investors of a fund or the fund against a fund manager if submission of such claims is expedient. A depositary is not required to submit such claims if the investors of the fund or the fund have already submitted the claims.

(2) A depositary has the right to submit, in its own name, the claims of investors of the fund or the fund against third parties or an objection or an application for the release of assets from seizure if compulsory execution is performed against the assets or assets are seized in order to cover a claim for which the assets of the fund are not subject to liability.

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

(4) A depositary has the right to receive a fee for provision of depositary services and compensation for expenses incurred upon provision of these services in accordance with depositary contract, basic document or prospectus of the fund.

(5) If the activities of a fund manager or fund are, according to the information available to the depositary, manifestly contrary to the legislation or basic document, prospectus, depositary contract or management contract of the fund, the depositary shall promptly notify the Financial Supervision Authority and the supervisory board of the fund manager thereof.

§ 294. Depositary contracts

(1) A depositary contract is entered into between the fund manager and depositary in writing and the depositary contract shall govern the terms and conditions under which the assets of the fund are entrusted to the depositary for holding and other functions provided by the legislation and basic document of the fund for performance of the depositary functions.

(2) A depositary contract of a fund shall prescribe:

- 1) the term of validity of the contract;
- 2) the rights and obligations of the parties;
- 3) the procedure for settlements;
- 4) the amount and procedure for payment of the fee paid to the depositary;
- 5) the extent of and procedure for payment of expenses incurred upon the provision of depositary services;
- 6) the liability of the parties for breach of the contract;
- 7) the liability of the depositary if the assets or securities of the fund are entrusted to a third party for holding;
- 8) the procedure for settlement of disputes;
- 9) the conditions and procedure for amendment and termination of the contract, including the conditions for safekeeping and transfer of assets after termination of the depositary contract;
- 10) application of Estonian law to the depositary contract of a publicly offered fund;
- 11) other terms and conditions provided by legislation or arising from the basic document or prospectus of the fund.

(3) The list of the data stated in the depositary contract and applicable to depositaries of alternative funds is provided for in Article 83 of Commission Delegated Regulation (EU) No 231/2013.

§ 295. Additional conditions of depositary contracts of UCITS managed by fund managers of EEA Member States

(1) If a UCITS founded in Estonia is managed by a fund manager of another EEA Member State, the depositary contract shall specify the following in addition to the provisions of subsection 294 (2) of this Act or the following information shall be appended to the depositary contract:

- 1) all the information that has to be exchanged between the UCITS, its fund manager and the depositary related to the issue and redemption of units, and upon exchange of the depositary the conditions and procedure for transfer of information and documents;
- 2) the confidentiality obligations applicable to the parties to the depositary contract related to the information and documents;
- 3) the information concerning compliance with the tasks and responsibilities of the parties to the depositary contract relating to prevention of money laundering and terrorist financing;
- 4) the list of other UCITS covered by the depositary contract;
- 5) the procedure for entrusting the assets with the depositary and holding of the assets by types of the assets;

- 6) the procedure for amendment of the fund rules or prospectus of the UCITS, and the procedure for notification of the depositary of the amendments;
- 7) the procedure for submission of information by the depositary to the fund manager, including the procedure for exercise of the rights relating to securities and the procedure for ensuring the fund manager timely and appropriate access to the information concerning the financial statements of the UCITS;
- 8) the procedure for ensuring access to the depositary by the fund manager to the information which is necessary for performance of its obligations;
- 9) the procedure for inspection of the activities of the fund manager by the depositary and assessment of the quality of the information submitted, including for carrying out on-site inspections;
- 10) the procedure for inspection by the fund manager of the activities and performance of the obligations of the depositary.

(2) Establishment of the confidentiality obligation concerning the information and documents specified in clause (1) 2) of this section shall not prevent the Financial Supervision Authority or the financial supervision authority of the home country of the fund manager from gaining access to the documents and information.

(3) In addition to the provisions of subsection (1) of this section, the depositary contract shall prescribe the following for outsourcing of the functions of the depositary or the fund manager:

- 1) an obligation to provide data on a regular basis concerning any third parties to whom the depositary or the fund manager has outsourced its functions;
- 2) an obligation to provide information upon request by one party to the depositary contract to the other party on the criteria used for selection of the third party and the measures applied to verification of the activities of the third party;
- 3) a confirmation by both parties that the liability of the depositary is not affected if the assets or securities of the UCITS are entrusted to a third party.

(4) Each procedure specified in clauses (1) 9) and 10) of this section may be agreed upon by a separate written contract.

(5) If the parties to a depositary contract agree upon submission of the information submitted subject to subsection (1) of this section in full or in part in electronic form, the depositary contract shall prescribe the terms and conditions for storage of the information.

(6) The list of the data stated in the depositary contract and applicable to the depositary of a UCITS is provided for in Article 2 of Commission Delegated Regulation (EU) No 231/2013.

§ 296. Separation of assets

(1) A depositary shall keep the assets of funds, including claims arising from money held in the bank account of the fund in a depositary or credit institution separate from its own assets and shall keep separate accounting of the assets of funds.

(2) A depositary may keep the assets of funds in its own name if the fund manager consents thereto and separate accounting of the assets of funds is ensured.

(3) The securities of a fund do not form a part of the bankruptcy estate of its depositary, and the claims of creditors of the depositary shall not be satisfied for the account thereof. Investors of the fund are not required to submit the application specified in subsection 123 (3) of the Bankruptcy Act for exclusion of the securities of the fund from the bankruptcy estate of the depositary.

(4) Claims arising from the money held by the depositary shall be given priority over the claims specified in subsection 153 (1) of the Bankruptcy Act.

§ 297. Outsourcing of depositary functions

(1) Outsourcing of depositary functions must be justified and the purpose thereof cannot be to circumvent compliance with the requirements provided for in this Act.

(2) A depositary shall choose a third party which holds the assets of a fund with due diligence in order to ensure reliability of the third party. Before outsourcing of the functions and thereafter, the depositary is required to verify whether the level of the organisational and technical administration and the financial situation of the third party are sufficient to ensure performance of the contractual obligations thereof.

(3) Outsourcing of the functions of holding assets which are held through a depositary or in the name of the depositary is permitted only to a person over whom supervision is excised and who is subject to prudential requirements, including minimum capital requirements.

(4) A depositary has the right to outsource only the functions related to holding of the assets specified in § 290 of this Act from among the functions provided for in § 289 of this Act.

(5) A depositary has the right to outsource functions to third parties which meet the following conditions at the time of performance of the functions outsourced to the party:

- 1) the existence of the securities transferred by the depositary to the third party for holding and recognition thereof in the accounting of the third party shall be verified at least once a year by an audit firm;
- 2) the third party shall comply with the principles of separation of assets provided for in subsections 296 (1)-(3) of this Act.

(6) A third party may outsource the depositary functions outsourced to the party on the condition that the person to whom these functions are outsourced complies with the requirements set to depositaries.

(7) Provisions of the services of operators of securities settlement systems for the purposes of Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems (OJ L 166, 11.06.1998, pp. 45-50) or provision of similar services to securities settlement systems of third countries shall not be deemed to be outsourcing of depositary functions.

(8) The principles of outsourcing of the functions of a depositary of an alternative fund are provided for in Commission Delegated Regulation (EU) No 231/2013.

(9) The principles of outsourcing of the functions of a depositary of a UCITS are specified in the Commission Delegated Regulation (EU) No 2016/438 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries (OJ L 78, 24.03.2016, pp. 11-30).

§ 298. Liability of Depositaries

(1) A depositary shall be liable to investors for any direct material damage caused due to its negligence or intentional failure to perform its obligations.

(2) A depositary shall be liable to the fund or investors of the fund for loss of securities held for its own account or transferred to third parties. In the case the securities held are lost, the depositary shall return, without undue delay, the securities of the same type belonging to the fund or an amount of money corresponding to them.

(3) A depositary shall not be liable for the loss of the securities of the fund transferred to a third party if the depositary proves that the loss of the securities was caused by an independent external event which consequences would have been inevitable despite the efforts of the depositary.

(4) In addition to the provisions of subsection (3) of this section, a depositary of an alternative fund may be exempted from liability in the case the securities transferred to a third party are lost and if the depositary can prove that:

- 1) all the requirements for outsourcing of the functions of holding the assets of the fund have been complied with;
- 2) the depositary and the third party have entered into a written agreement whereby the obligations of the depositary with respect to the securities of the fund are expressly transferred to the third party and in the case the securities are lost, the fund manager, fund or depositary have the right to file a claim for damage in the name of the fund manager or the fund against this third party;
- 3) the depositary contract expressly authorizes exemption of the depositary of the fund manager from liability and states objective reasons for exemption from liability.

(5) The unit-holders or shareholders of a UCITS have the right to demand compensation for damage caused by a depositary directly from the depositary or through the fund manager provided that equal treatment of shareholders and unit-holders is ensured and it does not involve multiple compensation for damage.

(6) The unit-holders or shareholders of an alternative fund have the right to demand compensation for damage caused by a depositary directly from the depositary or through the fund manager depending on the mutual agreement between the manager, depositary and shareholders or unit-holders of the fund.

(7) A depositary shall not be released from liability upon outsourcing of the functions of holding the assets of a fund.

(8) The additional principles of identification of liability and exemption from liability applicable to depositaries of alternative funds are provided for in Commission Delegated Regulation (EU) No 231/2013.

(9) The additional principles of identification of liability and exemption from liability applicable to depositaries of UCITS are specified for in Commission Delegated Regulation (EU) No 2016/438.

§ 299. Specifications for outsourcing of depositary functions to persons operating in third countries and for liability

(1) If, in accordance with the law of a third country, certain securities must be held by a person operating in a third country who does not comply with the requirements provided for in subsection 297 (3) of this Act, the

depository functions may be outsourced to this person pursuant to the law of the third country for the period of absence of the persons who comply with the requirements specified in subsection 297 (3) of this Act only under the following conditions:

- 1) the investors of the fund shall be notified before subscription for shares or units of restrictions on outsourcing of the functions provided by law of the third country, reasons for outsourcing of the functions and risks related to outsourcing of the functions;
- 2) the fund or the fund manager has issued guidelines to the depository to outsource the functions of holding the respective securities to a person operating in the third country.

(2) If, in accordance with the law of a third country, certain securities must be held by a person operating in a third country who does not comply with the requirements provided for in subsection 297 (3) of this Act, the depository may be released from liability for the activities of the third party under the following conditions:

- 1) the basic document of the fund explicitly states such opportunity to exempt from liability;
- 2) the investors of the fund are notified before subscription for shares or units of this exemption from liability and the reasons therefor;
- 3) the fund or the fund manager has issued guidelines to the depository to outsource the holding of the securities to a respective person of the third country and the liability of the depository has been explicitly transferred to the third party in the written contract entered into between them;
- 4) by a written contract entered into by a depository and the respective person of a third country, the obligations of the depository are explicitly transferred to the specified third party and in accordance with the respective contract, the fund, fund manager or depository have the right to submit a claim against the specified third party in the case the securities are lost.

§ 300. Exchange of depository pursuant to precept of Financial Supervision Authority

(1) The Financial Supervision Authority may issue a precept obliging a fund manager to exchange a depository in order to protect the legitimate interests of the shareholders of the investors of the fund if the depository fails to perform the obligations provided by legislation, depository contract or other contracts.

(2) A precept of the Financial Supervision Authority may designate a term within which a fund manager has to enter into a new depository contract and transfer the assets of the fund to a new depository.

(3) A depository shall perform the obligations provided by legislation and the depository contract until a new depository contract is entered into and shall transfer the assets of the fund to a new depository not later than by the due date designated by the Financial Supervision Authority. For the activities provided for in this subsection, the depository shall have the right to charge a fee provided for in the depository contract.

Chapter 25

Specifications for Depositories of Pension Funds

§ 301. Additional requirements for depositories of pension funds

(1) The depository of a pension fund may only be a credit institution which has been entered in the Estonian commercial register as a public limited company or branch of a foreign company. The restriction provided for in this section does not apply to depositories of occupational pension funds.
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) Only a credit institution which is an Estonian or foreign account administrator specified in the Securities Register Maintenance Act may be the depository of a mandatory pension fund.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) In addition to the provisions of § 287 of this Act, the level of the organisational and technical administration of activities of a depository, its financial situation, the competence and experience of the employees engaged in performance of the depository functions and its technical systems and facilities shall be adequate to ensure performance of functions prescribed for the depository in the contract specified in subsection 22 (1) and subsection 52⁵(3) of the Funded Pensions Act.

(4) A depository shall also perform the functions provided for in this Act and the Funded Pensions Act after termination of the depository contract if the depository contract is terminated upon termination of the pension fund management authority of the fund manager or in other cases if the assets of the fund are not transferred to another depository after termination of the depository contract.

§ 302. Activities and liability of depositories of pension funds

(1) In addition to the provisions of Chapter 24 of this Act, the depository of a pension fund shall verify compliance of the following transactions with the requirements established in the legislation, fund rules and

prospectus of the pension fund and, in the case of a mandatory pension fund, in the contract specified in subsection 22 (1) and subsection 52⁵(3) of the Funded Pensions Act:

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

- 1) the exchange of the units of the pension fund;
- 2) the redemption of the units of the pension fund in order to enter into an insurance contract for mandatory or supplementary funded pension;
- 3) the redemption of the units of the pension fund in order to make payments to unit-holders.

(2) A depositary shall inform the registrar of the pension register of the issue price and redemption price and the size of the issue fee and redemption fee of a unit of a mandatory pension fund by the beginning of each working day.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) In addition to the provisions of subsection 298 (3) of this Act, a depositary of a pension fund may be exempted from liability in the case the securities transferred to a third party are lost and if the depositary can prove compliance with the conditions provided for in subsection 298 (4) of this Act.

(4) The unit-holders of a pension have the right to demand compensation for damage caused by a depositary directly from the depositary or through the fund manager provided that equal treatment of unit-holders is ensured and it does not involve multiple compensation for damage.

§ 303. Specifications for depositaries of defined-benefit occupational pension funds

(1) The provisions concerning depositaries of UCITS provided for in chapter 24 of this Act are applied to depositaries of defined-benefit occupational pension funds and the provisions concerning unit-holders and shareholders of funds apply to persons covered by the pension schemes.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) [Repealed - RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(3) In addition to the provisions of subsection 298 (3) of this Act, a depositary of a defined-benefit occupational pension fund may be exempted from liability in the case the securities transferred to a third party are lost and if the depositary can prove compliance with the conditions provided for in clauses 298 (4) 1)-3) of this Act.

(4) Persons covered by the pension scheme of a defined-benefit occupational pension fund have the right to demand compensation from the fund manager for damage caused by the depositary if equal treatment of persons covered by the pension scheme is ensured and it does not involve multiple compensation for damage.

Part 5 FUND MANAGERS

Chapter 26 General Provisions, Activities and Management of Fund Managers

Division 1 General Provisions

§ 304. General provisions and application

(1) This Part shall apply to fund managers founded in Estonia. Only the provisions of §§ 398-440 of this Act apply to fund managers founded in foreign states, unless otherwise provided for in this Act.

(2) The seat and place of business of a fund manager established or founded in Estonia must be in Estonia. The seat of a fund manager established or founded in Estonia may be in a foreign state if the fund manager has established a branch in Estonia for operation or if it provides cross-border services in Estonia.

(3) The provisions of this Part concerning fund managers apply to occupational pension funds founded as public limited funds to the extent provided for in §§ 216-239 of this Act.

(4) Upon establishment or foundation of European venture capital fund managers, European social entrepreneurship fund managers and European long-term investment funds, the provisions concerning fund managers in Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 2015/760 of the European Parliament and the Council also apply to fund managers in addition to the provisions of this Act.

(5) The Financial Supervision Authority has the right to implement all the measures specified in this Act in order to bring the activities of the persons specified in subsection (4) of this section into compliance with the requirements provided for in Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 2015/760 of the European Parliament and of the Council, including the liability provisions applicable to fund managers.

Division 2

Management of Funds and Provision of Investment Services

§ 305. Management of funds

(1) Only the fund manager of a fund has the right to manage the fund. The fund manager may transfer the management of a fund to another fund manager who has the authority to manage the respective fund.

(2) Management of a UCITS and pension fund includes the following activities:

- 1) investment of the assets of the fund and management of risks relating to investment of the assets of the fund;
- 2) administration of the fund; and
- 3) offer of the fund.

(3) Management of an alternative fund includes at least investment of the assets of the fund and management of the risks relating to investment of the assets of the fund. The fund manager of an alternative fund may additionally engage in the following in the framework of management:

- 1) administration of the alternative fund;
- 2) offer of the alternative fund;
- 3) activities related to management of the assets which constitute the object of the investments of the alternative fund, including management of property, counselling of undertakings in connection with capital structure, business strategy and in other issues of this type and provision of other services in connection with mergers and acquisitions of undertakings and management of the assets which constitute the object of the investments thereof.

4) Investment of the assets of a fund means determination of the investment policy of the fund and making of investment decisions upon investment of the assets of the fund and conduct of transactions therewith.

(5) Administration of a fund includes:

- 1) keeping account of the assets of the fund and organisation of accounting of a common fund;
- 2) communication of necessary information to the investors of the fund and other customer services, including settlement of complaints of investors of the fund;
- 3) assessment of the assets of the fund and establishment of the net asset value thereof, including submission of information and reports on the assets of the fund;
- 4) monitoring compliance of the activities of the fund with the legislation, including implementation of an appropriate system of internal control with respect to the fund;
- 5) organisation of maintenance of a register of the units or shares of the fund;
- 6) calculation of the income of the fund and organisation of distribution of the income to the investors of the fund;
- 7) issue and redemption of the units or shares of the fund;
- 8) organisation of settlements related to issue of the units or shares and management of the assets, including issue of necessary documentation;
- 9) preservation of the documents related to the fund.

(6) Within the framework of management of a pension fund, the pension fund manager may additionally conduct the following activities specified in clause (3) 3) of this section with respect to the assets which constitute the object of the investments of the pension fund managed by it.

(7) The authority of a fund manager to manage a fund terminates upon:

- 1) transfer of the function to manage the fund to another fund manager;
- 2) revocation of the activity licence of the fund manager;
- 3) compulsory dissolution of the fund manager;
- 4) upon declaration of bankruptcy or the fund manager or abatement of bankruptcy proceedings commenced against it;
- 5) issue of a respective precept by the Financial Supervision Authority.

§ 306. Scope of activity licences of fund managers and registration of their activities

(1) In order to operate as a fund manager, the person must hold the activity licence provided for in this Act, unless otherwise provided for in this Act.

(2) A small fund manager which manages a public limited fund or common fund must apply for an activity licence of a fund manager. The provisions of §§ 441-452 and 454 of this Chapter apply to small fund managers holding activity licences, unless otherwise provided for in this Act.

(3) If a small fund manager does not apply for an activity licence, it has to register its activities with the Financial Supervision Authority in accordance with the provisions of § 453 of this Act and comply with the obligation to submit to the Financial Supervision Authority the information provided for in § 454 of this Act. The provision of §§ 309-312 of this Act concerning activities and management of fund managers and of §§ 441-452 concerning small fund managers do not apply to small fund managers with no activity licence.

(4) A fund manager which wants to exercise all the rights pursuant to Directive 2011/61/EU of the European Parliament and of the Council must apply to the Financial Supervision Authority for an activity licence for management of alternative funds in accordance with the provisions of §§ 313-321 of this Act and all the requirements prescribed to alternative fund managers apply to the fund manager.

(5) The activity licence of a fund manager issued by the Financial Supervision Authority grants one or more of the following rights (hereinafter *scope of activity licence*):

- 1) operation as a fund manager of a UCITS;
 - 2) operation as a fund manager of an alternative fund;
 - 3) operation as a fund manager of a mandatory pension fund;
 - 4) operation as a fund manager of a voluntary pension fund;
 - 5) operation as a fund manager of a small fund;
 - 6) provision of investment services and ancillary services.
- [RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(6) A fund manager may manage funds and provide investment services or ancillary services for which it has an activity licence, unless otherwise provided for in this Act.

(7) A fund manager of a UCITS may manage an alternative fund and a fund manager of an alternative fund may manage a UCITS if the fund manager has received an additional activity licence for operation as a manager of such fund. A pension fund manager may manage a UCITS or alternative fund if the fund manager has received an additional activity licence for operation as a manager of such fund. A pension fund manager may manage only such alternative funds which have been founded pursuant to this Act.

(8) A fund manager of a UCITS or pension fund is not required to apply for an additional activity licence for the management of an alternative fund which assets do not amount to the threshold established for a small fund manager specified in subsection 3 (6) of this Act.

(9) Small fund managers may manage only non-public funds. They may apply for an activity licence only for the management of a fund that is not publicly offered. They cannot apply for the right to provide investment services and ancillary services for the purposes of the Securities Market Act.

(10) If the total assets managed by a small fund manager exceed the threshold provided for in subsection 3 (6) of this Act, the fund manager must submit to the Financial Supervision Authority an application for an activity licence pursuant to § 313 of this Act within 30 calendar days after exceeding of the threshold.

§ 307. Services provided by fund managers

(1) The fund manager of a UCITS or alternative fund may apply for an activity licence for management of funds together with the right to provide one or more of the following investment services or ancillary services:

- 1) management of a securities portfolio for the purposes of clause 43 (1) 4) of the Securities Market Act;
- 2) investment advising for the purposes of clause 43 (1) 5) of the Securities Market Act;
- 3) holding of units or shares of a fund for a client for the purposes of clause 44 1) of the Securities Market Act.

(2) In addition to the services specified in subsection (1) of this section, an alternative fund manager may apply for the right to provide, as an investment service, the service of reception and transmission of orders with respect to securities for the purposes of clause 43 (1) 1) of the Securities Market Act.

(3) The fund manager of a UCITS or alternative fund may apply for the right to provide the service specified in clauses (1) 2) or 3) of this section and an alternative fund manager may additionally apply for the right to provide the service specified in subsection (2) of this section in the case the fund manager applies for the following rights or these right have been granted to the fund manager:

- 1) operation as a fund manager of a UCITS or alternative fund; and
- 2) the right to provide the service of securities portfolio management for the purposes of clause 43 (1) 4) of the Securities Market Act.

(4) A fund manager may also provide the fund management service to a fund not managed by the fund manager provided that the fund manager manages at least one fund.

§ 308. Processing of activity licences and disclosure of decisions to issue or revoke activity licences

(1) The Financial Supervision Authority shall publish on its website the decision on issue of an activity licence to a fund manager for management of funds or provision of investment services or ancillary services, amendment of the scope thereof or revocation of an activity licence in full or in part at the latest on the working day following the making of the decision.

(2) A fund manager shall publish on its website the decision on issue of an activity licence to the fund manager for management of funds or provision of investment services or ancillary services, amendment of the scope thereof or revocation of an activity licence in full or in part immediately after the receipt thereof.

(3) The provisions of §§ 314-321 or §§ 441-443 of this Act apply to applications for processing of activity licences of fund managers, revocation thereof or amendment of activity licences.

Division 3 General Requirements for Activities and Management of Fund Managers

§ 309. Requirements for activities of fund managers

(1) The activities of a fund manager must comply with the legislation, basic document of the fund manager and the fund managed by it and the management contract and be based on the best interests of its investors.

(2) A fund manager must treat the investors of a fund equally under equal circumstances and share information and documents with them on equal basis, taking account of the specifications provided for in the basic document of the non-public fund.

(3) A fund manager shall have the right to possess, use and dispose of the assets of the fund in accordance with the basic document, prospectus and management contract of the fund.

(4) A fund manager shall conduct transactions with the assets of a common fund in its own name and for the account of all the unit-holders collectively (hereinafter *for account of common fund*), or with the assets of a public limited fund or limited partnership fund in the name and for the account of the fund, or in accordance with the management contract in the name of the fund manager and for the account of the fund.

(5) A fund manager shall show sufficient competence, honesty, accuracy and diligence in its activities and refrain from transactions in which the interests of the fund manager are in conflict with the interests of the fund managed by it and the investors of the fund and other clients of the services provided by the fund manager (hereinafter in this Part *conflict of interests*). In the case of an inevitable conflict of interests, the fund manager shall proceed from the interests of the fund and investors of the fund and other clients of the services provided by the fund manager.

(6) A fund manager shall establish a procedure which allows you to identify the counterparties of all the transactions related to the funds managed by the fund manager, the nature of transactions and the time and place thereof. A fund manager shall ensure that the assets of the managed funds are invested in accordance with the basic document and prospectus of the fund and the current legislation.

(7) Upon provision of the services of managing securities portfolios, a fund manager may invest the assets of a client in a fund managed by the fund manager only to the extent in which the client has granted the respective right to the fund manager in writing.

(8) The provisions of subsections 79¹(2) and (4), §§ 81¹, 82³, 82⁴, 82⁶ and 82⁹-82¹⁶, subsection 85 (1), §§ 85², 85⁴-87², 88-88⁴, 89¹, 90, 90¹ and 93 of the Securities Market Act and relevant legislation of the European Union apply to fund managers that provide the investment services or ancillary services provided for in § 307 of this Act.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

§ 310. Requirements for managers and employees of fund managers

(1) Managers of a fund manager must ensure compliance with the requirements in such a manner that:

- 1) the organisational structure of the fund manager is transparent and with clearly defined areas of responsibility and proportionate to the nature and complexity of the activities thereof;
- 2) the fund manager has established the internal rules required for the activities thereof, including rules for sufficient mitigation and avoidance of conflicts of interests and, in the case provided for in this Act, risk control and conformity inspection rules, and efficient implementation of these rules is ensured;

3) the activities of the fund manager are in conformity with the legislation and internal rules and the number of employees of the fund manager and their competence is sufficient for sustainable provision of the services.

(2) Managers and employees of a fund manager are required to act with the prudence, competence, accuracy and diligence expected of them and in accordance with the requirements prescribed for their positions by subordinating the personal economic interests of its managers and employees to the interests of the fund manager and the funds managed by it, investors and other clients and creditors thereof. Managers and employees of the fund manager may not endanger the reliability and regular operation of the financial markets by their activities.

(3) Only persons who have the knowledge, skills, experience, education and professional qualifications necessary to manage a fund manager and an impeccable business reputation may be elected or appointed managers of fund managers. Employees of a fund manager must have sufficient skills, knowledge and experience.

(4) The following persons shall *inter alia* not be managers of fund managers:

1) persons whose activities or omissions have caused bankruptcy or revocation of the activity licence of a fund, fund manager or another person subject to financial supervision on the initiative of a financial supervision authority;

2) persons who have committed a criminal offence in the first degree;

3) persons who have been punished for an economic offence, official misconduct or offence against property or offence against public trust and data concerning the punishment have not been deleted from the criminal records database pursuant to the Criminal Records Database Act;

4) with respect to whom a court has imposed in accordance with §§ 49 and 49¹ of the Penal Code an occupational ban or prohibition to engage in enterprise, and persons with respect to whom a court has imposed a prohibition on business in accordance with § 91 of the Bankruptcy Act or whose right to engage in the field of business has been restricted pursuant to law, court judgment or ruling in any other manner.

(5) In the case of a citizen of a foreign state, a certificate of the criminal records database or an equivalent document of a competent court or administrative authority of the country of origin of the person which has been issued less than three months earlier shall be accepted for proving the exclusion of the facts provided for in subsection (4) of this section.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(6) If the document specified in subsection (5) of this section is not issued in the country of origin of the person, a document issued, less than three months ago, by a competent notary, court or administrative authority of the corresponding foreign state certifying the truthfulness of an oath taken by the person in front of the notary, court or administrative authority, or another competent body shall also be accepted.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 311. Notification of Financial Supervision Authority of managers, internal auditors and audit firms

(1) A fund manager shall notify the Financial Supervision Authority of the intention to elect, appoint or remove before the expiry of his or her term of authority the manager of a fund manager, audit firm and person performing the functions of an internal auditor by submitting to the Financial Supervision Authority at least ten days before making the relevant decision the information specified in clause (2), (3) or (4) of this section and the confirmation specified in subsection (5) of this section. The specified term shall not apply if prior notification is not possible for good reasons. If managers of a fund manager or other persons specified in this section are replaced because they no longer fulfil the requirements, the Financial Supervision Authority must also be notified of the reason therefor.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) Before election or appointment of the manager of a fund manager, the person to be elected or appointed must present the following data and documents to the fund manager:

1) the given names and surname, personal identification code of the person or in the absence thereof the date of birth, citizenship, place of residence, educational background, complete list of earlier places of employment and positions held, other documents certifying professional suitability, reliability of the manager and compliance with the requirements of this Act, and in the case of a member of the management board a description of his or her field of responsibility;

2) a confirmation that no circumstances apply to the person which would preclude performance of the functions provided for in this Act.

(3) Before election or appointment of the person performing the internal audit functions of a fund manager, the person to be elected or appointed must present the following data and documents to the fund manager:

1) in the case of a legal entity the business name and registry code, and the given names and surname, personal identification code of the natural person who is a certified internal auditor directly providing the service or in the absence thereof the date of birth, citizenship, place of residence, educational background, complete list of earlier places of employment and positions held and other documents certifying professional suitability, reliability and compliance with the requirements of this Act;

2) a confirmation that no circumstances apply to the person personally performing the internal audit function which would preclude the performance of the functions provided for in this Act.

(4) Before election or appointment of the audit firm of a fund manager, the person to be elected or appointed must present the following data and documents to the fund manager:

- 1) the business name, registry code and seat;
- 2) a confirmation that no circumstances apply to the audit firm which preclude the right to be an audit firm of the fund manager.

(5) The accuracy of the data and documents of natural persons specified in subsections (2)-(4) of this section shall be confirmed by the signature of the specified persons.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(6) If the person specified in subsection (1) of this section is re-elected or re-appointed and the information submitted concerning the person in accordance with subsection (2), (3) or (4) of this section has not changed, the fund manager may submit to the Financial Supervision Authority only a written confirmation of the person specified in subsection (1) of this section that the person is in compliance with the requirements provided for in this Act and the earlier submitted data concerning the person have not changed.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(7) A fund manager shall immediately notify the Financial Supervision Authority of receipt of a letter of resignation of the manager of a fund manager, internal auditor and audit firm.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(8) The term provided for in subsection (1) of this section does not apply upon application for an activity licence.

§ 312. Removal of managers of fund managers

The Financial Supervision Authority may issue a precept to demand removal of a manager of a fund manager if:

- 1) the manager does not meet the requirements provided for in this Act;
- 2) the manager has violated the requirements of this Act or other legislation related to his or her professional activities;
- 3) misleading or inaccurate data have been submitted, submission of essential information has failed or documents have been falsified in connection with election or appointment of the person; or
- 4) the activities of the manager in managing the fund manager have demonstrated his or her inability to organise the management of the fund manager in such a manner that the interests of the fund, investors, clients of investment services or ancillary services or creditors of the fund would be sufficiently protected.

Chapter 27

Managers of UCITS, Alternative Funds or Pension Funds

Division 1

Activity Licences of Fund Managers

Subdivision 1

General Requirements for Application of Activity Licences of Fund Managers

§ 313. Application of activity licences of fund managers

(1) In order to apply for an activity licence, the members of the management board of a fund manager shall submit to the Financial Supervision Authority a written application and the following data and documents (in general, application, data and documents hereinafter in this Division *application*):

- 1) a copy of the articles of association and, in the case of an operating company, the decision of the general meeting on amendment of the articles of association and the amended text of the articles of association;
- 2) upon foundation of a company, the memorandum of association or foundation resolution and a document certifying payment of the share capital;
- 3) in the case of an operating company, documents certifying the amount of own funds together with the sworn auditor's report;
- 4) the business plan;
- 5) the opening balance of the applicant and a review of income and expenditure, or in the case of an operating company the balance sheet and income statement as at the end of the month prior to submission of the application and the three last annual reports, if such documents exist;

- 6) the internal rules of the fund manager or drafts thereof and the internal rules which comply with the requirements provided for in the Securities Market Act for the provision of investment services or ancillary services or the drafts thereof;
- 7) the data of the managers and, if any, internal auditors of the applicant, including each person's given name and surname, personal identification code or in the absence thereof date of birth, citizenship, place of residence, educational background, complete list of earlier places of employment and positions held, in the case of members of the management board a description of the area of responsibility, and other documents certifying reliability of the managers and compliance with the requirements of this Act;
- 8) the data of the audit firm of the applicant which include its business name, seat and registry code;
- 9) a list of the shareholders of the applicant which sets out the name and the personal identification code or registry code of each shareholder, or the date of birth in the absence of a personal identification code, or registry code, and information on the number of shares and votes being acquired or owned by each shareholder;
- 10) the data specified in § 324 of this Act on persons who own qualifying holdings in the applicant;
- 11) the data of companies in which the holding of the applicant or a manager exceeds 20 per cent or which are controlled by the applicant and which must also include the amount of the share capital of the company, list of the areas of activity and size of the holding of the specified persons or the circumstances of exercising control;
- 12) if the applicant applies for an activity licence together with the right to provide investment services or ancillary services, the document certifying assumption of the obligation to pay a single contribution to the Investor Protection Sectoral Fund.

(2) A business plan shall be submitted for at least three years. The business plan must include a description of the following circumstances, forecasts and analysis:

- 1) the organisational structure of the applicant and description of the rights, obligations and liability of the persons related to the management of the fund;
- 2) the size of the assets, share capital and shareholders' equity of the applicant;
- 3) a forecast and analysis of essential economic indicators of the applicant;
- 4) the income and expenditure of the applicant by area of activity;
- 5) the types and number of funds managed and forecast and analysis of essential economic indicators;
- 6) the order for issue of shares or units of the fund, net asset value and foreseeable rate of return;
- 7) the investment policy and structure of investments of the funds;
- 8) the size and structure of the management expenses of the funds;
- 9) the rates for and amount of proceeds from management fees, depositary's charges, and the issue and redemption fees of units;
- 10) the amount of the fixed overheads of the applicant;
- 11) a list of other services provided by the fund manager;
- 12) plans regarding annual balance sheets and financial indicators, including financial indicators of the funds, which *inter alia* set out revenue, expenditure, profit and cash flows, and the presumptions which constitute the basis thereof;
- 13) the information specified in § 330 or 332 of this Act if the applicant applies for an activity licence of a fund manager of an alternative fund or pension fund.

(3) If a fund manager applies for the right to operate as a manager of several funds specified in subsection 306 (5) of this Act or additionally provide one or more investment services or ancillary services, this shall be clearly indicated in the application. In this case, the application must comply with the requirements provided by legislation for each such activity.

(4) The accuracy of the data and documents with regard to natural persons specified in clauses (1) 7) and 10) of this section shall be confirmed by these persons by their signatures.

(5) If changes are made in the data specified in subsection (1) of this section during processing of an application, the applicant shall promptly submit the respective updated data and documents to the Financial Supervision Authority.

§ 314. Review of applications for activity licences

(1) If the data and documents appended to an application are not in compliance with the requirements provided for in § 313 of this Act, the Financial Supervision Authority shall demand elimination of the deficiencies by the applicant.

(2) The Financial Supervision Authority may demand submission of additional data and documents within a reasonable term determined by it if it is not convinced on the basis of the data and documents specified in § 313 of this Act as to whether the applicant for an activity licence has adequate facilities for the management of a fund and whether the applicant is in compliance with the requirements established for a fund manager by the legislation.

(3) In order to verify the information submitted by an applicant, the Financial Supervision Authority may require that more specific information and documents be submitted, perform on-site inspections, order assessment or special audit, consult the state databases, request oral explanations from the managers and employees, audit firm of the fund manager, their representatives and third parties concerning the contents of documents and facts which are relevant in the making of a decision on the issue of an activity licence.

(4) The deficiencies specified in subsections (1)–(3) of this section shall be eliminated and the data and documents shall be submitted within a reasonable term determined by the Financial Supervision Authority.

(5) If obvious deficiencies are found in a submitted application, the Financial Supervision Authority may refuse to review the application.

(6) The Financial Supervision Authority may refuse to review an application or demand elimination of deficiencies by the applicant if the applicant has failed to eliminate the deficiencies specified in subsection (1) or (2) of this section within the prescribed term, has failed to submit the data, documents or information requested by the Financial Supervision Authority by the due date or has submitted these with significant deficiencies.

(7) If amendments are made to the data or documents specified in subsection 313 (1) of this Act during the processing of an application for an activity licence, the applicant shall promptly submit the respective updated data and documents to the Financial Supervision Authority. If an amendment is important, the Financial Supervision Authority may deem the moment of receipt of the important amendment to be the beginning of the time limit of proceedings. In this case, the Financial Supervision Authority shall notify the applicant of the new beginning of the time limit of proceedings.

(8) Upon processing of an application, the Financial Supervision Authority shall cooperate with the financial supervision authority of the respective EEA Member State if:

- 1) the applicant is a parent undertaking or subsidiary of a fund manager, fund, investment firm, credit institution, insurer founded in an EEA Member State or another person subject to financial supervision;
- 2) the subsidiary of the parent undertaking of the applicant is a fund manager, fund, investment firm, credit institution or insurer founded in the EEA Member State or another person subject to financial supervision;
- 3) the applicant and a fund manager, fund, investment firm, credit institution or insurer founded in the EEA Member State or another person subject to financial supervision are companies controlled by one and the same person.

§ 315. Decisions on issue of activity licences

(1) The Financial Supervision Authority shall make a decision to issue or refusal to issue an activity licence within two months after submission of all the necessary data and documents but not later than within six months after submission of a proper application. The applicant may give an irrevocable written consent to the Financial Supervision Authority for extension of the term for making a decision to issue an activity licence or refusal to issue it.

(2) The decision to grant an activity licence shall specify the funds which the fund manager has the right to manage. If, together with an application for an activity licence, the right to provide one or more investment services or ancillary services is also applied for, a decision on issue of an activity licence shall also set out the services which the fund manager has the right to provide in accordance with the activity licence.

(3) The Financial Supervision Authority shall promptly communicate a decision to issue or refusal to issue an activity licence to the applicant. The Financial Supervision Authority shall communicate the information on issue of an activity licence to a UCITS manager and alternative fund manager and revocation thereof, if made, to the European Securities and Markets Authority on a quarterly basis.

§ 316. Bases for refusal to issue authorisation

(1) The Financial Supervision Authority may refuse to issue an activity licence to a fund manager or grant to a fund manager the right to provide one or more investment services or ancillary services if:

- 1) the applicant, manager, audit firm or shareholders thereof do not comply with the requirements established by legislation or the activities of the manager of the applicant have demonstrated his or her inability to organise the management of the fund manager in such a manner that the interests of the fund, investors, clients of the investment services or ancillary services or creditors of the fund are sufficiently protected;
- 2) full payment of the share capital of a company being founded or existence of the initial capital or sufficient own funds of an operating company are not proved;
- 3) the applicant does not have the necessary resources and experience to operate with success and continuity as a fund manager;
- 4) close links between the applicant and another person prevent sufficient supervision over the fund manager, or the facts justify reasonable doubt in the close links which prevent effective supervision over the applicant, or the requirements provided for by legislation or implementation of legislation of the state where the persons with whom the applicant has close links are established prevent sufficient supervision over the fund manager;
- 5) the data or documents presented in the business plan are incomplete or insufficient;
- 6) the internal rules of the applicant are not sufficiently accurate or unambiguous for regulation of the activities of the fund manager;
- 7) the applicant or a manager thereof has been punished for an economic offence, official misconduct, offence against property or offence against public trust and the data concerning the punishment have not been deleted pursuant to the Criminal Records Database Act;

8) the previous activity licence issued to the applicant has been revoked, unless the activity licence has been revoked for any reason provided for in § 318 of this Act;

9) the additional data, documents or information submitted by the applicant during the proceedings of the application significantly change that submitted in an earlier application.

(2) The following shall be *inter alia* considered upon assessment of that provided for in clause (1) 3) of this section:

- 1) the level of the organisational and technical administration of the activities of the applicant;
- 2) the professional qualifications and experience of persons engaged in the management of funds, and transparency of their rights, obligations and liability;
- 3) the activities, financial situation and reputation of the applicant, its parent company and persons which belong to the same consolidation group as the applicant.

§ 317. Revocation of activity licences

(1) Revocation of an activity licence is total or partial deprivation of the rights granted to a fund manager by the activity licence.

(2) An activity licence shall be revoked either in full or in part in order to deprive of fund management authority or right to provide investment services or ancillary services. In the case an activity licence is revoked in part, the Financial Supervision Authority shall determine the rights which the holder of the activity licence shall lose upon partial revocation of the activity licence.

(3) Prior to deciding on total or partial revocation of an activity licence, the Financial Supervision Authority may issue a precept to the fund manager and set a term for elimination of the deficiencies which constitute the basis for revocation.

(4) A decision on revocation of an activity licence shall be promptly communicated to the addressee of the decision, public limited fund, limited partnership fund managed by it and the depositary of the fund managed by the fund manager, if any.

(5) A decision on revocation of an activity licence enters into force on the date indicated in the decision but not before communication of the decision to its addressee.

§ 318. Bases for revocation of activity licences

The Financial Supervision Authority may revoke an activity licence in full or in part if:

- 1) a fund manager has failed to commence the management of a fund within 12 months after issue of the activity licence thereto or the fund manager has not managed any funds or assets of any funds within a period of 12 consecutive months;
- 2) the data submitted upon application for an activity licence which were of material importance in the decision to issue the activity licence are false, and in other cases where false data have been submitted to the Financial Supervision Authority by or for the fund manager;
- 3) the fund manager, the managers, audit firm or shareholders thereof do not comply with the requirements established in this Act or the activities of the manager of the fund manager have demonstrated his or her inability to organise the management of the fund manager in such a manner that the interests of the fund, the investors, clients of the investment services or ancillary services or creditors of the fund are sufficiently protected;
- 4) the fund manager has violated the provisions of the legislation governing the activities thereof to a material extent, the fund manager or the manager thereof has been punished for an economic offence, official misconduct, offence against property or offence against public trust, if the data concerning the punishment have not been deleted from the criminal records database pursuant to the Criminal Records Database Act or the activities or inactivity of the fund manager are not in compliance with good practice;
- 5) the fund manager has published materially incorrect or misleading information or advertising concerning the activities or manager thereof;
- 6) close links between the fund manager and another person prevent sufficient supervision over the fund manager, or the facts justify reasonable doubt in the close links which prevent effective supervision over the fund manager, or the requirements provided by legislation or the implementation of legislation of the state where the persons with whom the applicant has close links are established prevent sufficient supervision over the fund manager;
- 7) the fund manager is unable to perform the obligations it has assumed or its activities significantly damage, for any other reason, the interests of the fund, investors of the fund, clients of the investment services or ancillary services or regular operation of the securities market;
- 8) the fund manager fails to comply with the prudential requirements provided by legislation;
- 9) the fund manager which provides the investment services or ancillary services has failed to pay contributions to the Investor Protection Sectoral Fund in accordance with the Guarantee Fund Act for the specified term or in full;
- 10) the fund manager has violated the basic document, prospectus or management contract of the fund managed by it and such violation may compromise the interests of the fund managed by the fund manager or of the investors of the fund;
- 11) the fund manager has failed to implement a precept of the Financial Supervision Authority by the due date or to the extent prescribed;

- 12) the amount of the own funds of the fund manager does not comply with the requirements provided by legislation;
- 13) fund manager has committed a money laundering violation or violates the procedure for preventing money laundering and terrorist financing established by legislation;
- 14) according to the information submitted to the Financial Supervision Authority by a foreign financial supervision authority, the fund manager has violated the conditions provided by legislation or the financial supervision authority of an EEA Member State;
- 15) the fund manager has submitted an application to the Financial Supervision Authority for revocation of an activity licence in accordance with subsection 387 (1) of this Act.

§ 319. Amendment of scope of activity licenses upon request of fund managers

- (1) Amendment of the scope of an activity licence includes application for an additional activity licence or application for revocation of an activity licence in part or in full on the initiative of a fund manager. The fund manager which already holds an activity licence and wishes to change the scope of its activity licence in such a manner that the fund manager would be authorised to additionally operate as a fund manager of one or more funds specified in subsection 306 (5) of this Act or provide the services mentioned in the specified provision shall apply to Financial Supervision Authority for an additional activity licence.
- (2) In order to apply for an additional activity licence, the members of the management board of the fund manager shall submit a written application to the Financial Supervision Authority and the data and documents specified in subsection 313 (1) of this Act which contain the changes in connection with the application for an additional activity licence and, as appropriate, the data and documents specified in subsection 330 (1) and subsection 332 (1).
- (3) In order to revoke an activity licence of such investment services or ancillary services which a fund manager no longer intends to provide or for the funds which the fund manager no longer intends to manage, the members of the management board of the fund manager shall submit a written application, business plan and internal rules of the fund manager to the Financial Supervision Authority.
- (4) In order to change the scope of an activity licence in such a manner that the fund manager would have the right to operate as a small fund manager, the members of the management board of the fund manager shall submit to the Financial Supervision Authority a written application, business plan, internal rules of the fund manager and the information specified in subsection 453 (2) of this Act concerning the funds managed.
- (5) A fund manager may apply for revocation of an activity licence if:
 - 1) the fund manager does not provide the investment services or ancillary services for which it holds an activity licence;
 - 2) the fund manager no longer manages any funds for which it holds an activity licence, or the assets of any funds; or
 - 3) upon merger of fund managers, the fund manager is the fund manager being acquired and the legitimate interests of the investors of the funds previously managed by the fund manager are sufficiently protected.

§ 320. Procedure for amendment of scope of activity licences

- (1) The provisions of §§ 308 and 314-316 of this Act apply to application for amendment of the scope of an activity licence, taking account of the specifications specified in § 319 of this Act. The Financial Supervision Authority shall review an application to amend the scope of an activity licence and make a decision of issue of an additional activity licence or revocation thereof within two months after submission of all the necessary data and documents but not later than within six months after submission of a proper application.
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

- (2) The Financial Supervision Authority may refuse to revoke an activity licence if:
 - 1) the obligations of the fund manager in connection with the fund managed have not ceased;
 - 2) the revocation of the activity licence may damage the legitimate interests of investors of the fund managed by the fund manager or clients of the investment services or ancillary services.
- (3) A decision on issue of an additional activity licence or revocation of an activity licence enters into force on the date indicated in the decision but not before communication of the decision to the fund manager. The provisions of subsection 317 (4) of this Act apply to communication of a decision on revocation of an activity licence.

§ 321. Changes to data which constitute basis for activity licences

- (1) A fund manager is required to promptly notify the Financial Supervision Authority of any changes in the data and circumstances which constituted the basis upon making the decision to issue an activity licence of the fund manager, and submit the following data and documents:

- 1) the business name and address of the seat of the fund manager or, in the case of changes in the contact details, the new business name, address of the seat and new contact details;
- 2) upon changes in the share capital of the fund manager, the amount of share capital and the date of making the entry;
- 3) upon changes in the articles of association of the fund manager, the amendments to and the amended text of the articles of association;
- 4) upon exchange of managers, the data specified in clause 313 (1) 7) of this Act if the fund manager has not submitted such data to the Financial Supervision Authority earlier, or a confirmation in accordance with subsection 311 (5) of this Act;
- 5) upon exchange of an auditor firm, the data specified in clause 313 (1) 8) of this Act if the fund manager has not submitted such data to the Financial Supervision Authority earlier, or a confirmation in accordance with subsection 311 (5) of this Act;
- 6) upon exchange of shareholders of the fund manager with qualifying holdings, the data specified in subsection 324 (1) of this Act;
- 7) upon amendment of the internal rules concerning the activities of the fund manager, a document showing the amendments to the internal rules or the new internal rules to which a summary of substantial changes to the internal rules has been appended.

(2) At the request of the Financial Supervision Authority, a fund manager must promptly publish the data and documents specified in clauses (1) 2)-4) of this section on its website.

(3) A fund manager must send a notice to the Financial Supervision Authority concerning amendments of its internal rules if no notice has been given in accordance with subsection (1) of the section.

Subdivision 2

Acquisition of Qualifying Holdings in Fund Managers

§ 322. Requirements for persons acquiring or having qualifying holdings

Qualifying holdings in a fund manager may be acquired, held and increased and control over a fund manager may be gained, held and increased by any person:

- 1) who has impeccable business reputation and whose activities in connection with the acquisition comply with the principles of sound and prudent management of a fund manager;
- 2) who, after the acquisition or increase of the holding, elect, appoint or designate only such persons as managers of the fund manager who comply with the requirements provided for in this Act for managers of fund managers;
- 3) whose financial situation is sufficiently secure and sustainable in order to ensure regular and reliable operation of the fund manager;
- 4) who is able to ensure that the fund manager is capable of meeting the prudential requirements provided for in this Act, in the case of a legal entity primarily the requirement that the consolidation group, which part the fund manager will form, has a structure which enables exercise of effective supervision, exchange of information and co-operation with the financial supervision authorities;
- 5) with regard to whom there is no justified reason to believe that the acquisition, holding, increase of a holding in or control over the fund manager is related to money laundering or terrorist financing or an attempt thereof or increases such risks.

§ 323. Notification of acquisitions of holdings

(1) Persons who intend to acquire a qualifying holding in a fund manager or increase such holding so that it exceeds 20, 30 or 50 per cent of the share capital of the fund manager or votes represented by shares, or conduct a transaction as a result of which the fund manager will become a company controlled by them (hereinafter *acquirer*) shall notify the Financial Supervision Authority of their intention beforehand and submit the data and documents specified in subsection 324 (1) of this Act.

(2) The provisions of this Subdivision also apply if a person acquires a qualifying holding in a fund manager due to any other event or as a result of a transaction or the holding thereof increases so that the proportion of the share capital or votes represented by shares of the fund manager held by the shareholder exceed 20, 30 or 50 per cent or due to the event or as a result of the transaction the fund manager becomes a company controlled by it. In this case, the person is required to notify the Financial Supervision Authority promptly after becoming aware of gaining control over the fund manager or acquisition or increase of a qualifying holding in the fund manager.

(3) The Financial Supervision Authority shall notify the acquirer in writing within two working days after receipt of the notice specified in subsection (1) or (2) of this section or the additional data and documents specified in subsection 324 (6) of the potential final date of the time limit of proceedings provided for in § 325 of this Act or refuse to review the notice in accordance with subsection 325 (2) of this Act.

§ 324. Data submitted upon notification of acquisitions of holdings

(1) The Financial Supervision Authority shall be notified of the name of the company in which a qualifying holding is acquired, increased or which becomes controllable by the acquirer, and of the size of the holding acquired in this company, and the following data and documents shall be submitted:

- 1) a description of the company to be acquired which contains an extract of the share register, the data on the type of shares and number of votes acquired or held by the acquirer and other information, as appropriate;
- 2) the curriculum vitae of an acquirer who is a natural person which *inter alia* contains the name, place of residence, educational background, work and service experience and personal identification code of the acquirer or the date of birth in the absence thereof and details of the holdings of the acquirer who is a natural person in other legal entities or pools of assets and data of the persons controlled by the acquirer;
- 3) the name, seat, registry code, authenticated copy of registration certificate and copy of the articles of association, if any, of the acquirer who is a legal entity or of the legal entity administering the pool of assets, data of holdings in other legal entities or pools of assets, and data of the persons controlled by the acquirer;
- 4) a list of the owners or members of the acquirer who is a legal entity, data on the number of shares held by or the size of the holding and number of votes of each owner or member in all the legal entities or pools of assets and the data of the persons who control the owners or members of the acquirer who is a legal entity;
- 5) the data of the members of the management board and supervisory board of the acquirer if the acquirer is a legal entity, including the name and surname, personal identification code of each person or date of birth in the absence of a personal identification code, educational background, work and service experience, and other documents which prove the trustworthiness, experience, competence and impeccable reputation of such persons;
- 6) a statement that the acquirer of a holding or the person becoming a manager of the fund manager as a result of acquisition of a holding complies with the requirements provided by legislation and he or she has not been punished for a criminal offence or economic offence, official misconduct, offence against property or misdemeanour against public trust whereas in the case of a foreign person or pool of assets a certificate of the criminal records database or an equivalent document of a competent court or administrative authority of the country of origin of the person which has been issued less than three months earlier shall be accepted;
- 7) a description of the business activities of the acquirer and description of the economic and non-economic interests of persons connected with the acquirer;
- 8) a statement that in the case of a person specified in clause 6) of this subsection no such circumstances have existed or exist which in accordance with law preclude his or her right to be a manager of a fund manager;
- 9) the last three annual reports of the acquirer, if they exist;
- 10) if the acquirer is a natural person, ratings required for assessing the financial situation of the acquirer and companies connected with the acquirer and reports intended for the public, as appropriate; and if the acquirer is a legal entity, credit ratings issued to the acquirer and the consolidation group;
- 11) if the acquirer is a company belonging to a consolidation group, a description of the structure of the group, data relating to the sizes of the holdings of the companies belonging to the group, and the annual reports of the consolidation group for the last three years together with sworn auditor's reports;
- 12) if the acquirer is a natural person, documents certifying the financial status of the person during the last three years;
- 13) information and documents concerning the sources of monetary or non-monetary resources for which it is intended to acquire a qualifying holding or increase it or gain control;
- 14) in the case of becoming a company controlling the fund manager, a business plan and other circumstances related to gaining control and exercising control;
- 15) a review of the strategy implemented in the fund manager if the fund manager does not become a controlling company as a result of the acquisition;
- 16) the circumstances relating to acquisition of a holding in accordance with §§ 9, 10 and 72¹ of the Securities Market Act;
- 17) the size of the qualifying holding owned by the person after acquisition of the holding and the circumstances relating to the holding in accordance with §§ 9, 10 and 72¹ of the Securities Market Act.

(2) In the case provided for in clause (1) 9) of this section, if more than nine months have passed from the end of the previous financial year, an audited interim report for the first six months of the financial year shall be submitted to the Financial Supervision Authority. A sworn auditor's report shall be added to the reports if preparation of the report is prescribed by legislation.

(3) The data and documents submitted to the Financial Supervision Authority shall be in Estonian. With the consent of the Financial Supervision Authority, the specified data and documents may be submitted in any other language.

(4) If a fund manager, fund, investment firm, credit institution, insurer or another person of a third country subject to financial supervision wishes to acquire a qualifying holding, a statement from the foreign supervision authority of the third country to the effect that the specified person of the third country holds an activity licence and complies with the established requirements shall also be submitted to the Financial Supervision Authority in addition to the data and documents specified in subsection (1) of this section.

(5) A statement regarding the accuracy of the submitted data and documents which is signed by the acquirer shall be appended to the data and documents specified in subsection (1) of this section and to any data and documents submitted later in connection with the data and documents. The accuracy of data and documents with regard to the natural persons specified in clauses (1) 2) and 5) of this section shall be confirmed by these persons by their signatures.

(6) The Financial Supervision Authority may request in writing additional data and documents in order to specify or verify the data and documents specified in subsection (1) of this section. In this case it shall be specified which additional information shall be submitted to the Financial Supervision Authority.

(7) The Financial Supervision Authority may waive the demand for the data or documents specified in subsection (1) of this section in part or in full.

§ 325. Legislative proceedings and time limits of proceedings

(1) The Financial Supervision Authority shall assess compliance of an acquirer with the requirements provided for in § 322 of this Act and resolve on prohibition or permission to acquire a holding within 60 working days (hereinafter *time limit of proceedings*) after submission of the notice provided for in subsection 323 (3) of this Act.

(2) The Financial Supervision Authority may refuse to review a notice if the notice or documents appended to it contain significant deficiencies, for example if the notice does not contain the data required in subsection 324 (1) of this Act, and the Financial Supervision Authority has not waived the request of the specified data or documents in accordance with subsection 324 (7) of this Act.

(3) Pursuant to subsections 324 (6) of this Act, the Financial Supervision Authority has the right to demand additional data and documents within 50 working days after the beginning of the time limit of proceedings.

(4) The time limit of proceedings shall suspend for the period between the first submission of the demand by the Financial Supervision Authority for additional data and documents specified in subsection (3) of this section and receipt from the acquirer of the demanded additional data and documents but the suspension shall not exceed 20 working days. The time limit of proceedings is not suspended if additional data and documents are demanded.

(5) If amendments are made to the data or documents specified in subsection 324 (1) of this Act during the proceedings, the applicant shall promptly submit these updated data and documents to the Financial Supervision Authority. If an amendment is important, the Financial Supervision Authority may deem the moment of receipt of the important amendment to be the beginning of the time limit of proceedings. In this case, the Financial Supervision Authority must notify the applicant of a new term.

(6) If no financial supervision is exercised over an acquirer or a financial supervision authority of a third country exercises supervision over the acquirer, the Financial Supervision Authority may extend the time limit of proceedings specified in subsection (4) of this section to up to 30 working days.

(7) Upon assessment of acquisitions and increase of qualifying holdings and upon turning a fund manager into a controlled company, the Financial Supervision Authority shall co-operate with the financial supervision authority of an EEA Member State if the acquirer is:

- 1) an insurance undertaking, credit institution, fund manager, fund, investment firm or another person subject to financial supervision having obtained an activity licence in an EEA Member State;
- 2) a parent undertaking of an insurance undertaking, credit institution, fund manager, fund, investment firm or another person subject to financial supervision having obtained an activity licence in an EEA Member State; or
- 3) a person controlling an insurance undertaking, credit institution, fund manager, fund, investment firm or another person subject to financial supervision having obtained an activity licence in an EEA Member State.

(8) The Financial Supervision Authority shall consult with other financial supervision authorities in the framework of the co-operation specified in subsection (7) of this section. The Financial Supervision Authority shall promptly send to other financial supervision authorities all the data that is essential upon assessment of acquisitions and increase of qualifying holdings and gaining control over fund managers.

§ 326. Conditions for acquisitions of holdings

(1) The Financial Supervision Authority has the right to specify a term for the acquirer during which the acquirer has the right to acquire or increase a qualifying holding or turn a fund manager into a company controlled by it. The Financial Supervision Authority may extend the prescribed term. A qualifying holding must be acquired within 12 months after issue of an authorisation. The acquirer is required, within the specified term, to promptly notify the Financial Supervision Authority of making a decision on conclusion of a transaction or failure to conduct a transaction by which the holding is acquired or increased or a fund manager is turned into a company controlled by it. Upon failure to acquire a qualifying holding during the term, the authorisation shall become void.

(2) A qualifying holding may be acquired or increased or a fund manager may be turned into a controlled company if the Financial Supervision Authority does not prohibit, by a precept thereof, acquisition or increase

of the qualifying holding or turning of the fund manager into a controlled company based on § 325 and subsection 327 (1) of this Act.

§ 327. Bases for prohibition on acquisition of holdings and decision on acquisition and notification of decisions

(1) The Financial Supervision Authority may prohibit, by a precept, acquisition and increase of a qualifying holding and turning of a fund manager into a controlled company if:

- 1) the acquirer does not comply with the requirements provided for in § 322 of this Act;
- 2) the acquirer has failed to submit to the Financial Supervision Authority by the prescribed due date the data or documents provided for in this Act, or the data or documents required by the Financial Supervision Authority pursuant to this Act;
- 3) the data or documents submitted to the Financial Supervision Authority do not comply with the requirements provided by legislation, are incorrect, misleading or incomplete or the Financial Supervision Authority cannot exclude doubts based on the information and documents submitted with respect to unsuitability of the acquisition or that the acquisition does not comply with the requirements provided for in this Act;
- 4) the fund manager would become a company controlled by a person residing or located in a third country and sufficient supervision is not exercised over the person in the country of residence or location of the person or the financial supervision authority of the third country has no legal basis or possibility to co-operate with the Financial Supervision Authority;
- 5) a person not identified to the Financial Supervision Authority controls the acquirer.

(2) The Financial Supervision Authority shall submit a decision to the acquirer concerning the authorisation to acquire, increase a qualifying holding or turn a fund manager into a controlled company or a prohibiting precept within two working days after adoption of the respective decision but before the end of the time limit of the proceedings. If financial supervision over the acquirer is exercised by the financial supervision authority of another EEA Member State, the decision must *inter alia* set out its assessment on acquisition, increase of the qualifying holding or turning a fund manager into a controlled company.

(3) If the circumstances specified in subsection (1) of this section become evident after acquisition, increase of a qualifying holding or turning of a fund manager into a controlled company, the Financial Supervision Authority may issue a precept according to which the acquisition of a qualified holding or turning of a fund manager into a controlled company is deemed to be contrary to this Act.

(4) The Financial Supervision Authority has the right to prohibit or restrict, by a precept, the exercise of voting rights or other rights enabling control in a fund manager by the acquirer or a person who has a qualifying holding in the fund manager or who controls the fund manager if any of the circumstances specified in subsections (1) or (3) of this section exist. The Financial Supervision Authority may issue a precept regardless of whether a precept specified for in subsection (1) or (3) of this section is issued.

(5) The Financial Supervision Authority may publish precepts on its website, and acquirers may also demand publishing of precepts.

(6) If an acquirer or a person who has a qualifying holding in the fund manager or who controls the fund manager is a fund manager, fund, investment firm, credit institution or insurer registered in another EEA Member State, another person subject to financial supervision or a person which belongs to the same consolidation group as the above specified person, the Financial Supervision Authority shall inform the competent financial supervision authority of that EEA Member State of issue of a precept specified in subsection (3) or (4) of this section.

(7) Compliance with the precepts of the Financial Supervision Authority specified in subsections (1), (3) and (4) of this section is also mandatory for the fund manager, person maintaining the share register of the fund manager and other person who organises exercise of voting rights.

§ 328. Consequences of illegal acquisition of holdings

(1) As a result of a transaction by which a qualifying holding is acquired or increased, the person shall not acquire the voting rights determined by the shares and the votes represented by the shares shall not be included in the quorum of the general meeting if:

- 1) the transaction is contrary to a precept issued by the Financial Supervision Authority;
- 2) the Financial Supervision Authority has issued a precept specified in subsection 327 (3) or (4) of this Act;
- 3) the acquirer has failed to notify the Financial Supervision Authority of the transaction in accordance with §§ 323 and 324 of this Act;
- 4) the transaction is conducted after expiry of the term specified in subsection 326 (1) of this Act or before acquisition of a qualifying holding is permitted pursuant to this Act.

(2) If any of the circumstances specified in subsection (1) of this section exists, the rights which turn a fund manager into a company controlled by the person do not arise for the person as a result of a transaction.

(3) If voting rights representing a qualifying holding acquired or increased by such a transaction in the case of which any of the circumstances specified in subsection (1) of this section exists are included in the quorum of the general meeting and influence the adoption of a decision of the general meeting, the decision of the general meeting shall be void. A court may declare nullity of a decision of the general meeting on the basis of an application of the Financial Supervision Authority. Nullity of a decision cannot be relied upon if an entry has been made in the commercial register based on the decision and two years have passed from the date of making the entry.

(4) If, arising from a transaction by which a fund manager is turned into a company controlled by a person and in the case of which any of the circumstances specified in subsection (1) of this section exists, the rights enabling control are exercised, a court may declare exercise of the rights void on the basis of an application of the Financial Supervision Authority. Nullity of exercising the rights cannot be relied upon if an entry has been made in a public register with regard to exercising the rights and two years have passed from the date of making the entry.

§ 329. Notification of changes in qualifying holdings

(1) If a person intends to transfer shares in an amount which would result in the person losing a qualifying holding in a fund manager or if the person reduces the holding thereof in such a manner that it falls below any of the limits specified in subsection 323 (1) of this Act or waives control over the fund manager, the person is required to notify the Financial Supervision Authority thereof in advance and indicate the number of shares which the person owns and transfers and holds after the transaction.

(2) The provisions of subsection (1) of this section also apply if a person loses control over a fund manager or a qualifying holding in a fund manager as a result of any other events or transactions or if the qualifying holding of the person is reduced in such a manner that it falls below any of the limits specified in subsection 323 (1) of this Act. In this case, the person shall notify the Financial Supervision Authority promptly after becoming aware of having lost the qualifying holding or control or decrease of the holding.

(3) Upon becoming aware of transactions specified in subsections 323 (1) and (2) of this Act, a fund manager is required to promptly notify the Financial Supervision Authority thereof.

(4) A fund manager shall submit to the Financial Supervision Authority, together with its annual report, data concerning persons who, as at the end of the financial year, have a qualifying holding in the fund manager and shall set out the size of the holdings owned by the persons and circumstances related to the acquisition thereof in accordance with §§ 9, 10 and 72¹ of the Securities Market Act.

Subdivision 3

Additional Requirements for Application for Activity Licences of Alternative Fund Managers and Commencement of Offer of Funds

§ 330. Additional requirements for applications for activity licences of alternative fund managers and amendment of data of activity licences

(1) A person who applies for an activity license of an alternative fund manager must append to the application for an activity licence the principles of remuneration established pursuant to this Act and the following data and documents with respect to each alternative fund managed by the person or each alternative fund which the person intends to manage:

- 1) the basic document of the fund or other document establishing the fund;
- 2) the seat of the fund in the case of a foreign fund;
- 3) the information concerning the investment policy of the fund, including the investments of the fund and instruments traded, trading venues, use of leverage, main risks of the fund, composition and total value of the assets managed and the fact whether the assets of the fund are invested on a large-scale basis in another fund;
- 4) if the fund is a feeder fund or if the assets of the fund are invested to a large extent in another fund, the information concerning the seat of the master fund or the specified other fund;
- 5) the information concerning the depositary or the acts made for the appointment thereof;
- 6) the information to be submitted to investors concerning each fund on the basis of the provisions §§ 74 and 90 of this Act in the case of a public fund and the provisions of § 269 of this Act in the case of a non-public fund together with the information on how the offer of the fund to persons who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of provision of investment services.

(2) The data specified in subsection (1) of this section shall not be appended to an application if they have been submitted to the Financial Supervision Authority during the proceedings of the approval of the fund rules or articles of association of a public fund or as the information submitted to the Financial Supervision Authority concerning a non-public fund in accordance with § 268 of this Act.

(3) A fund manager may commence the management of a non-public fund specified in (1) of this section after receipt of an activity licence but not before one month has expired from the submission to the Financial Supervision Authority of all the required data and documents specified in subsection (1). The provisions of this Act concerning approval of the fund rules or articles of association of a public fund apply to commencement of an offer of a public fund.

(4) In addition to the data and circumstances specified in subsection 321 (1) of this Act, a fund manager has to notify the Financial Supervision Authority of any changes in the principles of remuneration and agreements on outsourcing of the functions of the fund manager. The Financial Supervision Authority may, within one month after receipt of the information, prohibit any changes in the circumstances specified in clauses 321 (1) 4)-7) of this Act, principles of remuneration and agreements on outsourcing of the functions of the fund manager, if the changes do not comply with the provisions of the legislation, by notifying the fund manager promptly thereof. The Financial Supervision Authority may extend the term for assessment of the submitted data and documents by one month, taking account of the circumstances, by notifying the fund manager thereof.

(5) The provisions of this section also apply to submission of information to the Financial Supervision Authority about sub-funds.

§ 331. Additional requirements for commencement of offer of funds managed by alternative fund managers

If a fund manager manages and offers a non-public alternative fund which was not founded pursuant to this Act, the management and offer of the fund must comply with the provisions of §§ 267-271 of this Act. If the fund manager publicly offers an alternative fund and a prospectus has been prepared for the public offer in accordance with the Securities Market Act, the information in accordance with the requirements specified in §§ 74, 75 and 80-82 of this Act has to be disclosed concerning the alternative fund which has not been disclosed concerning the alternative fund in accordance with the Securities Market Act, and reports have to be prepared and submitted in accordance with §§ 86-92 of this Act. Each alternative fund managed by the alternative fund manager must have a depositary in accordance with the provisions of § 285 of this Act.

Subdivision 4 Additional Requirements for Activity Licences of Pension Fund Managers

§ 332. Additional requirements for application for activity licences of mandatory pension fund managers, notification of issue of activity licences and revocation of activity licences and scope of activity licences of pension fund managers

(1) In order to apply for an activity licence for the management of a mandatory pension fund, the document certifying assumption of the obligation to pay a single contribution to the Pension Protection Sectoral Fund must be submitted in addition to the provisions of subsection 313 (1) of this Act.

(2) The Financial Supervision Authority shall promptly communicate the decision according to which the applicant may manage mandatory pension funds to the registrar of the pension register.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) In addition to the bases provided for in § 318 of this Act, the Financial Supervision Authority may revoke the activity licence of a mandatory pension fund manager if the fund manager fails to pay contributions to the Pension Protection Sectoral Fund in accordance with the Guarantee Fund Act during the specified term or in full.

(4) A pension fund manager cannot change the scope of an activity licence in the manner described in subsection 319 (4) of this Act.
[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

Division 2 Share Capital of and Prudential Requirements for Fund Managers

Subdivision 1

Share Capital of and General Prudential Requirements for Fund Managers

§ 333. Share capital and initial capital and legal form of fund managers

(1) A fund manager of a UCITS, alternative fund or pension fund may operate only as a public limited company or European company.

(2) If a fund manager is founded as a new company, the share capital thereof must be at least 125,000 euros.

(3) In the case of an operating company, the minimum amount of the initial capital of a fund manager must be equivalent to at least 125,000 euros.

§ 334. Requirements for activities of fund managers

(1) The own funds of a fund manager shall be treated in the meaning of Articles 26-88 of Regulation (EU) No 575/2013 of the European Parliament and of the Council and the provisions of these Articles apply to them.

(2) The amount of Tier 2 own funds of a fund manager must not exceed one-third of Tier 1 own funds.

(3) The amount of the own funds of a fund manager must be at least equal to each of the following indicators:

- 1) the minimum amount of the initial capital of the fund manager specified in § 333 of this Act;
- 2) the requirement for the minimum amount of the initial capital and additional own funds of the fund manager which amounts to 0.02 per cent of the amount by which the market value of the assets of the funds managed by the fund manager and of the funds which management authority the fund manager has transferred exceeds the amount of 250,000,000 euros and which is added to the minimum amount of the initial capital of the fund manager;
- 3) 25 per cent of the fixed overheads of the fund manager.

(4) The own funds of a fund manager do not have to exceed the amount of 10,000,000 euros.

(5) With the permission of the Financial Supervision Authority, a fund manager may cover 50 per cent of the required amount of additional own funds by a guarantee in the respective amount granted by a credit institution or insurer. The credit institution or insurer which issued a guarantee must be a credit institution or insurer of an EEA Member State, credit institution or insurer of another foreign state provided that the issuer of the guarantee is required to comply, in the estimation of the Financial Supervision Authority, with prudential requirements which are at least equivalent to those for the credit institution or insurer of the EEA Member State.

(6) A fund manager is required to promptly notify the Financial Supervision Authority and submit their explanations if the own funds of the fund manager have decreased by more than five per cent or below the required amount applicable to the fund manager. If the own funds of the fund manager are less than the required minimum amount of own funds applicable to the fund manager, the Financial Supervision Authority may determine a term for bringing the own funds into compliance with the requirements of this Act and legislation issued on the basis thereof.

(7) If a fund manager is part of a financial conglomerate for the purposes of § 110¹ of the Credit Institutions Act, the fund manager shall comply with the provisions of Chapters 110¹-110¹³ of the Credit Institutions Act.

(8) If a fund manager manages both pension funds as well as other public funds and the required amount of own funds calculated in accordance with § 338 of this Act is higher than the required amount of own funds provided for in this section, the provisions concerning the own funds of pension fund managers shall apply to the fund manager.

(9) If, in the estimation of the Financial Supervision Authority, the method of recognition of the assets, liabilities, equity capital, revenue and expenditure has an impact on the amount of the own funds of the fund manager, the Financial Supervision Authority may determine the method of recognition of the assets, liabilities, equity capital, revenue and expenditure for the fund manager. The determined method of recognition must be in compliance with the accounting principles implemented by the fund manager.

(10) The procedure for reporting on the own funds of fund managers shall be established by a regulation of the minister responsible for the area.

§ 335. Fixed overheads of fund managers

(1) The requirement of own funds based on the fixed overheads specified in clause 334 (3) 3) of this Act shall be calculated in accordance with Articles 34b-34d of Commission Delegated Regulation (EU) No 241/2014, supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.03.2014, pp. 8-26).

(2) The Financial Supervision Authority may adjust the requirement in compliance with clause 334 (3) 3) of this Act in the case changes have taken place in the economic activities of a fund manager compared to the previous calendar year which the Financial Supervision Authority considers significant. More detailed terms and conditions for the adjustment of the requirement are provided for in Article 34c of Commission Delegated Regulation (EU) No 241/2014.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

Subdivision 2

Additional requirements for own funds of alternative fund managers

§ 336. Additional requirements for own funds of alternative fund managers

(1) In addition to the provisions of § 334 of this Act, an alternative fund manager must hold a liability insurance against the risks arising from professional negligence or additional own funds which are sufficient for the performance of the obligations related to the alternative funds managed by the fund manager. Requirements for assessment of the risks of professional liability of an alternative fund manager, liability insurance and additional own funds are provided for in Commission Delegated Regulation (EU) No 231/2013.

(2) An alternative fund manager may invest the additional own funds specified in (1) of this section and the own funds specified in § 334 of this Act to the extent of the minimum amount of own funds only in liquid assets or assets readily convertible to cash in short term and these may not be used for investments in high risk assets.

Subdivision 3

Additional Requirements for Share Capital and Prudential Requirements of Pension Fund Managers

§ 337. Additional requirements for share capital and initial capital of pension fund managers

(1) The minimum amount of the initial capital of a pension fund manager is:

- 1) 1,000,000 euros, if the fund manager manages a mandatory pension fund;
- 2) 500,000 euros, if the fund manager manages a voluntary pension fund.

(2) The share capital of a fund manager may be reduced only under the condition that the initial capital of the fund manager is not less than provided for in subsection (1) of this section after adoption of the reduction decision.

(3) A fund manager of a mandatory pension fund is required to notify the Financial Supervision Authority in writing of any planned reduction of the share capital at least one month prior to making this decision.

(4) If a fund manager of a mandatory pension fund wishes to reduce the share capital for any other purposes besides covering a loss, it may decide to reduce the share capital if the Financial Supervision Authority has granted a written consent therefor. The Financial Supervision Authority shall decide on grant of or refusal to give its consent within 20 days after receipt of the notice specified in subsection (3) of this section.

(5) The Financial Supervision Authority may refuse to give the consent specified in subsection (4) of this section if reduction of the share capital would damage the fund manager's solvency or the interests of the unit-holders or shareholders or other creditors of the mandatory pension fund managed by the fund manager.

(6) § 358 and the first sentence of subsection 359 (1) and subsection (2) of the Commercial Code do not apply to managers of mandatory pension funds. A fund manager shall publish a notice concerning the reduction of the share capital and the amount of the new amount thereof on the website of the fund manager or the consolidation group to which the fund manager belongs within 15 after adoption of the reduction decision.

(7) If the share capital of a mandatory pension fund manager is increased by a bonus issue, it may be done so for the account of the issue premium of the fund manager, other reserves formed of net profit, retained earnings of previous years or net profit.

(8) A mandatory pension fund manager is required to notify the Financial Supervision Authority in a format which can be reproduced in writing of any intended increase of the share capital and the details of the issue at least seven days prior to adoption of the relevant decisions.

(9) The provisions of § 346 of the Commercial Code do not apply to mandatory pension fund managers.

§ 338. Specifications for own funds of pension fund managers

- (1) The provisions of subsections 334 (3)-(5) of this Act do not apply to own funds of pension fund managers.
- (2) The amount of the own funds of a pension fund manager must be at least equal to each of the following indicators:
 - 1) the minimum amount of the initial capital of the pension fund manager;
 - 2) 25 per cent of the fixed overheads of the pension fund manager;
 - 3) the required amount of additional own funds of the pension fund manager.
- (3) The required amount of the additional own funds of a pension fund manager is:
 - 1) 0,5 per cent of the market value of the assets of the pension funds managed by the fund manager in the part which does not exceed 1,000,000,000 euros;
 - 2) 0,02 per cent of the market value of the assets of the pension funds managed by the fund manager in the part which exceeds 1,000,000,000 euros.
- (4) Upon transfer of the management of a pension fund, the amount of the own funds of the fund manager to which the management of the pension fund is transferred must comply with the requirements for the additional own funds of pension fund managers at the latest six months after transfer of the management authority.
- (5) With the permission of the Financial Supervision Authority, the term specified in subsection (4) of this section may be extended by six months.

§ 339. Applications for authorisations for extension of terms

- (1) In order to apply for the authorisation specified in subsection 338 (5) of this Act, a pension fund manager shall submit an application and the data and documents which set out the reasons that prevent the fund manager from complying with the requirements provided for in subsection (2) of that section.
- (2) The provisions of § 314 of this Act apply to processing of applications and verification of the data and documents submitted.
- (3) The decision to issue or refuse to issue the authorisation specified in subsection 338 (5) of this Act shall be made by the Financial Supervision Authority within one month after receipt of all the necessary data and documents but not later than within two months after receipt of the application.
- (4) The Financial Supervision Authority may refuse to issue the authorisation specified in subsection 338 (5) of this Act if extension of the term is unjustified taking account of the financial situation of the pension fund manager and the structure of investments of the pension funds managed by the pension fund manager or if this is contrary to the legitimate interests of the pension fund or unit-holders of the pension fund.
- (5) The Financial Supervision Authority shall promptly communicate the decision specified in subsection (3) of this section to the fund manager.

Division 3 Activities and Management of Fund Managers

Subdivision 1 Requirements for Management and Activities of Fund Managers

§ 340. Requirements for activities of fund managers

- (1) A fund manager shall ensure:
 - 1) establishment and implementation of the internal rules and existence of the resources necessary for the activities of the fund manager and effective use thereof;
 - 2) functioning of its internal audit, conformity inspection and risk control function and efficient implementation thereof, including in the case the carrying out of the function has been outsourced to a third party.
- (2) Upon investment of the assets of a fund, the fund manager shall:
 - 1) obtain sufficient information on the assets which it intends to acquire or has acquired for the account of the fund;
 - 2) monitor the financial and economic situation of the issuer whose securities it intends to acquire or has acquired, or of the counterparty with whom transactions are conducted for the account of the fund.
- (3) The obligation specified in clause (2) 2) of this section does not apply to investment of the assets of the fund in the case of which a share or debt securities index is largely replicated in accordance with the fund rules or articles of association or prospectus, if any, of the fund.

(4) A fund manager shall act in the best interests of the investors of the fund.

(5) A fund manager shall be obliged to file the claims of the fund or the investors of the fund against the depositary or any third parties if failure to file the specified claims results or may result in damage to the fund or thereby to the investors of the fund. A fund manager is not required to file the specified claims if the fund or the investors of the fund have already filed the claims or if the damage is small scale damage or if filing of the claim entails disproportionate costs and the limit of such damage is determined in the fund rules, articles of association or prospectus of the fund.

(6) A fund manager or a person who operates as a fund manager shall be liable for the damage caused to the fund and the investors of the fund by violation of the functions of the fund manager. A fund manager or the person who operates as a fund manager shall be liable for the claims which are submitted against the fund managed by the fund manager and not satisfied if damage was incurred by the fund as a result of the activities of the fund manager upon management of the fund and the fund manager has violated the requirements for fund managers provided by the legislation, articles of association of the fund manager, fund rules, prospectus of the fund or the documents established on the basis thereof.

(7) A fund manager shall submit the information referring to any offences related to the activities of the fund manager or damaging the interests of the investors of the fund or violation of any requirements for the fund or the activities of the fund to the Financial Supervision Authority and, if any, to the depositary of the fund. A fund manager must promptly eliminate the specified deficiencies or violations.

§ 341. Requirements for management of fund managers

(1) The management board of a fund manager has to:

- 1) approve and regularly review the procedure for making investment decisions in order to ensure compliance of the investment decisions with the general investment policy of the fund;
- 2) regularly check implementation of the general investment policy and risk limits of each managed fund;
- 3) approve and regularly review the risk management rules, procedure for measurement and management of risks, risk limits and other risk management measures of each managed fund;
- 4) ensure designation of the conformity inspection function and efficient carrying out thereof, including in the case the carrying out of the conformity inspection function has been outsourced to a third party.

(2) The persons responsible for carrying out the conformity inspection and risk control function shall submit to the management board of the fund manager regularly but at least once a year a written report on the conformity inspection and risk control area and implementation of the investment policy and procedures for making investment decisions of the fund. The reports shall provide an overview of the shortcomings encountered during the reporting period and the proposals made and measures adopted for the elimination thereof.

§ 342. Requirements for managers of fund managers and obligations of managers

(1) The management board of a fund manager shall consist of at least two members.

(2) Members of the management board of a fund manager need not be members of the management board or employees of a fund manager, credit institution, insurer, payment institution, e-money institution, creditor, credit intermediary or investment firm, except for members of the management board or employees of undertakings which belong to the same consolidation group as the fund manager.

(3) The members of the depositary of a fund managed by a fund manager shall make up not more than one-half of the members of the management board of the fund manager.

(4) The management board of a fund manager shall regularly check the efficiency of the internal rules established at the fund manager and the measures established on the basis thereof and compliance of the management and activities of the fund manager therewith and implement the measures required for elimination of the deficiencies in such a manner that protection of the best interests of the investors and clients of investment services or ancillary services would be ensured.

(5) The supervisory board of a fund manager shall exercise supervision over compliance with the obligations specified in subsection (4) of this section.

§ 343. Obligation of employees of fund managers to notify Financial Supervision Authority

(1) A fund manager is required to inform the Financial Supervision Authority promptly in writing of any circumstances which result or may result in:

- 1) material or repeated violation of legislation governing the activities of the fund manager, funds managed by the fund manager or depositaries of the fund;

2) significant proprietary damage caused by a manager or employee of the fund manager to the fund manager or funds managed by the fund manager, investors of the fund or clients of the investment services or ancillary services.

(2) Upon submission of data to the Financial Supervision Authority in accordance with subsection (1) of this section, employees of the fund manager or other third parties related to the activities of the fund manager shall not violate the obligation to maintain confidentiality of the data imposed on the fund manager by legislation or a contract.

(3) A fund manager shall establish a procedure for its employees for reporting of any violations of the requirements provided for in this Act which allows independent reporting of violations of law.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 344. Internal rules of fund managers

(1) Internal rules which are sufficient and proportionate and which regulate the activities of managers and employees shall be established at a fund manager taking account of the nature, scope and complexity of the activities of the fund manager.

(2) Internal rules must ensure compliance with the legislation governing the activities of the fund manager and decisions of the managing bodies of the fund manager, and investment of the assets of the fund in accordance with the fund rules, articles of association or prospectus of the fund and legitimate and regular provision of investment services or ancillary services.

(3) Among other matters, the internal rules shall set out the following:

1) the procedure for movement of the internal information and documents of the fund manager, including requirements for submission and forwarding of information;

2) the criteria for selection of employees, professional or official functions, relationships of subordination and decision making procedures, reporting chains, procedure for reporting and provision of information at the fund manager and in relations with third parties and delegation of rights, preserving the separation of functions upon determination of the investment policy of the fund, transactions with securities for the account of the fund, assumption of obligations by the fund manager, recording of services for accounting purposes and in the reports and assessment of risks involved;

3) the requirements for information technology systems, ensuring information security and business continuity;

4) the procedure of functioning of the internal control system, including the procedure for carrying out internal audit, conformity inspection and risk control and the risk management rules and procedure for implementation thereof;

5) the procedure for mitigation and avoidance of conflicts of interests at the fund manager, including the procedure for mitigation and avoidance of conflicts of interests inside the consolidation group if the fund manager belongs to a consolidation group, and the procedure for conduct of a personal transaction with the relevant person at the fund managers;

6) the bases for remuneration of the management board members or employees of the fund manager and the principles of their formation, including bases for payment of performance pay and measures for mitigation and avoidance of conflicts of interests related to remuneration and the procedure for checking adherence to these principles;

7) the procedure for outsourcing of the functions of the fund manager, including the asset management functions;

8) the procedure for settlement of complaints of investors;

9) the procedure for notification of the circumstances specified in subsection 343 (3) of this Act;

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

10) the procedure for disclosure of the reports and information of the fund manager;

11) the procedure for independent and consistent assessment of the assets managed;

12) the procedure for maintaining databases and handling of data;

13) a plan for determining the danger of suspension of business activities related to the provision of services, mitigation and avoidance of such risks and restrictions, both time limited and unlimited by time, in the conclusion of transactions;

14) the accounting policies and procedures;

15) the internal rules of procedure for imposing international sanctions established on the basis of the International Sanctions Act and implementation of the Money Laundering and Terrorist Financing Prevention Act, and the internal control rules for verification of compliance therewith.

(4) A fund manager may not be based, upon investment of the assets of the fund or assessment of the risks, only or mechanically on the credit ratings issued by the rating agencies specified in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council.

(5) The internal rules of a fund manager which provides investment services or ancillary services must comply with the requirements provided for in the Securities Market Act in addition to the provisions of this Act.

§ 345. Processing and storage of information and registration and storage of transactions conducted for account of UCITS in data processing systems

(1) Legal, technical and organisational measures must have been established at a fund managers to ensure:

1) security, integrity and confidentiality of the information processed by the fund manager;
2) consistency in the management of the fund and preservation of important data in the case of failures in the functioning of the fund manager, or if this is impossible, as quick as possible restoration of the data and continuation of provision of the fund management service.

(2) A fund manager must preserve data concerning its activities, organisational structure, internal rules and the procedures and measures established for compliance therewith.

(3) The measures specified in subsection (1) of this section must be sufficient and proportional to the nature, scope and complexity of the activities of the fund manager and in compliance with the nature and contents of information processed by the fund manager.

(4) A fund manager shall regularly monitor and evaluate the adequacy and effectiveness of the measures established and implemented in accordance with subsection (1) of this section. If any deficiencies become evident, a fund manager must eliminate these.

(5) A UCITS manager shall register each transaction conducted for the account of the UCITS in the data processing system specified in subsection 54 (12) of this Act promptly after conduct of the transaction. The information entered in the data processing system upon recording of the transaction must be sufficient for restoration of the order for making the transaction and the circumstances of the transaction.

(6) The data of any transactions conducted for the account of a UCITS must be stored in the data processing system.

(7) More specific requirements for recoding and storage of transactions conducted for the account of a UCITS shall be established by a regulation of the minister responsible for the area.

§ 346. Obligation to act in best interests of funds and investors of funds and requirements for compliance with investment decisions of UCITS

(1) A fund manager shall ensure uniform and fair treatment of the investors of a fund and avoid preferring of the interests of any groups of investors under equal circumstances. A fund manager shall establish procedures and measures to prevent abuses which may endanger or endanger the stability and integrity of the securities market.

(2) If preferential treatment in special cases has been stated in the fund rules or articles of association of a fund, special treatment of a group of investors of the fund may take place. This special treatment must be reasonable, fair and justified and it may not be of such nature which would lead to advantageous status of an individual investor over the other investors of the fund and thereby enable material benefits for the account of other investors.

(3) The procedure for establishment the net asset value of the fund established by a fund manager must ensure equal treatment and operation in the best interests of the investors of the fund. The fund manager has to prove, as appropriate, that the net asset value of the fund has been properly established.

(4) A fund manager shall ensure that the procedure for issue or redemption of units or shares shall exclude the use of such methods which may endanger or endanger transparency of establishment of the net asset value of the fund or the property interests of the investors of the fund. For this purpose, the fund manager shall ensure immediate accessibility of the information concerning orders for issue or redemption of the units or shares of the fund and conduct of transactions and compliance thereof, and the fund manager shall also implement appropriate and necessary countermeasures in order to prevent any issue or redemption of the units or shares of the fund which is not based on fairly estimated net asset value or which in any other manner enable conduct of transactions with the units or shares of the fund on the basis of unfair net asset value which would have a direct impact on the property interests of other investors.

(5) A fund manager shall avoid incurring of costs for the fund or the investors of the fund which are not connected with the management of the fund.

(6) The requirements provided for transparency and fair evaluation for the net asset value of a fund in subsection (4) of this section for the protection of the property interests of the investors of the fund shall also apply in the case the units or shares of a closed-end fund are issued on the basis provided for in subsection 55 (9) of this Act at a price which differs from the net asset value.

(7) In order to execute the investment decisions of a UCITS, the UCITS manager shall take all reasonable steps upon execution of orders for the account of the UCITS to achieve the best possible result for the UCITS upon execution of the orders. The UCITS manager shall establish legal, technical and organisational measures required for this purpose (hereinafter *rules for execution of orders*). If the UCITS manager manages an investment firm [*ühingufond*] or a UCITS investment company founded in another EEA Member State,

the consent of this UCITS or the fund manager acting in the name of this UCITS shall be required for the establishment of the rules for execution of orders. The UCITS manager shall implement the rules for execution of orders, regularly update these and make these and any amendments thereto available to the investors. As appropriate, the UCITS manager shall prove that execution of an order for the account of the UCITS is in compliance with the rules for execution of orders established by the UCITS manager.

(8) A UCITS manager must ensure that orders executed for the account of the assets of the UCITS are executed quickly and impartially. The UCITS manager shall establish legal, technical and organisational measures required for this purpose. The UCITS manager shall ensure timely and correct transfer of any securities or money received in the course of the settlement to the account of the UCITS. The UCITS manager may not misuse the information related to pending orders and shall minimize the risk that this information is misused by the relevant persons thereof.

(9) Upon transmission of an order to be executed for the account of a UCITS to any third party for execution, the UCITS manager must act in the best interests of the UCITS. The UCITS manager shall adopt measures to achieve the best possible result for the UCITS upon transmission of orders for execution. In order to implement these measures, the UCITS manager shall establish rules which determine persons for each type of the assets of the UCITS to whom the orders may be transmitted for execution (hereinafter *transmission rules*). The UCITS manager may enter into a transmission contract for execution of orders if this is in compliance with the provisions of this subsection. The transmission rules shall be made available to the investors of the UCITS. The UCITS manager shall regularly evaluate the quality and effectiveness of the transmission rules established by it and of execution of the orders transmitted. The UCITS manager must prove, as appropriate, that transmission of orders for execution for the account of the UCITS is in compliance with the transmission rules established by the UCITS manager.

(10) A UCITS manager may execute an order for the account of the UCITS together with an order executed for the account of another fund, client or for its own account only in the case it is not disadvantageous for the UCITS or the client and if the UCITS manager has established rules for allocation of orders which prescribe fair allocation of aggregated orders, including how the quantity and the price of the orders affect the allocation of the orders and partial execution of the orders. The UCITS manager which has aggregated the orders executed for its own account with the orders of one or more UCITS or customers may not allocate the proceeds of the execution in a manner which is disadvantageous for the UCITS or other clients.

(11) The minister responsible for the area may specify by a regulation the requirements provided for in subsections (7)-(10) of this section.

§ 347. Internal control system

(1) A fund manager must have an established and operating internal control system which objective is to ensure compliance of the activities of the fund manager with the current internal rules, legislation and decisions adopted at all management and operation levels of the fund manager and adoption of decisions on the basis of reliable and proper information.

(2) The internal control system must be proportionate and created taking account of the nature, scope and complexity of the activities of the fund manager and ensure risk control and compliance with the requirements for the management of fund managers.

(3) The internal control system has a conformity inspection, risk control and internal audit function (hereinafter *key function*).

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(4) A fund manager shall ensure that the person carrying out the internal control has the rights, working conditions and access to all the required information necessary to perform the functions thereof, including the right to obtain explanations and information from the managers and employees of the fund manager and to observe elimination of the deficiencies discovered and compliance with the precepts issued.

§ 348. Conformity inspection function

(1) A fund manager must create an independent conformity inspection function and legal, technical and organisational measures for carrying out conformity inspections.

(2) The management board of a fund manager shall appoint an employee or another person responsible for the conformity inspection with whom a written contract shall be entered into.

(3) Conformity inspections must ensure that:

1) compliance of the fund manager, activities of the managers and employees thereof with the legislation, precepts of the Financial Supervision Authority, decisions of the managing bodies, internal rules, contracts entered into by the fund manager and good practices is regularly checked, and compliance of the internal rules established at the fund manager and decisions thereof with the legislation and suitability and effectiveness of the measures adopted for elimination of deficiencies in the performance of the obligations of the fund manager is assessed;

2) the relevant persons responsible for the management of the fund are advised in the issues related to the performance of the obligations provided for in this Act;

3) reports are regularly submitted to the management board of the fund manager.

(4) In order to carry out independent conformity inspections, a fund manager must establish in its internal rules the principles of action and rules for identification, mitigation and avoidance of the legal risks of failure to perform the obligations provided for by the Acts and other risks related thereto (hereinafter *principles of action*). Upon establishment of the principles of action, the nature, scope and level of complexity of the activities of the fund manager must be taken into consideration.

(5) The principles of action must enable the Financial Supervision Authority to efficiently perform its supervisory functions.

(6) Persons carrying out conformity inspections may not engage in provision of services or activities over which they exercise supervision, unless the fund manager is able to prove that, taking account of the nature, scope and level of complexity of the activities thereof, the specified obligations are not proportionate and that performance of the functions of conformity inspections is effective in practice even without compliance with the given obligations.

(7) The bases of and procedure for remuneration of the persons carrying out conformity inspections must not compromise their objectivity.

(8) Persons carrying out conformity inspections are required to promptly forward any information which becomes known to them concerning the fund manager and which refers to an offence of the fund manager or damaging of the interests of the fund, investors of the fund and clients of investment services or ancillary services to the managers of the fund manager.

§ 349. Internal audit function

(1) A fund manager must establish an independent internal audit system, as appropriate and proportionate, taking account of the nature, scope and complexity of the activities of the fund manager and legal, technical and organisational measures for carrying out internal audits. In the absence of internal audits, the fund manager must be able to demonstrate that the internal audit rules of the fund manager and the procedure for implementation thereof comply with the requirements established in this Act and legislation established on the basis thereof and they are implemented consistently and effectively.

(2) The supervisory board of a fund manager shall appoint an internal auditor with whom a written contract shall be entered into as the person responsible for carrying out internal audits. An internal auditor may not perform any other functions which result or are likely to result in a conflict of interests.

(3) An internal auditor must ensure that:

1) an internal audit programme is established for assessment of the processes and systems of the fund manager, including of the internal control system and activities;

2) recommendations are submitted to the supervisory board of the fund manager which are based on the results of internal audits, and implementation of the recommendations is verified;

3) reports are regularly submitted to the supervisory board of the fund manager.

(4) Internal auditors are required to promptly forward any information which becomes known to them concerning the fund manager and which refers to an offence of the fund manager or damaging of the interests of the fund, investors of the fund and clients of investment services or ancillary services to the managers of the fund manager.

§ 350. Risk control function

(1) A fund manager must create an independent risk control and legal, technical and organisational measures for carrying out risk controls.

(2) The management board of a fund manager shall appoint an employee or another person responsible for the risk control (hereinafter *risk control manager*) with whom a written contract shall be entered into.

(3) A risk control manager shall ensure that:

1) the risk management rules and procedure for measurement and management of risks are implemented;

2) the risk management systems of each fund managed are implemented;

3) the supervisory board of the fund manager is advised in the issues related to risk management;

4) reports are regularly submitted to the management board of the fund manager.

(4) A risk control manager and carrying out of risk controls must be organisationally independent and separated from the other areas of activity of the fund manager, including investment of the assets of the fund, and the bases of and procedure for remuneration of persons carrying out risk control must not endanger their objectivity.

(5) The obligations specified in subsection (4) of this section need not be complied with if the fund manager is able to prove that, taking account of the nature, scope and complexity of the business activities thereof and the funds managed thereby, the specified obligation is not proportionate, and that for compliance with the risk control function of the fund manager protective measures have been applied for prevention of conflicts of interests, and carrying out of risk control is effective in practice even without compliance with the respective obligation.

(6) Risk control managers are required to promptly forward any information which becomes known to them concerning a fund manager and which refers to an offence of the fund manager or damaging of the interests of a fund, investors of a fund and clients of investment services or ancillary services to the managers of the fund manager.

§ 351. Procedure for mitigation and avoidance of conflicts of interests

(1) A fund manager shall establish a procedure for mitigation and avoidance of conflicts of interests which provides for the level, technical and organisational measures, taking account of the nature, scope and complexity of the activities of the fund manager. The fund manager shall implement a procedure for mitigation and avoidance of conflicts of interests in order to identify, mitigate and, as appropriate, avoid upon management of a fund any internal conflicts of interests of the fund manager, conflicts of interests between the fund manager and any persons exercising control over it, conflicts of interests between the funds and investors of the funds and between the investors of the fund and other clients of the fund manager, and the adverse effect thereof on the interests of the investors of the fund.

(2) The procedure for mitigation and avoidance of conflicts of interests of a fund manager shall determine:

- 1) the circumstances relating to each service provided by the fund manager or in the name of the fund manager which result or may result in a conflict of interests or which entail a material risk of damage to the interests of the investors of the fund;
- 2) the measures to be implemented in order to resolve conflicts of interests.

(3) The procedure for mitigation and avoidance of conflicts of interests must ensure that the persons who are connected with the business activities which involve or may involve conflicts of interests carry out their business activities in such a manner which mitigates as much as possible the risk of damaging the interests of the investors of the fund or clients of the investment services or ancillary services.

(4) The procedure for mitigation and avoidance of conflicts of interests must include the procedure for personal transactions of the relevant persons connected to the fund manager and ensure protection of the interests of the investors of the funds managed by the fund manager and avoidance of any activities which are not in compliance with the lawful and regular operation of the market. As appropriate and relevant, the procedure for mitigation and avoidance of conflicts of interests must include:

- 1) procedures which avoid or control exchange of information between relevant persons engaged in activities involving a risk of conflicts of interests where the exchange of that information may harm the interests of the investors of the fund;
- 2) separate control over relevant persons whose principal functions involve conduct of transactions in the name of the fund or provision of services related to the fund and whose interests may conflict or who otherwise represent different interests that may give rise to conflicts of interests, including with those of the fund manager;
- 3) measures which remove any connection between the remuneration of relevant persons engaged in different activities and the revenues generated by them to the fund manager or the fund, where a conflict of interests may arise in relation to those activities, including if this would endanger the realisation of the investment policy of the fund;
- 4) procedures which hinder or limit any person upon exercise of inappropriate influence on the way in which the relevant person provides or carries out the fund management service;
- 5) procedures to hinder or control simultaneous or sequential involvement of a relevant person in separate fund management services where such involvement may impair the proper management of the risks arising from conflicts of interests.

(5) If the procedure for mitigation and avoidance of conflicts of interests does not ensure avoidance of the risk of damage to the interests of the fund or investors of the fund, the relevant persons must promptly notify the management board and supervisory board of the fund manager thereof in order to ensure making of decisions for acting in the best interests of the fund and investors of the fund. In addition to this, the fund manager must implement alternative or additional procedures and measures for mitigation and avoidance of conflicts of interests and disclose the general nature of the conflicts of interests and, as appropriate, the sources of the conflicts. In the case specified in this subsection, the fund manager shall notify the investors of the fund on a durable medium and give reasons for the decision adopted for avoidance of damage to interests.

(6) Before conduct of transactions related to investment of the assets of the fund, a fund manager shall notify the investors of the fund of the general nature of the conflict of interests or even of the sources thereof if the measures established by the fund manager for mitigation and avoidance of conflicts of interests do not ensure avoidance of the risk of damage to the interests of the investors of the fund in the specific case.

(7) A fund manager shall maintain a record of the conflicts of interests which have arisen and may arise and which involve a material risk of damage to the interests of the investors of the fund, and of more specific circumstances related to these, and regularly update it.

§ 352. Requirements for mitigation and avoidance of conflicts of interests

(1) Upon detection of any conflicts of interests, a fund manager shall take into consideration the obligations of the fund manager in connection with the management of funds and the interests of the clients of investment services and ancillary services and the interests of the fund manager and if the fund manager belongs to a consolidation group, any circumstances of which the fund manager is or should be aware of in the case a conflict of interests may arise as a result of the structure and business activities of other members of this consolidation group.

(2) Upon detection of any conflicts of interests and determination of the type thereof, a fund manager must take into consideration at least whether the fund manager, relevant person or another person who has direct or indirect control over the fund manager is in the following situation upon provision of the fund management service or due to other reasons:

- 1) the fund manager is likely to make, for the account of the investors of the fund, a financial gain or avoid a financial loss;
- 2) the interests of the fund manager in the result of the service provided to the investors of the fund or transactions conducted in the name of the fund differ from the interests of the investors;
- 3) the fund manager has a financial or other incentive to favour the interests of the investors of another fund managed by the fund manager or those of another client to the interests of the investors of the fund;
- 4) the fund manager is engaged in the same area of activity as the investor of the fund;
- 5) the fund manager receives a benefit in cash, in kind or in the form of services from a person not connected with the fund in relation to the service provided to the investors of the fund other than the standard commission or service fee paid for that service.

§ 353. Requirements for personal transactions of relevant persons of fund managers

(1) A fund manager not specified in subsection 309 (8) of this Act shall establish a procedure by internal rules to avoid any activities where a conflict of interest may arise for the relevant person associated therewith or where the relevant person gains access to the inside information for the purposes of Regulation (EU) No 596/2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.06.2014, pp. 1-61) or confidential information relating to investors of the fund. The provisions concerning relevant persons in this section do not apply to personal transactions of supervisory board members of fund managers.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) A fund manager is required to adopt appropriate measures to ensure that:

- 1) each relevant person is aware of the procedure established on the basis of subsection (1) of this section and the restrictions contained therein on conduct of personal transactions;
- 2) a system is applied on the basis of which the fund manager is promptly informed of any personal transactions conducted by a relevant person or which enables the fund manager to identify such transactions;
- 3) all data on personal transactions, including any authorisation or prohibition of the transactions, is stored and a separate record of the data is maintained;
- 4) in the case of different functions, this does not hinder reliable, honest and appropriate actions of the relevant person.

(3) If a fund manager outsources the functions of the fund manager to a third party, the fund manager shall ensure that the third party shall store the data specified in clause (2) 3) of this section and submit these data promptly to the fund manager on the request of the latter.

(4) The conclusion of a personal securities transaction specified in this section means conclusion of a securities transaction by or for a relevant person if:

- 1) the relevant person acted outside his or her normal duties or authority upon conduct of the transaction;
- 2) the transaction was conducted for the account of the relevant person or a person close to the relevant person;
- 3) the transaction was conducted for the account of a person who has close links with a relevant person;
- 4) the transaction was conducted for the account of a person whose contractual relationship with the relevant person is such that the relevant person has material interests in the outcome of the transaction, other than a fee or commission for the execution of the trade.

(5) For the purposes of this section, a person close to a relevant person is his or her spouse, a dependent child or foster child who has shared the same household as that relevant person for at least one year by the day of the transaction.

(6) The procedure and measures specified in this section do not apply to personal transactions which have been conducted:

- 1) [repealed - RT I, 30.12.2017, 3 - entry into force 03.01.2018]
 - 2) in units or shares of a fund in the case the Financial Supervision Authority or a financial supervision authority of another EEA Member State exercises supervision over the fund and requirements for risk spreading in the investment of their assets equivalent to a fund managed by the fund manager are applied to such fund and the relevant person and any other person for whose account the transactions are conducted are not involved in the management of that fund;
 - 3) under the provision of a securities portfolio management service where there is no prior communication in connection with the transaction between the manager of the securities portfolio and the relevant person or other person for whose account the transaction is executed.
- [RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 354. Remuneration of members of management boards and employees of fund managers

(1) The supervisory board of a fund manager shall approve and review at least once a year the principles of remuneration and office related benefits which contain the principles of remuneration of the members of the management board and employees of the fund manager, including severance payments and pension benefits, and the bases and principles of determining the benefits. Approval of the principles of remuneration and the implementation thereof shall be checked by the members of the supervisory board who do not perform any other management functions in the fund manager and who have sufficient knowledge and experience in the area of risk management and remuneration.

(2) Upon establishment and implementation of the principles of remuneration, the size, nature, scope and level of complexity of the activities of the fund manager and of the funds managed must be taken into account. The principles of remuneration must:

- 1) be clear, transparent, in accordance with reliable and efficient risk management principles and not encourage taking of risks which are not in accordance with the basic documents and investment policies of the funds managed by the fund manager;
- 2) be in accordance with the business strategy, values of the fund manager, economic results of the fund manager and the funds managed by the fund manager and the legitimate interests of the investors of the fund and clients of the investment services or ancillary services and contain measures for mitigation and avoidance of conflicts of interests;
- 3) take into consideration the long-term objectives of the fund manager in view of its ability to cope with the changes in the external environment.

(3) The implementation of the principles of remuneration and the assessment thereof shall be verified at least once a year by the internal control of the fund manager, unless a remuneration committee has been formed at the fund manager.

(4) Each payment to members or employees of the management board of a fund manager from the assets of the fund manager or the fund shall be made in compliance with the principles of remuneration, including upon issue of the units or shares of the fund to the members of the management board or employees of the fund manager in the form of performance pay.

(5) The bases for determining the fees paid to the members of the management board or employees of the fund manager based on the economic performance and transactions (hereinafter *performance pay*) must be objective and reasoned and predetermine the period of time for which the performance pay is paid.

(6) The contract of a member of the management board and contract entered into with an employee of a fund manager may prescribe payment of a performance pay in an earlier determined amount only during the first year of assuming the office or commencement of work.

(7) Determination of the performance pay and the parts thereof to be paid must take into consideration suitable methods of shaping the terms and conditions of payment and all relevant existing and potential risks.

(8) The prerequisites for determination and payment of performance pay of a fund manager also apply to the severance payments related to termination of management board member contracts and employment contracts.

(9) Determination of a performance pay must take into consideration that the percentage of the basic pay and performance pay reasonably comply with the duties and liability of the management board member or employee and the basic pay forms a sufficiently big part of the total remuneration which makes it possible not to determine or pay the performance pay, as appropriate. The following shall be taken into account upon determination and payment of the performance pay:

- 1) personal performance of the management board members or employees and business entities of the fund manager and funds managed by the fund manager, taking account of both financial as well as other criteria provided for by the internal rules;
- 2) personal performance of the management board members or employees and performance of the business entities of the fund manager and funds managed by it in conjunction with the long-term economic results of the fund manager;
- 3) risks related to the investments of the funds managed by the fund manager and the conditions of redemption of the units or shares of the funds;

4) the period recommended to the investors of the funds managed by the fund manager for holding the units or shares of the fund to ensure that the assessment of the performance is based on long-term performance and investment risks of the fund and payment of the performance pay is distributed over the same period.

(10) The basis for remuneration of persons carrying out internal control functions at a fund manager is the achievement of the objectives related to internal control regardless of the results of the controlled areas of activity.

(11) The principles of remuneration of persons who carry out the risk control must ensure their independence and objectivity in the performance of the functions related to risk control.

(12) A fund manager may reduce the performance pay paid to a management board member or employee, suspend the payment of the performance pay or demand refunding of the paid performance pay, in part or in full, if:

- 1) the general economic performance of the fund manager or the fund managed by the fund manager shows a loss or has deteriorated to a significant extent compared to the previous period;
- 2) a management board member or employee of the fund manager does not meet the performance criteria; or
- 3) determination of the performance pay was based on the data submitted or confirmed by the beneficiary which were inaccurate or incorrect to a material extent.

(13) The limitation period for a claim for reduction or refunding of the performance pay specified in subsection (12) of this section is three years from the time when the payment of the performance pay to a management board member or employee of the fund manager was decided.

(14) Management board members and employees of a fund manager are not allowed to use their personal risk mitigation strategies or remuneration and liability insurance which would impair the objectives deriving from their principles of remuneration. Means or methods that facilitate circumvention of the principles of remuneration may not be used for payment of the performance pay.

(15) The fees related to termination of a management board member contract or employee contract of a fund manager must be in accordance with their performance, and take into account the impact on nonconforming performance to the pay.

(16) A fund manager shall disclose the information characterising the implementation of its principles of remuneration in its annual report:

- 1) relevant characteristics of the principles of remuneration, including information concerning the criteria used to measure performance and compliance therewith;
- 2) reasons for payment of performance pay and severance payment and enabling of other performance based financial or significant non-financial benefits.

(17) Upon application of the principles of remuneration, an employee of a fund manager is a person whose:

- 1) duties include performance of the management and control function of the fund manager;
- 2) whose decision-making powers include taking of risks which have a significant impact on the risk profile of the fund manager or the funds managed by the fund manager, including carrying out risk control or making of investments of funds managed by the fund manager; or
- 3) the remuneration is in the same range as that of the management board member of the fund manager or of the person performing the functions specified in clause 1) or 2) of this subsection.

(18) For the purposes of this Act, remuneration shall also include the fees paid to members of the management board of a fund manager.

§ 355. Performance pay of members of management boards and employees of fund managers

(1) If the UCITS or alternative funds managed by a fund manager make up at least 50 per cent of the assets managed by the fund manager, at least 50 per cent of the performance pay of the management board members and employees of the fund manager must form a balance pool of the units, shares or other similar rights of the UCITS or alternative funds managed by the fund manager which are connected to acquisition of the units or shares of the fund. The Financial Supervision Authority may set restrictions on the types or contents of the securities which may be used as part of such performance pay.

(2) Payment of a substantial part of the performance pay, which may not be less than 40 per cent of the performance pay, shall be distributed in a balanced way over three to five years, taking account of the business cycles of the funds managed, conditions of redemption of the units or shares, period recommended to investors for holding the units or shares and the risk profile. If the share of the performance pay in the entire remuneration is significant, 60 per cent of the performance pay must be distributed based on the provisions in the first sentence of this subsection. In addition to the above, a significant part of the performance pay specified in this subsection may also be paid in full at the end of a three-year or longer period.

(3) The part of the performance pay which is paid in the securities specified in subsection (1) of this section, must be held in safekeeping in such a manner that the interests of the fund manager, the fund managed by the fund manager and the investors thereof would be protected. Both the part of the performance pay paid as well as the part of the performance pay which payments are distributed in accordance with subsection (2) of this section must be held in safekeeping.

(4) If an additional procedure is prescribed at the fund manager for payment of pension benefits, pension payments shall be made to management board members or employees, when their pension rights arise, in the proportions provided for in subsection (1) of this section and in the form of securities, and the prohibition stated in the safekeeping policy specified in subsection (3) of this section applies to them for at least five years.

(5) If a management board member contract or employee contract with the fund manager is terminated before his or her pension right arises, the fund manager must hold the pension payments made for the person in safekeeping for the term of five years in the form of the instruments specified in subsection (1) of this section.

§ 356. Remuneration committees of fund managers

(1) If it is proportionate to the size and nature, scope and level of complexity of the activities of a fund manager and the funds managed by the fund manager, a remuneration committee shall be established at the fund manager and the function thereof is to independently assess the implementation of the remuneration principles at the fund manager and the impact of the remuneration related decisions on compliance with the requirements provided for risk management and liquidity. The decisions concerning remuneration of the employees performing conformity inspection and risk control functions at the fund manager shall be approved by a remuneration committee, if a remuneration committee has been established at the fund manager.

(2) The functions of a remuneration committee include the following:

- 1) supervision over remuneration of the management board members and employees;
- 2) assessment of implementation of the remuneration principles at least once a year and, as appropriate, making of proposals for updating the remuneration principles;
- 3) making of proposals to the supervisory board of the fund manager on remuneration decisions and remuneration principles.

(3) A remuneration committee consists of the members of the supervisory board of the fund manager.

(4) The implementation of the principles of remuneration and the assessment thereof shall be verified at least once a year by the internal control of the fund manager, unless a remuneration committee has been formed at the fund manager.

Subdivision 2

Additional Requirements for Management and Activities of UCITS Managers

§ 357. Due diligence obligations of fund managers

(1) A fund manager shall establish a procedure for compliance with due diligence obligations in order to ensure making of investment decisions in accordance with the investment objectives and policy and risk limits of the fund.

(2) Before and after making an investment, a fund manager shall prepare forecasts and quantitative and qualitative analyses of the impact of the investment on the structure of the assets of the fund, liquidity, risk profile and rate of return, taking account of the criteria provided for in the risk management rules. The specified analyses must be made on the basis of reliable and relevant information.

(3) If performance of the risk control functions of a fund manager has been outsourced to a third party, the fund manager shall establish a procedure for continuous evaluation of the activities of the third party and performance of the obligations related to risk control.

§ 358. Procedure for exercise of voting rights arising from assets of funds

(1) A fund manager shall establish a procedure based on only the interests of the fund for the time and place of exercise of the voting rights related to the shares or other securities giving right to vote and included in the assets of the fund (hereinafter in this section *procedure for exercise of voting rights*).

(2) A procedure for exercise of voting rights shall determine:

- 1) tracking of important events related to the shares or other securities giving right to vote and included in the assets of the fund;
- 2) exercise of voting rights is consistent with the investment objectives and investment policy of the fund;
- 3) prevention, mitigation and avoidance of conflicts of interests arising from voting rights.

(3) The summary of the procedure for exercise of voting rights shall be made accessible to the investors of the fund. At the request of the investors of the fund, the details of implementation of the procedure for exercise of voting rights shall be made accessible free of charge.

§ 359. Additional requirements for risk control functions

(1) A written report of a person carrying out risk control shall contain the following information concerning the funds managed by the fund manager:

- 1) compliance of the risk level of the fund with the risk profile of the fund;
- 2) compliance of the fund with the risk limits system;
- 3) appropriateness and efficiency of the procedure for measurement and management of risks;
- 4) actual and expected exceeding of the risk profile and the risk limits system of the fund to ensure immediate implementation of appropriate measures.

(2) The report specified in subsection (1) of this section must demonstrate whether appropriate measures have been taken to eliminate the deficiencies upon existence of deficiencies in the area covered in the report.

(3) Persons carrying out risk control shall submit the reports specified in subsection (1) of this section on regular basis but at least once a year to the management board and supervisory board of the fund manager.

(4) In addition to this, persons carrying out risk control must:

- 1) ensure compliance of the UCITS with the risk limits system, including compliance with the risk position and counterparty risk assessment requirements;
- 2) review the procedure for computing the value of OTC derivatives and enhance it, as appropriate.

§ 360. Settlement of investor complaints

(1) A fund manager shall establish in its internal rules a procedure for speedy and free settlement of complaints received from investors. The procedure for settlement of complaints of investors must allow the investors to file complaints in the official language of the EEA Member State in which the UCITS was established or founded or where the fund units of the UCITS managed by the fund manager are publicly offered. The fund manager must make the information concerning the procedure for settlement of complaints accessible to the investors free of charge.

(2) A fund manager shall register all the complaints and maintain records on the measures implemented for settlement of complaints.

Subdivision 3

Additional Requirements for Management and Activities of Alternative Fund Managers

§ 361. Additional requirements for organisational structure and due diligence obligations of alternative fund managers

(1) Fund managers shall choose prime brokers with the prudence and diligence expected of fund managers. A written contract shall be entered into with a prime broker which prescribes:

- 1) opportunities to conduct transactions with the assets of the alternative fund, including to transfer and reuse assets, which are in accordance with the basic document of the alternative fund;
- 2) notification of the depositary of the alternative fund of entry into a contract with the prime broker.

(2) In addition to the provisions of this Act, the persons conducting the risk control of alternative fund managers have to:

- 1) regularly check implementation of the risk limits related to the general investment policy of each fund managed;
- 2) check compliance of the investment decisions with the general investment policy and risk profile of the fund managed;
- 3) ensure assessment of the risks related to investments and management thereof and assessment of the impact of the risks on the investments of the fund at any time by application of stress tests, as appropriate.

(3) If a fund manager uses leverage upon management of the assets of an alternative fund, the fund manager must establish appropriate limits for the use of leverage and, as appropriate, demonstrate compliance with the limits upon use of leverage.

(4) A fund manager shall determine the maximum limit of leverage which the fund manager may use in the name of each alternative fund managed and the conditions of use of a collateral or guarantee related to leverage, taking account of the following conditions:

- 1) type of the alternative fund;
- 2) investment policy of the alternative fund;
- 3) sources of leverage of the alternative fund;
- 4) interlinkage with other financial institutions which can pose systemic risks;
- 5) need to limit counterparty risks;
- 6) extent to which leverage is covered by a collateral;
- 7) asset-liability ratio;
- 8) nature, scope and volume of the activities of the alternative fund manager on this market.

(5) A fund manager shall implement sufficient liquidity risk management procedures to each leveraged and managed alternative fund which units or shares are redeemed at the request of the investors of the fund in order to ensure conformity of the investment policy and liquidity profile of the alternative fund with the liabilities of the fund and the conditions of redemption of the units or shares of the fund.

(6) A fund manager shall conduct stress tests in order to establish and measure the liquidity risks of the fund in ordinary and extraordinary conditions.

(7) The requirements for the organisational structure and activities of fund managers, including use and calculation of leverage are provided for in Commission Delegated Regulation (EU) No 231/2013.

Subdivision 4

Additional Requirements for Management and Activities of Pension Fund Managers

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 362. Additional requirements for managers and employees of pension fund managers and their remuneration

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(1) Persons whose office or position in a depositary of a mandatory pension fund is related to the provision of the depositary service with regard to this pension fund or whose other activities cause conflicts of interests upon fulfilment of their functions in the fund manager must not be managers or employees of the mandatory pension fund manager.

(2) Managers and employees of mandatory pension fund managers must not be members of the management board or employees of the registrar of the pension register.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) If performance pay is paid to management board members or employees of mandatory pension fund managers who have decision-making powers in connection with making investments of the mandatory pension fund or their pay depends in part or in full on the investment decisions made by them with respect to this mandatory pension fund, this pay must be based on at least the rate of return of the fund for the last three years.

(4) Only persons who have the knowledge, skills, experience, education and professional qualifications necessary to manage the key functions and an impeccable business reputation may be elected or appointed as persons who are responsible for the management of the key functions of fund managers of occupational pension funds.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(5) The person responsible for managing the key function of a fund manager of an occupational pension fund must be different from the person responsible for the management of a similar key function in the employer making contributions to this pension fund. Deviations from the restriction provided for in this subsection is permitted if this is justified taking into consideration the nature, scope and complexity of the activities of the fund manager and the fund manager implements measures for mitigation and prevention of conflicts of interests associated with such activity.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(6) The provisions in subsections 310 (4)-(6) of this Act concerning managers of fund managers also apply to persons responsible for managing the key functions of occupational pension fund managers.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(7) The provisions of subsections 311 (1), (3) and (5)-(8) of this Act apply to notification of the Financial Supervision Authority of persons responsible for managing the key functions of occupational pension funds.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 363. Management of mandatory pension funds

(1) Fund managers who have the authority to manage mandatory pension funds are required to manage conservative pension funds.

(2) Fund managers may manage mandatory pension funds if, according to the fund rules and prospectuses of these pension funds, the investment policies thereof are sufficiently different in the opinion of the fund manager or these pension funds are offered to unit-holders of different ages.

(3) A fund manager is under no obligation to comply with the requirement provided for in subsection (2) of this section if less than two years have passed from merger of this fund manager with another fund manager or assumption of the management of the mandatory pension fund.

[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 363¹. Additional requirements for risk control function of occupational pension fund managers

(1) The risk control function of an occupational pension fund manager must enable to monitor and measure the risks associated with the management of an occupational pension fund, in particular in connection with the following activities:

- 1) management of the assets and liabilities of the occupational pension fund and the manager thereof;
- 2) making of investments;
- 3) management of liquidity and concentration risks;
- 4) management of operational risks;
- 5) use of risk mitigation methods.

(2) Monitoring and measuring of risks related to making of investments must also include potential environmental, social and governance risks associated with investment of the assets of an occupational pension fund.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 363². Assessment of own risks of occupational pension fund manager

(1) An occupational pension fund manager must organise its risks' assessment which must be proportionate and carried out taking into consideration the nature, scope and complexity of the activities of the fund manager, and establish legal, technical and organisational measures to assess its risks and store its data.

(2) Taking into consideration the provisions of subsection (1) of this section, the occupational pension fund manager must describe, upon assessment of its risks, how the risk assessment shall be taken into account in the management and decision-making processes of the occupational pension fund manager, and give their assessment of at least to the following:

- 1) efficiency of the risk management system;
- 2) relevance and sufficiency of the measures adopted for mitigation and prevention of conflicts of interests, if the fund manager has outsourced the performance of the key function to an employer making contributions to the occupational pension fund managed by it;
- 3) operational risks of the fund manager;
- 4) potential new risks, including risks related to climate change, use of natural resources and environment, social risks and asset depreciation risks due to amendments to the legislation, if the specified risks are taken into consideration upon investment of the assets of the occupational pension fund.

(3) An occupational pension fund manager must establish procedures that are consistent with the nature, scope and complexity of the risks related to its business activities and enable to identify and assess any coming short-term and long-term risks which may have an impact on the fund manager's ability to perform its obligations. The description of the methods introduced must be submitted by the occupational pension fund manager in its risk assessment.

(4) An occupational pension fund manager must assess its risks at least every three years and without any delay after significant changes in the risk profile of the occupational pension fund managed by it.

(5) The business strategy of an occupational pension fund manager must take into consideration the conclusions drawn in the course of its risk assessment.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

Division 4

Outsourcing of Functions of Fund Managers

Subdivision 1 Partial Outsourcing of Functions of Fund Managers

§ 364. General provisions on partial outsourcing of functions

(1) Fund managers may outsource the activities specified in § 305 of this Act to third parties pursuant to written contracts (hereinafter *outsourcing*) only under the following conditions:

- 1) outsourcing does not damage the legitimate interests of the fund and investors of the fund;
- 2) outsourcing of the functions does not hinder the activities of the fund manager and sufficient performance of the functions of the fund manager;
- 3) outsourcing does not prevent sufficient supervision over the fund manager;
- 4) outsourcing does not result in a situation where the fund manager does not manage the fund or has no competence for this, particularly due to outsourcing of the management or internal control system function of the fund manager;
- 5) persons who conduct the outsourced activities have the qualification, impeccable reputation, sufficient experience to perform the functions and they are able to perform these functions;
- 6) persons who conduct the outsourced activities have the obligation to follow the additional instructions given by the fund manager and allow the fund manager to check the outsourced activities;
- 7) the fund manager is prepared to substantiate the need for outsourcing of the functions;
- 8) the fund manager has to prove, as appropriate, that the person conducting the outsourced activities was chosen with sufficient care and the person complies with the requirements provided for in this section.

(2) A fund manager may also outsource activities to a foreign fund manager, investment firm or credit institution which does not have a branch founded in Estonia or which does not provide cross-border services in Estonia or to another person if the performance of the outsourced function does not require an activity licence.

(3) A fund manager shall promptly inform the Financial Supervision Authority of outsourcing of the functions related to the management of a fund and submit the contract for outsourcing of the functions. The Financial Supervision Authority shall promptly notify of outsourcing of the functions of a UCITS manager the financial supervision authority of the country of destination of the EEA Member State in which the fund manager has established a branch or provides cross-border services in the case the units or shares of the UCITS are offered in the EEA Member State.

(4) Outsourcing of the functions to a third party does not release the fund manager from liability related to the management of the fund.

(5) In addition to the persons specified in clause 365 (1) 2) of this Act, organisation of the issue and redemption of units or shares may also be outsourced to the registrar of the pension register.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(6) Maintenance of registers of units or shares may be outsourced only taking account of the requirements provided for in §§ 60 and 61 of this Act.

§ 365. Requirements for outsourcing of functions related to investment of assets of funds

(1) For better performance of its functions, fund managers may outsource the investment of the assets of a fund to a third party under the following conditions:

- 1) outsourcing is in accordance with the investment policy of the fund and the decision of the fund manager on implementation of this policy;
- 2) investment of the assets is outsourced to a fund manager established in Estonia or any foreign country and holding an activity licence or a credit institution or an investment firm entitled to provide securities portfolio management services.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) The function of investment of assets may not be outsourced to the depositary of a fund or such third party in the case of which a conflict of interests may arise between the fund manager, the fund or investors of the fund.

(3) Upon arise of a conflict of interests, the function of the investment of the assets may be outsourced to a third party if the organisational structure and level of technical systems of the third party allows to keep the function of asset investment separate from the services which may cause conflicts of interest. Potential conflicts of interests must be identified and disclosed and they must be managed and monitored in the manner provided for in the internal rules of the third party.

(4) The requirements provided for in this section also apply to outsourcing of the risk control function of alternative fund managers.

(5) With a prior consent of the Financial Supervision Authority, the function of investment of assets or risk control of an alternative fund may be outsourced to a person not specified in clause (1) 2) of this section.

(6) The function of the investment of the assets of a fund may be outsourced to a person founded in a third country only in the case an information exchange agreement has been entered into between the financial supervision authority of the home country of the respective person and the Financial Supervision Authority.

§ 366. Requirements for further outsourcing of functions related to management of funds outsourced to third parties

(1) Third parties may outsource the functions related to management of fund outsourced to the party under the following conditions:

1) the fund manager has given its prior written consent for this purpose to the person outsourcing the functions;
2) the fund manager has sent the contract for further outsourcing of the functions to the Financial Supervision Authority before the entry into force thereof.

(2) Upon further outsourcing of the functions related to management of funds, the third parties must comply with the requirements and obligations provided for in §§ 364, 365 and 367 of this Act. Compliance with the respective requirements and obligations shall be verified by the person outsourcing the fund management functions.

§ 367. Termination of outsourcing of functions

(1) A fund manager must have the right to terminate at any time a contract for outsourcing of functions related to the management of a fund entered into with a third party.

(2) In the case of violation of the provisions of this Subdivision, the Financial Supervision Authority shall have the right to issue a precept to the fund manager to require termination of outsourcing of the functions related to the management of the fund or termination of the contract entered into with the third party for outsourcing of the functions.

Subdivision 2 Outsourcing of Functions of Pension Fund Managers

§ 368. Specifications for maintenance of registers of pension fund units

The provisions of this Division concerning partial outsourcing of the functions of fund managers do not apply to outsourcing of the functions of maintenance of registers of pension fund units to the registrar of the pension register.

[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

§ 368¹. Specifications for outsourcing of functions of occupational pension fund managers

An occupational pension fund manager must notify the Financial Supervision Authority of outsourcing of functions related to performance of the key functions to any third party before entry into force of the outsourcing contract.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

Division 5 Organisation of Accounting, Disclosure of Information of Fund Managers and Reporting to Financial Supervision Authority

Subdivision 1 General Provisions

§ 369. Organisation of accounting of fund managers

The accounting and reporting of a fund manager shall be organised pursuant to the Accounting Act, this Act, other legislation and the internal rules of the fund manager.

Subdivision 2

Requirements for Activities of Fund Managers

§ 370. Preparation and submission of reports

(1) A fund manager shall regularly prepare monitoring reports and submit these to the Financial Supervision Authority.

(2) The period of monitoring reports is one quarter of a year.

(3) Monitoring reports are submitted within 25 days after the end of the accounting period.

(4) A fund manager shall submit its annual report, the sworn auditor's report, an extract from the proposal for and decision on the distribution of profits or covering of losses for the financial year and the minutes of the general meeting concerning the approval of or refusal to approve the annual report to the Financial Supervision Authority within two weeks after the general meeting of the shareholders but not later than on 1 May of the year following the financial year. A fund manager need not submit the documents specified in the first sentence of this subsection to the Financial Supervision Authority if these documents have been disclosed on the website of the fund manager or the consolidation group to which the fund manager belongs.

(5) In addition to the provisions of subsection (1) of this section, the Financial Supervision Authority shall have the right to request, for the purpose of exercise of supervision, additional periodic and nonrecurrent reports and data from the fund manager on the fund manager and the funds managed by it. The Financial Supervision Authority shall determine the frequency and time limit for submission of additional reports and data.

(6) The persons who submit reports to the Financial Supervision Authority are required to preserve the documents which are the sources of information used in the preparation of the reports for at least five years.

(7) In the case deficiencies are found in the reports submitted, the fund manager shall promptly correct the report.

(8) Based on the reports specified in this section and submitted to the Financial Supervision Authority, the fund manager or the Financial Supervision Authority may submit data, as appropriate, to the Ministry of Finance for the performance of the functions arising from the Government of the Republic Act and to *Eesti Pank* for the performance of the functions provided for in the Official Statistics Act.

(9) The contents, bases for preparation and procedure for submission of monitoring reports shall be established by a regulation of the minister responsible for the area.

(10) The requirements provided for in § 454 of this Act concerning disclosure of information concerning funds apply to non-public alternative funds managed by UCITS managers.

§ 371. Audit obligations and notification obligations of sworn auditors

(1) The annual accounts of fund managers must be audited.

(2) In the course of carrying out the audit of a fund manager, a sworn auditor must audit the compliance of the activities of the fund manager with the requirements provided in this Act and submit a report to the fund manager and the Financial Supervision Authority, assessing at least the following areas:

- 1) compliance with the requirements established with regard to own funds;
- 2) compliance of the policy and rules of procedure for the management of risks associated with the management of the assets of the fund with the requirements.

(3) A sworn auditor is required to inform the Financial Supervision Authority promptly in writing of any circumstances revealed in the course of carrying out the audit which result or may result in:

- 1) material or repeated violation of legislation governing the activities of fund managers, funds or depositaries;
- 2) interruption of the activities of the fund manager;
- 3) insolvency of the fund manager of depositary or another situation or risk of a situation in which the fund manager or depositary is unable to perform its obligations;
- 4) issue of a qualified opinion on the accounting of the fund manager;
- 5) significant proprietary damage to the fund manager or the fund managed by it, investors of the fund or clients of the investment services or ancillary services which is caused by an act of a member of the management board or supervisory board or employee of the fund manager.

(4) Upon submission of data to the Financial Supervision Authority according to subsection (3) of this section, a sworn auditor does not violate the obligation to maintain confidentiality of data which is imposed on the sworn auditor by legislation or a contract.

Subdivision 3

Requirements for Submission of Information and Valuation of Assets Managed by Alternative Fund Managers

§ 372. Submission of information by alternative fund managers concerning funds to Financial Supervision Authority

(1) A fund manager shall submit to the Financial Supervision Authority the information specified in § 92 of this Act concerning each fund managed by the fund manager and established or founded in an EEA Member State and fund offered by the fund manager in the EEA Member State.

(2) The Financial Supervision Authority shall have the right to additionally request a list of the funds managed by the fund manager as at the end of each quarter.

(3) The provisions of §§ 89-92 and 267-271 of this Act apply to publication of information concerning alternative funds managed by an alternative fund manager and reporting of alternative funds. The provisions concerning offer of funds in the specified sections also apply to publication of information of and reporting on offer of the units or other similar rights expressing holdings in alternative funds managed by the alternative fund manager.

(4) In addition to the provisions of this Division, the Financial Supervision Authority shall have the right to request from fund managers, for the purpose of monitoring systemic risks, additional periodic and nonrecurrent reports and data concerning the fund manager and the funds managed by it.

(5) If an alternative fund manager manages a fund founded in a foreign state, the accounting of the fund must be organised in accordance with the legislation of the home country of the fund. The report of the fund of a foreign state must also be made available to the financial supervision authority of the home country of the fund.

(6) The provisions of this section concerning alternative funds also apply to sub-funds.

§ 373. Requirements for valuation of assets of alternative funds by fund managers

(1) A fund manager must evaluate the assets of an alternative fund and establish the net asset value of a unit or share and disclose it to the investors of the fund at least once a year during the time limit and pursuant to the procedure provided for in the basic document of the alternative fund.

(2) A fund manager shall evaluate the assets of an alternative fund and establish the net asset value of the units or shares with suitable frequency, taking account of the investments of the fund and the conditions of issue and redemption of the units or shares. The net asset value of a closed-end alternative fund and the units or shares thereof shall be established and communicated to the investors of the fund on the day of issue, redemption of the units or shares or making payments from the fund in another manner.

(3) If an alternative fund is a public fund, the provisions of § 54 of this Act apply to establishment of the net asset value of the fund and the units or shares thereof.

(4) The valuation of the assets of an alternative fund shall be performed impartially and with sufficient skills and diligence.

(5) The assets of an alternative fund may be evaluated by:

- 1) the fund manager if the valuation of the assets is independent of performance of the asset investment function and determination of the principles of remuneration and measures have been implemented at the fund manager for mitigation and avoidance of conflicts of interests of persons related to valuation of the assets; or
- 2) the third party which offers the service of valuation of assets (hereinafter in this section *external evaluator*), which is independent of the fund, the fund manager and other persons who have close links to the fund or the fund manager.

(6) An external evaluator may be a person who has the respective qualification and a valid profession for the purposes of § 3 Professions Act and who has sufficient knowledge, experience and means to evaluate the assets of the fund. An external evaluator may be a depositary if the valuation of the assets is independent of the performance of the depositary functions and if measures have been implemented for mitigation and avoidance of conflicts of interests which are disclosed to the investors of the fund in accordance with procedure for mitigation and avoidance of conflicts of interests.

(7) In the case of outsourcing of the functions of evaluation of assets to an external evaluator, the requirements provided in §§ 364-367 of this Act for outsourcing of the functions of fund managers must be complied with. An external evaluator must not outsource the functions of evaluation of assets to any third parties.

(8) A fund manager shall notify the Financial Supervision Authority of appointment of an external evaluator. If an external evaluator does not comply with the requirements provided for in subsection (6), the Financial Supervision Authority may demand appointment of a new external evaluator.

(9) If no external evaluator is appointed as the evaluator of the assets of a fund, the Financial Supervision Authority may require that an external evaluator or sworn auditor verify the procedure for independent and consistent evaluation of the assets of the fund or evaluation of the assets of the fund.

(10) Outsourcing of the functions of fund manager to evaluate the assets and establish the net asset value of the units or shares to an external evaluator does not release the fund manager from the liability for performance of this function.

(11) External evaluators shall be liable for damage arising from violation of their obligations. The liability of an external evaluator cannot be limited by a contract.

(12) The requirements for evaluation of the assets of an alternative fund and establishment of the net asset value of units or shares are provided for in Commission Delegated Regulation (EU) No 231/2013.

(13) The provisions of this section apply to alternative funds which are managed by alternative fund managers and offered in an EEA Member State.

Subdivision 4

Additional Reporting by Mandatory Pension Fund Managers

§ 374. Specifications for reporting by mandatory pension fund managers

(1) Upon preparation of the annual report, a mandatory pension fund manager shall submit a report on the management of the mandatory pension funds in the notes to the annual accounts.

(2) The format of the notes to the annual accounts specified in subsection (1) of this section and the procedure for completion thereof shall be established by a regulation of the minister responsible for the area.

(3) A mandatory pension fund manager shall explain in the notes to its annual accounts the principles for allocation of expenses to the management of the mandatory pension fund and other activities of the fund manager.

(4) The principles for allocation of expenses to management of mandatory pension funds and other activities of fund managers may be established by a regulation of the minister responsible for the area.

Division 6

Obligations of Alternative Fund Managers in connection with Acquisition of Holdings in Companies by Funds managed thereby

§ 375. Application of requirements for acquisitions of holdings in companies by alternative funds

(1) Unless otherwise provided for in this section, the requirements provided for in this Division must be applied upon gaining control over a legal entity founded in an EEA Member State or other equivalent company which shares or other securities granting a holding (hereinafter in this Division *share*) are not admitted to trading on a regulated market (hereinafter *non-traded company*), if control is gained:

1) by an alternative fund managed by the fund manager; or
2) jointly by several alternative funds which are managed by the fund manager or which are jointly managed by the fund manager and another fund manager.

(2) The provisions of subsection 376 (1) of this Act also apply to acquisition of a minority holding in a non-traded company.

(3) The provisions of subsection 376 (4) and § 378 of this Act apply to gaining of control over a company founded in an EEA Member State or other equivalent company which has issued securities or assumed an obligation to issue securities in accordance with § 5 of the Securities Market Act.

(4) The requirements provided for in this Division do not apply to gaining of control over small or medium-sized enterprises for the purposes of subsection 14¹(7) of the Securities Market Act or special purpose entities which were established for the purpose of purchasing, holding and administering immovables.

(5) Gaining of control in this Division is deemed to be acquisition of more than 50 per cent of voting rights in the share capital of a non-traded company. Upon determination of voting rights, the votes which belong to

the company controlled by an alternative fund and the votes managed by a third party for the alternative fund or a company controlled by the alternative fund in the person's own name shall be deemed to belong to the alternative fund. Voting rights are determined on the basis of all the shares of the same class which represent the voting rights even if the voting rights of these shares have been suspended.

(6) Upon application of this Division, the provisions concerning the obligation to maintain confidentiality of the information provided for in the Employees' Trustee Act has to be taken into consideration. An employees' trustee is the person specified in § 2 of the Employees' Trustee Act.

(7) In this Division:

- 1) share also includes other equivalent rights which are related to the acquisition of a holding in a company of an EEA Member State;
- 2) share capital includes [other equivalent capital of a company of an EEA Member State;
- 3) shareholder also includes a partner or other equivalent person with voting rights in a company of an EEA Member State.

§ 376. Notification of acquisitions of qualifying holdings in or gaining control over companies by alternative funds

(1) A fund manager in the case of which a fund managed by the fund manager acquires, either directly or indirectly, individually or jointly with another fund or other persons, voting rights in the holding of a non-traded company which constitute 10, 20, 30, 50 or 75 per cent or exceed the specified figure or are below it must submit, as soon as possible but not later than within ten working days after acquisition of the voting rights, a notification to the Financial Supervision Authority concerning the acquisition of the voting rights, increase or reduction thereof (hereinafter in this Division *notice*). In the case of gaining control over a non-traded company, the notice must also be submitted to the non-traded company and the shareholders thereof whose data are available to the fund manager or whose data shall be made available by the non-traded company or the register maintaining the share register thereof.

(2) Upon gaining control, a notice must contain at least:

- 1) breakdown of the voting rights in the company;
- 2) conditions of gaining control, including information concerning all the persons who participated in the transactions of acquisition of the holding and the representatives thereof and, as appropriate, information concerning the companies controlled by them and in which name such securities related to the voting rights are actually held;
- 3) date of reaching or exceeding the limit of holding;
- 4) obligation of the management board of the company to notify the trustee of the company or employees in the absence of a trustee of gaining control over the company and the information specified in clauses 1)-3) of this section.

(3) In addition to a notice, a fund manager shall submit the following information to the Financial Supervision Authority, the non-traded company and shareholders thereof whose data are available to the fund manager or whose data shall be made available by the non-traded company or the register maintaining the share register thereof:

- 1) data on the fund manager which manages either individually or jointly with another fund manager the fund which has gained control;
- 2) the procedure for mitigation and avoidance of conflicts of interests between the fund manager, the fund and the company over which the control was acquired, including the measures by which the independence of the parties was ensured upon entry into the contract;
- 3) the procedure for publication of information and notification of employees by the company.

(4) In the case of gaining control over an issuer, the information specified in clause (2) 4) and subsection (3) of this section shall also be made available to the issuer and the shareholders of the issuer whose data are available to the fund manager or whose data shall be made available by the non-traded company or the register maintaining the share register thereof.

(5) A fund manager who gained control over a non-traded company shall disclose to the non-traded company and the shareholders thereof whose data are available to the fund manager or whose data are made available by the non-traded company or the register maintaining the share register thereof information concerning the future plans for business activities of the non-traded company and the impact thereof on the working conditions of the employees. The fund manager shall ensure that the management board of the non-traded company shall notify the trustee of the company or its employees in the absence of a trustee of the circumstances subsection.

(6) A fund manager who gained control over a non-traded company shall submit information to the Financial Supervision Authority and the investors of the fund concerning the conditions of financing of gaining of control over the company.

§ 377. Requirements for annual accounts of alternative funds which control non-traded companies

(1) An independent overview of the activities of a non-traded company and the following information shall be published in the annual accounts of the fund having gained control:

- 1) important events which have occurred after the end of the financial year;
- 2) future plans for business activities of the company;
- 3) data on acquisition of own shares.

(2) The data specified in clause (1) 3) of this section on acquisition of shares of a non-traded company contain at least the following information:

- 1) the reasons for acquisition of own shares;
- 2) the number and nominal value or, in the absence of a nominal value, the nominal accounting value of the shares acquired and transferred during the financial year and the percentage of these shares in the share capital;
- 3) in the case of acquisition or transfer for value, the consideration paid for the shares;
- 4) the number and nominal value or, in the absence of a nominal value, the nominal accounting value of the shares belonging to the company and the percentage of these shares in the share capital.

(3) A fund manager shall make every effort to ensure that the management board of the non-traded company shall submit to the trustee of the non-traded company or the employees of the company in the absence of a trustee the annual accounts of the fund or the information specified in subsection (1) of this section before preparation of the annual accounts of the non-traded company. The information specified in this section shall be submitted to the trustee of the non-traded company or its employees before the deadline for publication of the annual accounts of the fund.

§ 378. Requirements for distribution of profits of companies which control alternative funds

(1) Within 24 months after gaining control, it is prohibited to decide with the participation of the votes belonging to the alternative fund which gained control on the distribution of the profits, reduction of the share capital, purchase of own shares of the non-traded company or issuer or to encourage the making of this decision in any other manner and the fund manager must avoid making of such decisions in the best way possible.

(2) The following is prohibited pursuant to subsection (1) of this section:

- 1) distribution of profits to shareholders if, based on the latest approved annual report, the net assets of the company amount to less or upon distribution of the profits would amount to less than the total amount of the subscribed share capital and reserves which distribution to shareholders is not permitted pursuant to law or the articles of association;
- 2) distribution of profits to shareholders in the amount which exceeds the profits for the last financial year plus any profits brought forward and amounts drawn from reserves available for this purpose, less any losses brought forward and amounts placed to reserve in accordance with legislation or the articles of association;
- 3) acquisition of own shares, including earlier acquired shares which belong to the company and shares acquired by persons acting in their own name but in the interests of the company which would have the effect of reducing the net assets below the amounts specified in clause 1) of this section.

(3) In the case specified in clause (2) 1) of this section, the uncalled part of the subscribed share capital is deducted from the subscribed share capital in the case this is not included as a claim in the assets recorded in the balance sheet under equity capital.

(4) The restrictions on reduction of share capital provided for in this section do not apply to reduction of share capital to cover losses or transfer to reserves not subject to distribution if the reserve does not exceed ten per cent of the reduced share capital.

Division 7 Division, Transformation, Merger, Dissolution and Bankruptcy of Fund Managers

Subdivision 1 Division, Transformation and Merger of Fund Managers

§ 379. Division and transformation of fund managers

(1) The division of fund managers is not allowed.

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

§ 380. Mergers of fund managers

(1) A fund manager (hereinafter *fund manager being acquired*) may merge with another fund manager (hereinafter *acquiring fund manager*), and continue the activities on the basis of the activity licence of the acquiring fund manager, except as a company being acquired with a credit institution in the case provided for in clause 65 (1) 2) of the Credit Institutions Act.

[RT I, 10.01.2019, 1 - entry into force 20.01.2019]

(2) Fund managers may merge by founding a new fund manager.

(3) An authorisation of the Financial Supervision Authority is required for the merger of fund managers (hereinafter in this Division *authorisation for merger*). The fund manager founded as a result of the merger shall apply for an activity licence to act as a fund manager.

§ 381. Merger agreements

A merger agreement of a fund manager may not be entered into with a suspensive or resolute condition with the exception of a condition according to which rights and obligations arise from the merger agreement after the Financial Supervision Authority has decided to issue an authorisation for merger.

§ 382. Merger reports

(1) Upon a merger, a report shall be prepared and the report shall be audited by a sworn auditor.

(2) A sworn auditor's report shall provide an opinion on whether the acquiring fund manager meets the prudential requirements provided for in this Act.

§ 383. Authorisations for merger

(1) In order to be issued an authorisation for merger, the acquiring fund manager shall submit or the merging fund managers shall jointly submit an application to the Financial Supervision Authority to which the following data and documents (application, data and documents hereinafter in this Subdivision *application*) are appended:

- 1) the merger agreement;
- 2) the merger report;
- 3) the merger resolutions, if preparation thereof is required;
- 4) the sworn auditor's report;
- (5) the business plan for three years after the merger;
- 6) the data and documents specified in clause 313 (1) 7) and § 324 of this Act;
- 7) the internal rules of the fund manager.

(2) If the merger brings about amendment of the fund rules or articles of association of a public fund managed by the fund manager, the acquiring fund manager shall also submit the data and documents specified in § 37 of this Act.

(3) In the case of a merger of a fund manager whereby a new fund manager is founded, the application, data and documents specified in § 313 of this Act must be submitted to the application for an activity licence of the fund manager.

§ 384. Processing of applications for authorisations for merger and decisions on issue of authorisations for merger

(1) The provisions of § 314 of this Act apply to processing of applications, verification of submitted data and verification of whether the facilities of applicants for the management of public funds and the acquiring fund manager comply with the requirements provided for in this Act or legislation issued on the basis thereof.

(2) The decision to issue or refuse to issue an authorisation for merger shall be made by the Financial Supervision Authority within two months after receipt of a respective application but at the latest one month after receipt of all the required data and documents. In the case of a merger of fund managers whereby a new fund manager is founded, the Financial Supervision Authority shall make a decision on issue of or refusal to issue an authorisation for merger within six months after receipt of an application for authorisation for merger.

(3) If amendment of the fund rules or articles of association was applied for upon merger, the Financial Supervision Authority shall make a decision, together with the decision to issue an authorisation for merger, on approval of the amendments to the fund rules or articles of association.

(4) The Financial Supervision Authority shall decide to revoke an activity licence of a fund manager being acquired or issue of an activity licence to an acquiring fund manager at the same time with the decision to issue

an authorisation for merger and the decision shall not enter into force before the day of making a merger entry in the commercial register.

(5) The Financial Supervision Authority shall communicate the decision to issue or refuse to issue an authorisation for merger to the acquiring fund manager or the merging fund managers promptly after the decision is made.

(6) The Financial Supervision Authority shall disclose the decision on issue of an authorisation for merger on its website at the latest on the working day following the making of the decision pursuant to the procedure established on the basis of subsection 53 (4) of the Financial Supervision Authority Act.

§ 385. Bases for refusal to issue authorisations for merger

The Financial Supervision Authority may refuse to issue an authorisation for merger if:

- 1) the managers of the acquiring fund manager do not comply with the requirements provided for in this Act or legislation issued on the basis thereof;
- 2) the limitations on investments provided by legislation would be violated as a result of the merger;
- 3) the financial situation of the acquiring fund manager, including the amount of own funds, does not comply with the requirements provided for in this Act;
- 4) the merger agreement does not comply with the requirements provided by legislation;
- 5) close links between the acquiring fund manager and another person prevent sufficient supervision over the fund manager;
- 6) the merger may damage the interests of a fund, the investors of the fund or clients of investment services or ancillary services for other reasons.

§ 386. Merger notification

(1) Merging fund managers must promptly publish a merger notice on receipt of an authorisation for merger on the website of the fund manager or the consolidation group to which the fund manager belongs.

(2) A fund manager shall submit an application for entry of a merger in the commercial register promptly after publication of the merger notice specified in subsection (1) of this section.

Subdivision 2 Dissolution and Bankruptcy of Fund Managers

§ 387. Dissolution of fund managers

(1) The general meeting of a fund manager may adopt a decision on dissolution of the fund manager only after dissolution of all funds managed by the fund manager or outsourcing of the management thereof. A fund manager shall promptly submit the decision of the general meeting to the Financial Supervision Authority and append to it an application for revocation of the activity licence and a confirmation that all the funds managed by the fund manager have been dissolved or the management thereof has been outsourced.

(2) If it becomes evident during the liquidation of a fund manager that the fund manager is insolvent, the liquidator must submit a bankruptcy petition and notify the Financial Supervision Authority thereof in writing.

§ 388. Application of Bankruptcy Act in case of bankruptcy of fund managers

The provisions of the Bankruptcy Act apply to submission of a bankruptcy petition, declaration of bankruptcy and bankruptcy proceedings of a fund manager, unless otherwise provided for in this Subdivision.

§ 389. Submission of bankruptcy petitions of fund managers

(1) Bankruptcy cautions shall not be submitted to fund managers.

(2) A bankruptcy petition of a fund manager may be submitted only by the fund manager, the liquidator of the fund manager or the Financial Supervision Authority.

(3) If it becomes evident in the course of the activities of a fund manager that the fund manager is insolvent, the management board of the fund manager must notify the Financial Supervision Authority in writing thereof before submitting a bankruptcy petition.

(4) The Financial Supervision Authority shall be entitled to file a bankruptcy petition with respect to a fund manager if at least one of the following conditions occurs:

- 1) the assets of the fund manager are insufficient for satisfaction of all the claims of the creditors;
- 2) the fund manager has spent, hidden or squandered the fund manager's assets or made grave errors in management as a result of which the fund manager has become or is becoming insolvent, or has caused or is causing the insolvency in any other manner.

(5) The provisions of § 10 of the Bankruptcy Act do not apply to submission of bankruptcy petitions of fund managers by the Financial Supervision Authority.

§ 390. Proceedings regarding bankruptcy petitions and declaration of bankruptcy

(1) A court shall accept and hear a bankruptcy petition of a fund manager submitted by the Financial Supervision Authority and declare the bankruptcy or dismiss a bankruptcy petition within three working days after receipt of the bankruptcy petition.

(2) A court shall refuse, by a ruling, to accept a bankruptcy petition submitted by the Financial Supervision Authority if the bankruptcy petition does not substantiate the conditions provided for in subsection 389 (4) of this Act. The bases for refusal to accept a bankruptcy petition provided for in subsection 14 (1) of the Bankruptcy Act does not apply to bankruptcy petitions filed by the Financial Supervision Authority.

(3) The provisions of §§ 15-26 and 30 of the Bankruptcy Act do not apply and no interim trustee shall be appointed if the bankruptcy petition of a fund manager is submitted by the Financial Supervision Authority.

(4) If the bankruptcy petition of a fund manager is submitted by the fund manager or liquidator, a court shall hold, for deciding on appointment of an interim trustee in bankruptcy, a preliminary hearing and the Financial Supervision Authority, fund manager and liquidator shall be summoned to the hearing in the case the petition was submitted by the liquidator. At the preliminary hearing, the Financial Supervision Authority shall provide an opinion regarding the bankruptcy petition of the fund manager.

(5) The court shall decide on the time of the preliminary hearing specified in subsection (4) of this section within seven working days after the receipt of the bankruptcy petition and deliver the summonses to the Financial Supervision Authority, fund manager and the liquidator.

(6) The court shall hear the bankruptcy petition submitted by a fund manager or liquidator and declare the bankruptcy, dismiss the application or terminate the proceedings by abatement on the bases specified in § 29 of the Bankruptcy Act within five working days after appointment of an interim trustee in bankruptcy.

(7) Subsection 31 (3) of the Bankruptcy Act also applies if a bankruptcy petition was submitted by the Financial Supervision Authority.

§ 391. Appointment and release of interim trustees in bankruptcy and trustees in bankruptcy

(1) If a bankruptcy petition of a fund manager is submitted by a fund manager or liquidator, a court shall appoint an interim trustee in bankruptcy on the proposal of the Financial Supervision Authority.

(2) A court shall appoint a trustee in bankruptcy of a fund manager on the proposal of the Financial Supervision Authority. The provisions of § 61 of the Bankruptcy Act do not apply to a trustee in bankruptcy of a fund manager.

(3) An interim trustee in bankruptcy or trustee in bankruptcy shall promptly submit to the Financial Supervision Authority the data requested by it and enable examination of the documentation concerning the bankruptcy proceedings of the fund manager.

(4) In addition to the provisions of subsection 22 (5) and 68 (1) of the Bankruptcy Act, the written report and opinion of an interim trustee in bankruptcy and the written notice and activity report of a trustee in bankruptcy shall be submitted to the Financial Supervision Authority.

(5) In addition to the provisions of § 68 of the Bankruptcy Act, a court shall release a trustee in bankruptcy on the proposal of the Financial Supervision Authority.

(6) If a trustee in bankruptcy is released, a new trustee in bankruptcy shall be appointed pursuant to the procedure provided for in this section.

§ 392. Obligations and rights of trustees in bankruptcy

(1) In addition to the provisions of § 55 of the Bankruptcy Act, a trustee in bankruptcy shall:

1) publish a bankruptcy notice at least in one national daily newspaper and on the website of the fund manager or the consolidation group to which the fund manager belongs;

2) promptly submit to the Financial Supervision Authority the data requested by it and enable the Financial Supervision Authority to examine the documentation concerning the bankruptcy proceedings of the fund manager;

3) as appropriate or prescribed by the legislation of another EEA Member State, notify the registrar of the commercial register, registrar of the land register or similar registrars of the EEA Member State where the branch of an Estonian fund manager has been founded of the bankruptcy ruling of the fund manager.

(2) The provisions of subsection 34 (2) of the Bankruptcy Act do not apply to notification of the known creditors of a fund manager.

§ 393. Bankruptcy committee

(1) The bankruptcy committee of a fund manager shall comprise five members, three of whom are appointed by the Financial Supervision Authority.

(2) The provisions of subsection 74 (7) of the Bankruptcy Act do not apply to the bankruptcy proceedings of a fund manager.

§ 394. Assets of fund managers, recovery thereof and sale of bankruptcy estate

(1) Unless otherwise provided for in this Act, the shares or units of a fund owned by the fund manager form a part of the bankruptcy estate of the fund manager.

(2) In the course of bankruptcy proceedings of a fund manager, transaction conducted in connection with transfer of a fund managed by the fund manager before the declaration of bankruptcy of the fund manager shall not be subject to recovery.

(3) With the consent of the bankruptcy committee, a trustee in bankruptcy has the right to sell all the assets of the fund at once.

§ 395. Bases for termination of bankruptcy proceedings

Bankruptcy proceedings of a fund manager may be terminated only with the consent of the Financial Supervision Authority with the agreement of creditors or by making a compromise.

Subdivision 3 Additional Requirements for Dissolution of Pension Fund Managers

§ 396. Additional requirements for dissolution of mandatory pension fund managers

(1) A mandatory pension fund manager is subject to compulsory dissolution on the initiative of the Financial Supervision Authority on the basis of a court ruling.

(2) The Financial Supervision Authority may file an application with a court for compulsory dissolution of a fund manager if the Financial Supervision Authority has revoked the activity licence of the fund manager.

(3) A court shall adjudge the compulsory dissolution of a fund manager as quickly as possible but not later than on the third working day after submission of the petition.

(4) The provisions of subsection 366 (3) of the Bankruptcy Act do not apply to compulsory dissolution of a fund manager. A judgment on compulsory liquidation is subject to immediate execution, and the filing of and proceedings regarding an appeal do not suspend the activities of liquidators.

(5) For obtaining an authorisation for voluntary dissolution of a mandatory pension fund manager, a fund manager shall submit an application to the Financial Supervision Authority to which the following data and documents (application, information and documents jointly hereinafter in this section *application*) are appended:

- 1) the decision of the general meeting on application for the authorisation for dissolution of the fund manager;
- 2) the assessment of the fund manager concerning the effect of the dissolution thereof on the interests of the unit-holders of the mandatory pension funds which have been or are managed by the pension fund manager.

(6) If an application for the authorisation for dissolution of a mandatory pension fund manager is not in compliance with the requirements provided for in subsection (5) of this section, the Financial Supervision Authority shall request elimination of the deficiencies by the applicant.

(7) The Financial Supervision Authority may demand submission of additional data and documents if it is not convinced on the basis of the data and documents specified in § 5 of this Act as to whether dissolution of a fund manager is in compliance with the interests of the unit-holders of the mandatory pension funds which have been or are managed by the fund manager or if any other circumstances relating to the fund manager need to be verified.

(8) In order to verify the data submitted, the Financial Supervision Authority may perform on-site inspections, order expert assessments and special audits, consult state databases, request oral explanations from managers and employees of fund managers, audit firms, representatives thereof and third parties concerning the contents of the documents submitted and the facts which are relevant in making a decision on an authorisation for dissolution of the mandatory pension fund manager.

(9) The data and documents specified in subsections (6) and (7) of this section shall be submitted within a reasonable term determined by the Financial Supervision Authority. The Financial Supervision Authority may refuse to review an application if the applicant has failed to eliminate the deficiencies specified in subsection (6) or (7) of this section within the prescribed term or has failed to submit the data, documents or information requested by the Financial Supervision Authority by the due date.

(10) The decision to issue or refuse to issue an authorisation for dissolution of a mandatory pension fund manager shall be made by the Financial Supervision Authority within one month after submission of all the necessary data and documents but not later than within two months after receipt of the respective application.

(11) The Financial Supervision Authority may refuse to issue an authorisation for dissolution of a mandatory pension fund manager if dissolution of the fund manager is contrary to the interests of the unit-holders of the mandatory pension funds which have been or are managed by the pension fund manager.

(12) The Financial Supervision Authority shall promptly communicate a decision on issue of or refusal to issue an authorisation for dissolution of a mandatory pension fund manager to the fund manager and disclose it at the latest on the working day following the making of the decision pursuant to the procedure established on the basis subsection 53 (4) of the Financial Supervision Authority Act.

§ 397. Additional requirements in case of bankruptcy of pension fund managers

(1) A bankruptcy petition of a pension fund manager may be submitted only by the fund manager, liquidator of the fund manager or the Financial Supervision Authority.

(2) In the case of the bankruptcy of a pension fund manager, claims against the fund manager of unit-holders of pension funds managed by the pension fund manager shall be satisfied first after claims secured by a pledge.

(3) The provisions of subsection (2) of this section apply for five years after transfer of the management of a pension fund.

(4) The units of a mandatory pension fund manager which are owned by a mandatory pension fund manager and managed by the mandatory pension fund manager shall not be included in the bankruptcy estate of the fund manager.

(5) A mandatory pension fund manager may apply for redemption of the units of a mandatory pension fund which are owned by the mandatory pension fund manager and which have been or are managed by the mandatory pension fund manager pursuant to the procedure provided for in § 69 of this Act or for the deletion of such units pursuant to the procedure provided for in § 72 of this Act only if the circumstances specified in subsection 32 (1) of the Funded Pensions Act have not arisen within 18 months after transfer of the management of the mandatory pension fund.

(6) Money received upon redemption of the units specified in subsection (4) of this section shall be included in the bankruptcy estate of the mandatory pension fund manager.

(7) In addition to the provisions of § 55 of the Bankruptcy Act and subsection 392 (1) of this Act, a trustee in bankruptcy shall allow the Guarantee Fund to examine the documentation concerning the bankruptcy proceedings of mandatory pension fund managers.

Chapter 28

Cross-border Activities of UCITS, Alternative Fund and Pension Fund Managers and Cross-Border Fund Offers

Division 1

Cross-border Activities of UCITS Managers and Cross-border UCITS Offers

Subdivision 1

General Provisions

§ 398. Bases for cross-border activities of UCITS managers

- (1) The provisions of this Division apply to fund managers who hold an activity licence of a UCITS manager.
- (2) Fund managers may manage a UCITS established or founded in other EEA Member States and provide investment services by providing cross-border services (hereinafter *cross-border provision of services*) or by founding branches for this purpose.
- (3) Fund managers may publicly offer the UCITS managed by the fund manager in another EEA Member State. Fund managers may publicly offer the UCITS managed by the fund manager in third countries in accordance with the requirements established by the third country.

Subdivision 2 Activities of UCITS Managers in other EEA Member States and Cross-border Offers of UCITS

§ 399. Foundation of branches in other EEA Member States and cross-border provision of services

- (1) If a fund manager wishes to establish a branch in another EEA Member State or provide cross-border services in another EEA Member State, the fund manager shall submit an application and the following data and documents to the Financial Supervision Authority:
 - 1) the name of the country of destination where the fund manager intends to found a branch or provide cross-border services;
 - 2) an action plan which contains data on all the services provided in this country of destination, description of the risk management system and procedure for settlement of complaints of the investors of the fund;
 - 3) in the case a branch is founded, the address of the seat thereof in the country of destination from where it is possible to get the documents which are important for the investors;
 - 4) in the case a branch is founded, the names of the persons responsible for the management of the branch and the organisational structure of the branch.
- (2) A fund manager shall submit the data and documents together with the translation certified by a notary or sworn translator into the official language or one of the official languages of the country of destination.
- (3) In the case a branch is established, the Financial Supervision Authority shall make a decision to forward or refuse to forward the data and documents to the financial supervision authority of the country of destination within two months after receipt of all the required data and documents. The Financial Supervision Authority shall communicate the decision to the fund manager.
- (4) In the case of provision of cross-border services, the Financial Supervision Authority shall make a decision to forward or refuse to forward the data and documents to the financial supervision authority of the country of destination within one month after receipt of all the required data and documents. The Financial Supervision Authority shall communicate the decision to the fund manager.
- (5) The Financial Supervision Authority may refuse to review the data and documents submitted and make a decision on the refusal to forward them if:
 - 1) the data or documents submitted do not meet the requirements provided for in this Act or are inaccurate, misleading or incomplete or, the data or documents additionally requested have not been submitted within the term determined by the Financial Supervision Authority;
 - 2) the fund manager does not manage any UCITS;
 - 3) the financial situation, organisational structure or other resources of the fund manager are insufficient for the provision of the services specified in the action plan in the country of destination;
 - 4) foundation of a branch or cross-border provision of services or implementation of the action plan submitted by the fund manager may damage the interests of the fund or investors of the fund, the financial situation or reliability of the activities of the fund manager;
 - 5) the financial supervision authority of the country of destination has no legal basis or possibilities for cooperation with the Financial Supervision Authority due to which the Financial Supervision Authority is unable to exercise sufficient supervision over the branch or cross-border provision of services in the country of destination.
- (6) The Financial Supervision Authority shall forward, after making the decision specified in subsection (3) or (4) of this section, the data and documents and the data on investor protection scheme implemented in Estonia to the financial supervision authority of the country of destination.
- (7) A fund manager may commence cross-border provision of services in the country of destination after forwarding of the data and documents to the financial supervision authority of the country of destination, taking account of the conditions provided for in the legislation of the country of destination. and set out by the financial supervision authority of the country of destination.

(8) A fund manager may establish a branch in the country of destination if the fund manager has received the conditions from the financial supervision authority of the country of destination for foundation of a branch in the country of destination or if the financial supervision authority of the country of destination has not submitted the conditions thereof within two months after receipt of the data and documents. If a fund manager founds a branch in the country of destination, the fund manager must comply with the requirements in force in the country of destination which have been established pursuant to Article 14 of Directive 2009/65/EC of the European Parliament and of the Council. Supervision over compliance with these requirements shall be exercised by the financial supervision authority of the country of destination.

(9) A fund manager shall notify the Financial Supervision Authority and the financial supervision authority of the country of destination of any changes in the data and documents at least one month before the changes enter into force.

(10) The Financial Supervision Authority shall inform the financial supervision authority of the country of destination of each such change in the investor protection scheme applicable in Estonia which have occurred during the period when the fund manager has been operating in the country of destination and of each change in the information submitted on the basis of subsection (6) of this section about the scope of the authorisation of the fund manager and the restrictions related to the UCITS managed.

(11) The Financial Supervision Authority may prohibit, by its precept, operation of a fund manager in the country of destination through a branch or provision of cross-border services if:

- 1) the basis provided for in subsection (5) of this section for refusal to forward data and documents exists;
- 2) the financial supervision authority of the country of destination has informed the Financial Supervision Authority that the fund manager has committed a violation of the requirements provided for in the legislation of the country of destination and established by the financial supervision authority of the country of destination.

(12) The Financial Supervision Authority shall promptly deliver the precept specified in subsection (11) of this section to the fund manager. The fund manager is required to terminate the provision of its services through a branch in the country of destination not later than by the date determined by the Financial Supervision Authority.

§ 400. Management of UCITS in other EEA Member States

(1) If a fund manager intends to manage a UCITS established in another country of destination, the Financial Supervision Authority shall submit explanations to the financial supervision authority of the country of destination concerning the data of the activity licence of the fund manager and the documents submitted by the fund manager for the management of a UCITS in the country of destination within ten working days after receipt of a request from the financial supervision authority of the country of destination.

(2) If a fund manager manages a UCITS founded in another EEA Member State, the obligations of the fund manager set out in the fund rules and the prospectus of the UCITS founded in another EEA Member State be in accordance with the requirements for fund managers provided for in §§ 313-371 of this Act. The fund manager shall establish organisational arrangements which are required according to the legislation of the other EEA Member State for pursuing the activities of a UCITS established in such EEA Member State and investing the assets of the UCITS and performance of the obligations specified in the fund rules and the prospectus of the UCITS pursuant to this Act.

§ 401. Public offer of UCITS in other EEA Member States

(1) In order to offer a UCITS established or founded in Estonia in another EEA Member State, the fund manager shall submit to the Financial Supervision Authority, before commencing the offer, an offer notice in the English language in writing or in a format which can be reproduced in writing and the following data and documents:

- 1) the fund rules or articles of association of the fund;
- 2) the latest audited annual accounts or annual report of the fund and the latest semi-annual report of the fund if this has been approved after the latest audited annual accounts or annual report;
- 3) the prospectus and key information;
- 4) an overview of the arrangements of the offer of the fund in the country of destination which sets out the methods of disclosure of information for the offer of the fund;
- 5) the names of the classes of the units or shares of the fund offered in the country of destination if the fund has different classes of units or shares;
- 6) a notation stating whether the same fund manager that manages the fund in Estonia offers the units or shares of the fund in the country of destination.

(2) A fund manager shall submit the data and documents, except key information, at its choice either in English, the official language of the country of destination or a language approved by the financial supervision authority of the country of destination. The contents of the data and documents and format requirements are specified in Commission Regulation (EU) No 584/2010, implementing Directive 2009/65/EC of the European Parliament

and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ L 176, 10.07.2010, pp. 16-27).

(3) A fund manager shall submit the key information in the official language of the country of destination or a language approved by the financial supervision authority of the country of destination.

(4) The Financial Supervision Authority shall submit proper data and information to the financial supervision authority of the country of destination together with its statement in the English language concerning the compliance of UCITS with the requirements of Directive 2009/65/EC of the European Parliament and of the Council. The specified statement shall be submitted within ten working days after receipt of the proper data and documents.

(5) The Financial Supervision Authority shall ensure access to the documents set out in clauses (1) 1)-3) of this section and, as appropriate, the translations thereof to the financial supervision authority of the country of destination.

(6) The Financial Supervision Authority shall notify fund managers promptly of submission of data and documents to the financial supervision authority of the country of destination.

(7) The offer of an Estonia UCITS in a country of destination may be commenced from the day when the fund manager received the notification specified in subsection (6) of this section from the Financial Supervision Authority.

(8) A fund manager shall notify the financial supervision authority of the country of destination of amendments to the data and documents specified in clauses (1) 1)-3) of this section and indicate where the updated data and documents can be examined.

(9) Before making amendments to the data specified in clause (1) 4) or 5) of this section, a fund manager shall notify the financial supervision authority of the country of destination thereof.

(10) The principles of cross-border offer of UCITS are provided for in Articles 1-5 of Commission Regulation (EU) No 584/2010.

Subdivision 3

Activities of UCITS Managers in Third Countries

§ 402. Branches of fund managers in third countries

(1) A fund manager which wishes to found a branch in a third country must apply for a respective authorisation (hereinafter in this Division *authorisation for foundation of branch*) from the Financial Supervision Authority.

(2) In order to apply for an authorisation to found a branch, a fund manager shall submit to the Financial Supervision Authority a written application and the following data and documents (in general, application, data and documents hereinafter in this Subdivision *application*):

- 1) the name of the third country where the fund manager wishes to found the branch;
- 2) the address of the seat of the branch in the third country;
- 3) information specified in clause 313 (1) 7) of this Act concerning the managers of the branch;
- 4) a business plan which complies with the requirements provided for in subsection 313 (2) of this Act.

(3) The format of an authorisation for application to found a branch may be established by a regulation of the minister responsible for the area.

§ 403. Processing of applications for authorisations to found branches and decisions on issue of authorisations

(1) The provisions of § 314 of this Act apply to processing of applications for authorisations to found branches, verification of submitted data and verification of the financial situations, organisational structures and technical systems of the applicants and existence of sufficient resources for the foundation of the branch.

(2) The decision to issue or refuse to issue an authorisation for foundation of a branch shall be made by the Financial Supervision Authority within two months after receipt of all the necessary data and documents but not later than within three months after receipt of the respective application.

(3) The Financial Supervision Authority shall promptly communicate the decision to issue or refuse to issue an authorisation for foundation of a branch to the fund manager.

§ 404. Bases for refusal to issue authorisations for foundation of branches

The Financial Supervision Authority may refuse to issue an authorisation for foundation of a branch if:

- 1) the manager of the branch does not comply with the requirements established for managers of fund managers by this Act;
- 2) the data or documents submitted upon application for an authorisation to found a branch do not comply with the requirements provided for in § 402 of this Act, they are inaccurate, misleading or incomplete;
- 3) the financial situation, organisational structure and other resources of the fund manager are insufficient for the provision of services specified in the business plan in third countries;
- 4) the foundation of the branch in a third country or implementation of the business plan submitted by the fund manager may damage the interests of the fund and the investors of the fund, the financial situation of the fund manager or reliability of its activities in Estonia, another EEA Member State or a third country;
- 5) the financial supervision authority of a third country has no legal basis or possibilities for cooperation with the Financial Supervision Authority due to which the Financial Supervision Authority is unable to exercise sufficient supervision over the branch.

§ 405. Revocation of authorisations for foundation of branches

(1) The Financial Supervision Authority may revoke an authorisation for foundation of a branch if:

- 1) the fund manager has submitted false information upon application for the authorisation for the foundation of a branch which was of material importance in the decision to issue the authorisation, and in other cases where false information has been submitted to the Financial Supervision Authority by or for the fund manager;
- 2) the fund manager has significantly violated the requirements of the legislation of the relevant third country and this may damage the interests of the investors or clients of investment services of the fund managed by the fund manager;
- 3) the fund manager or the branch thereof does not comply with the requirements in force with regard to issue of authorisations for foundation of a branch;
- 4) the fund manager fails to submit reports on its branch as required;
- 5) the fund manager has violated the fund rules or management contract of the fund managed by it and the interests of the investors of the fund managed by the fund manager may be damaged due to such violation or the fund manager or the manager of its branch has been punished for an economic offence, official misconduct, offence against property or offence against public trust and information concerning the punishment has not been deleted from the criminal records database pursuant to the Criminal Records Database Act;
- 6) the fund manager has failed to implement a precept of the Financial Supervision Authority by the due date or to the extent prescribed;
- 7) the risks arising from the activities of the branch are significantly greater than risks arising from the activities of the fund manager;
- 8) the activity licence of the fund manager has been revoked;
- 9) the circumstances specified in § 404 of this Act become evident.

(2) The Financial Supervision Authority shall promptly communicate a decision to revoke an authorisation for foundation of a branch to the fund manager and the financial supervision authority of the third country.

(3) A fund manager shall terminate provision of its services through a branch founded in a third country not later than by the due date specified by the Financial Supervision Authority.

Subdivision 4

Activities of UCITS Managers of Other EEA Member States in Estonia and Cross-Border Offers of UCITS

§ 406. Branches of fund managers in Estonia and cross-border provision of services in Estonia

(1) A fund manager which wishes to found a branch in Estonia or provide cross-border services in Estonia shall notify the Financial Supervision Authority thereof through the financial supervision authority of its home country. The following data and documents shall be submitted to the Financial Supervision Authority (hereinafter in this section *information*):

- 1) an action plan which must contain data on all the services provided in Estonia and description of the risk management system and procedure for settlement of complaints of the investors of the fund;
- 2) in the case of foundation of a branch, the organisational structure thereof;
- 3) in the case of foundation of a branch, the business name and address thereof;
- 4) in the case of foundation of a branch, the names of the persons responsible for the management of the branch;
- 5) the description of the investor protection scheme applicable to the investors and clients of funds managed by the fund manager in the home country;
- 6) a statement by the financial supervision authority of the home country that an activity licence has been issued to the fund manager according to the provisions of Directive 2009/65/EC, and explanations of the scope

of the activity licence of the fund manager and restrictions related to the UCITS managed, if the fund manager intends to manage a UCITS established in Estonia.

(2) The information shall be submitted together with officially authenticated translations into Estonian. With the consent of the Financial Supervision Authority, the information may also be submitted in English.

(3) The Financial Supervision Authority may make a decision within two months after receipt of information concerning foundation of a branch in which it determines the conditions in compliance with which the fund manager of the home country must provide its services, including portfolio management, consulting and depositary services. The Financial Supervision Authority shall communicate its decision to the financial supervision authority of the home country.

(4) A fund manager may found a branch and commence provision of services through a branch two months after the day when the Financial Supervision Authority receives the information or the day when the Financial Supervision Authority submits the respective notification to the fund manager.

(5) A fund manager may commence cross-border provision of services after that the Financial Supervision Authority has received the information.

(6) Foundation of a branch by a fund manager of a home country in Estonia must be in compliance with the requirements provided for §§ 340-352 of this Act and established to the general organisational structure of the fund manager, settlement of complaints of the investors of the fund, mitigation and avoidance of conflicts of interests and acting in the best interests of the UCITS and the investors of the fund.

(7) The Financial Supervision Authority has to be notified at least one month in advance of changes in the information. Within one month after becoming aware of any change, the Financial Supervision Authority may amend the decision specified in subsection (3) of this section or make the above specified decision, unless it has been made earlier.

(8) Upon entry of a branch in the commercial register, a statement of the Financial Supervision Authority shall be submitted to the commercial register about receipt of information and the decision, if any, of the Financial Supervision Authority specified in subsection (3) of this section. If the Financial Supervision Authority makes a decision specified in subsection (7) of this section, it shall send a transcript of the decision to the commercial register.

§ 407. Management of UCITS founded by fund managers in Estonia

(1) If a fund manager of a home country manages a UCITS founded in Estonia, it must comply with the provisions of §§ 25-215 of this Act upon establishment of UCITS and management of the fund. On request, the fund manager of the home country shall submit the amended prospectus and annual accounts of the UCITS to the Financial Supervision Authority.

(2) A fund manager of a home country which wishes to manage a UCITS established in Estonia shall submit the following data and documents to the Financial Supervision Authority:

- 1) the depositary contract and annexes thereto;
- 2) the information concerning outsourcing of the functions related to management of the fund.

(3) If a fund manager already manages a UCITS founded in Estonia, the data and documents specified in subsections (2) of this section need not be submitted provided that the fund manager has earlier submitted them to the Financial Supervision Authority.

(4) The Financial Supervision Authority may request explanations and additional information from the financial supervision authority of a home country in connection with the data and documents specified in subsection (2) of this section and the scope of the activity licence of the fund manager and restrictions arising from the type of UCITS managed.

(5) The Financial Supervision Authority may make a decision which prohibits the management of a UCITS founded in Estonia by the fund manager of a home country if:

- 1) the fund manager does not comply with the requirements established in this Act for fund managers of another EEA Member State;
- 2) the fund manager does not hold an activity licence for the management of such UCITS for which the data and documents specified in subsection (1) of this section were submitted;
- 3) the data or documents submitted by the fund manager are incomplete or insufficient.

(6) Prior to making the decision specified in subsection (5) of this section, the Financial Supervision Authority shall consult with the financial supervision authority of the home country.

(7) A fund manager of the home country which manages a UCITS founded in Estonia shall communicate to the Financial Supervision Authority any significant changes in the data and documentation specified in subsection (2) of this section.

§ 408. Public offer of UCITS of other EEA Member States in Estonia

(1) A UCITS of another EEA Member State may be publicly offered in Estonia if the offer complies with the requirements provided for UCITS in this Act and if:

- 1) the investors of the fund are guaranteed the possibility to require redemption of the units or shares from the UCITS of the EEA Member State and making of payments;
- 2) Information shall be disclosed concerning a UCITS of another EEA Member State pursuant to the procedure and to the extent provided for in §§ 73-82 of this Act.

(2) A UCITS of another EEA Member State may be publicly offered in Estonia starting from the day when the financial supervision authority of the home country of the UCITS submits a statement to the Financial Supervision Authority of compliance of the UCITS with the requirements of Directive 2009/65/EC of the European Parliament and of the Council and notifies the fund manager of that the following data and documents have been submitted to the Financial Supervision Authority:

- 1) the fund rules or articles of association of the fund;
- 2) the prospectus and key information;
- 3) the latest audited annual accounts or annual report of the fund and the latest semi-annual report of the fund if this has been approved after the latest audited annual accounts or annual report;
- 4) an overview of the arrangements of the fund offer in Estonia which sets out the methods of disclosure of information for the offer of the fund;
- 5) the names of the classes of the units or shares of the fund offered in Estonia if the fund has different classes of units or shares;
- 6) a notation stating whether the same fund manager that manages the fund in another EEA Member State offers the units or shares of the fund in Estonia.

(3) A fund manager submits the data and documents specified in subsection (2) of this section, except for key information, at its choice either in Estonian or English. Key information shall be submitted in Estonian. The contents of and form requirements for the data and documents specified in subsection 2) of this section are specified in Commission Regulation (EU) No 584/2010.

(4) The fund manager of the home country of a UCITS or a UCITS of another EEA Member State which manages its own assets shall notify the Financial Supervision Authority of amendments to the documents specified in clauses (2) 1)-3) of this section and indicate where the updated documents can be examined. Before making amendments to the data specified in clauses (2) 4) and 5) of this section, the fund manager of the UCITS of the home country or the UCITS which manages its own assets shall notify the Financial Supervision Authority thereof in a format which can be reproduced in writing.

Division 2

Cross-border Activities of Alternative Fund Managers and Cross-border Offers of Alternative Funds

Subdivision 1

Activities of Alternative Fund Managers founded in Estonia in EEA Member States

§ 409. Bases for activities of fund managers founded in Estonia

(1) The provisions of this Subdivision apply to fund managers founded in Estonia and holding the activity licences issued by the Financial Supervision Authority which manage alternative funds upon offer of alternative funds or management of alternative funds.

(2) A fund manager may:

- 1) offer a fund established or founded in Estonia or another EEA Member State (hereinafter in this Subdivision *offer of fund of EEA Member State*) in Estonia or another EEA Member State;
- 2) manage a fund founded in another EEA Member State.

(3) A fund manager may offer a fund in another EEA Member State by founding a branch for this purpose in the EEA Member State or by providing cross-border services.

(4) If a fund manager manages a fund in a foreign state, the accounting of the fund must be organised in accordance with the legislation of the home country of the fund and the reports of the foreign fund must be also made accessible to the financial supervision authority of the home country of the fund.

(5) In addition to offering and managing of funds, a fund manager may provide investment services or ancillary services in another EEA Member State in accordance with the provision of the Securities Market Act.

§ 410. Offer of funds of Estonian fund managers in other EEA Member States

(1) In order to offer a fund founded in Estonia or another EEA Member State in another EEA Member State, a fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and append the following data and documents in English to it (hereinafter in this section *information*):

- 1) an action plan which contains a list of the funds the offer of which units or shares in the other EEA Member State is requested, and information concerning the country in which each fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund;
- 4) the description of the information provided to investors concerning the fund;
- 5) in the case of a feeder fund, the information on where the master fund was founded;
- 6) the information which shall be provided to the investors on each fund in accordance with the provisions of § 269 of this Act;
- 7) the name of the country of destination where the offer of the units or shares of the fund is requested;
- 8) an overview of the procedure of the fund offer in Estonia and, where appropriate, information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) The Financial Supervision Authority shall submit proper information to the financial supervision authority of the country of destination together with its statement in the English language stating that the fund manager has been issued an activity licence in accordance with the provisions of Directive 2011/61/EU of the European Parliament and of the Council. The specified statement and the information shall be submitted within 20 working days after receipt of proper information. The Financial Supervision Authority may refuse to submit information to the financial supervision authority of the country of destination only in the case the activities of the fund manager or the information submitted do not comply with the requirements provided for in this Act.

(3) The Financial Supervision Authority shall notify the fund manager promptly of submission of information to the financial supervision authority of the country of destination. As of the day of receipt of the specified notification, the fund manager may commence the offer of the fund in the country of destination.

(4) Prior to making any significant changes to the information, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes in the information.

(5) The Financial Supervision Authority shall prohibit the enforcement of any changes in the information by a fund manager if the activities of the fund manager no longer comply with this Act as a result of the changes entering into force.

(6) If any changes which are in conflict with this Act enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified in this Act to bring the activities of the fund manager into compliance with law, including to prohibit the offer of the fund.

(7) If the changes in the information are in compliance with the provisions of this Act, the Financial Supervision Authority shall notify the financial supervision authority of the country of destination thereof.

(8) The provisions of this section apply to offers of funds which assets are invested, to the extent of at least 85 per cent, in the units or shares of another fund, in the case the master fund manager is an Estonian alternative fund manager.

§ 411. Activities of Estonian fund managers upon management of funds of other EEA Member States

(1) In order to manage a fund in another EEA Member State, a fund manager shall submit the following information in the English language to the Financial Supervision Authority:

- 1) the name of the country of destination where the fund manager intends to manage a fund founded there either by cross-border services or through a branch;
- 2) an action plan which particularly contains a list of the services which offer is requested in the country of destination and a list of the funds the management of which in the country of destination is requested.

(2) In the case a branch is founded in the country of destination, a fund manager shall submit, in addition to the information specified in subsection (1) of this section, the following data in writing in the English language:

- 1) the organizational structure of the branch;
- 2) the address of the fund through which it is possible to obtain information;
- 3) the name and contact details of the managers of the branch.

(3) The Financial Supervision Authority shall submit proper information to the financial supervision authority of the country of destination together with its statement in the English language stating that the fund manager has been issued an activity licence in accordance with the provisions of Directive 2011/61/EU of the European

Parliament and of the Council. The specified statement and the information specified in subsection (1) of this section shall be submitted within one month after receipt of proper information. Upon foundation of a branch, the specified statement and the information specified in subsections (1) and (2) of this section shall be submitted within two months after receipt of proper information.
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(4) The Financial Supervision Authority may refuse to submit the information specified in subsection (3) of this section to financial supervision authorities of countries of destination only in the case the activities of fund managers or the information submitted do not comply with the requirements provided for in this Act.

(5) The Financial Supervision Authority shall promptly notify the fund manager of submission of the information specified in subsections (1) and (2) of this section to the financial supervision authority of the country of destination. The fund manager may commence provision of the services in the country of destination as of the day of receipt of the specified notification.

(6) Prior to making any significant changes in the information specified in subsections (1) and (2) of this section, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes in the information.

(7) If the changes are in compliance with the provisions of this Act, the Financial Supervision Authority shall notify the financial supervision authority of the country of destination thereof.

(8) The Financial Supervision Authority shall prohibit the enforcement of any changes specified in the information specified in subsections (1) and (2) of this section by a fund manager if the activities of the fund manager no longer comply with this Act as a result of the changes entering into force.

(9) If the changes which are in conflict with this Act enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified in this Act to bring the activities of the fund manager into compliance with law, including to prohibit the management of the fund.

Subdivision 2

Activities of Alternative Fund Managers founded in EEA Member States in Estonia

§ 412. Bases of activities of fund managers

The provisions of this Subdivision apply to fund managers founded in another EEA Member State and holding an activity licence of the financial supervision authority of the EEA Member State upon offer of alternative funds or management of alternative funds.

§ 413. Offers of funds of other EEA Member States in Estonia

(1) Fund managers wishing to offer funds in Estonia shall notify the Financial Supervision Authority thereof through the financial supervision authority of its home country. Offer notices shall be submitted to the Financial Supervision Authority in the English language and the following data and documents shall be appended to them (hereinafter in this section *information*):

- 1) an action plan which contains a list of the funds the offer of which units or shares in Estonia is requested, and information concerning the country in which each fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund;
- 4) the description of the information provided to investors concerning the fund;
- 5) in the case of a feeder fund, the information on where the master fund was founded;
- 6) the information which shall be provided to the investors on each fund in accordance with the provisions of § 269 of this Act;
- 7) the name of the country of destination where the offer of the units or shares of the fund is requested;
- 8) an overview of the procedure of the fund offer in Estonia and, where appropriate, information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) After the Financial Supervision Authority has received proper information to which a written statement of the financial supervision authority of the home country of the fund manager in English is appended stating that the fund manager has been issued an activity licence in accordance with the provisions of Directive 2011/61/EU of the European Parliament and the Council, the fund manager may commence the offer of the fund in Estonia.

(2¹) A public offer of a fund may be commenced after receipt of consent of the Financial Supervision Authority. [RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) A fund manager shall promptly inform the Financial Supervision Authority of any changes in the facts stated in the information through the financial supervision authority of the home country and also indicate the place where it is possible to examine the updated documents.

(4) The Financial Supervision Authority may prohibit the offer of a fund by a fund manager in Estonia in the case the fund manager does not comply with the requirements provided for in this Act.

§ 414. Activities of fund managers of EEA Member States upon management of funds in Estonia

(1) In order to manage in Estonia a fund established or founded in Estonia, a fund manager of an EEA Member State shall submit to the Financial Supervision Authority through the financial supervision authority of its home country, together with an application, an action plan in the English language which contains a list of the services which provision in Estonia is requested, and a list of the funds which management in Estonia is requested.

(2) In order to establish a branch in Estonia, a fund manager shall submit, in addition to the application and action plan specified in subsection (1) of this section, the following data in the English language in the manner specified in the same provision:

- 1) the organizational structure of the branch;
- 2) the address of the fund through which it is possible to obtain information;
- 3) the name and contact details of the managers of the branch.

(3) After the Financial Supervision Authority has received the information specified in subsections (1) and (2) of this section to which a statement of the financial supervision authority of the home country of the fund manager in the English language has been appended that the fund manager is required to hold an activity licence, the fund manager may commence the management of the fund in Estonia.

(4) A fund manager shall promptly inform the Financial Supervision Authority of any changes in the information specified in subsections (1) and (2) of this section through the financial supervision authority of its home country.

(5) Upon entry of a branch in the commercial register, the Financial Supervision Authority shall submit a statement to the commercial register concerning the receipt of the data specified in subsections (1) and (2) of this section.

Subdivision 3 Activities in Third Countries of Fund Managers founded in Estonia

§ 415. Bases of activities of fund managers

(1) The provisions of this Subdivision apply to fund managers founded in Estonia and holding the activity licences issued by the Financial Supervision Authority which manage alternative funds upon offer of alternative funds or management of alternative funds in third countries.

(2) A fund manager may manage or offer a fund established or founded in a third country (hereinafter in this Division *third country fund*) (hereinafter in this Subdivision *provide services*) based on an authorisation issued by the Financial Supervision Authority.

(3) A fund manager may provide services by founding a branch for this purpose or by providing cross-border services.

§ 416. Conditions of management of third country funds

A fund manager may manage in a third country a fund, which units or shares are not offered in any EEA Member State, under the following conditions:

- 1) upon management of the fund, the fund manager complies with all the requirements established for fund managers, with the exception of the requirements for submission of the annual accounts or annual reports of the fund and fund manager and the depositary of the fund managed by the fund manager;
- 2) an information exchange agreement has been entered into between the Financial Supervision Authority and the financial supervision authority of the country of destination which allows the Financial Supervision Authority to verify compliance of the activities of the fund manager with the requirements of this Act.

§ 417. Data and documents submitted to Financial Supervision Authority for provision of services

(1) A fund manager which wishes to provide services shall notify the Financial Supervision Authority thereof and submit to the Financial Supervision Authority, together with an application in writing or in a format which

can be reproduced in writing, the following data and documents in the English language (hereinafter in this Subdivision *information*):

- 1) the name of the country where the fund manager wishes to provide services;
- 2) an action plan which shall contain data of all the services provided;
- 3) upon foundation of a branch, the address of the seat of the branch in the third country, the action plan of the branch and details of the managers of the branch to the same extent as data is submitted concerning the managers upon application for an activity licence of the fund manager.

(2) A fund manager shall notify the Financial Supervision Authority of any changes in the facts stated in the information at least one month before entry into force of the changes.

§ 418. Conditions of commencement and termination of provision of services

(1) The Financial Supervision Authority may refuse to review the information or issue an authorisation if:

- 1) the information does not comply with the requirements provided for in § 417 of this Act, is inaccurate, misleading or incomplete;
- 2) the information contains the deficiencies specified in clause (1) 1) of this section and the information additionally requested by the Financial Supervision Authority has not been submitted by the prescribed date;
- 3) the fund manager does not manage any funds;
- 4) the managers of the branch do not comply with the requirements established for managers;
- 5) the financial situation, organisational structure or other resources of the fund manager are insufficient for the provision of services specified in the action plan.

(2) The Financial Supervision Authority may revoke an authorisation for provision of services if:

- 1) any of the bases specified in subsection (1) of this section occur;
- 2) the fund manager has materially violated the requirements of legislation of the relevant third country and this may damage the interests of the unit-holders, shareholders or clients of the investment services or ancillary services of the fund managed by the fund manager;
- 3) the fund manager or its branch does not fulfil the requirements for issue of an authorisation;
- 4) the fund manager fails to submit reports on its branch as required;
- 5) the fund manager has violated the fund rules or management contract of the fund managed by it and the interests of the unit-holders or shareholders of the fund managed by the fund manager may be damaged due to such violation or the fund manager or the manager of its branch has been punished for an economic offence, official misconduct, offence against property or offence against public trust and information concerning the punishment has not been deleted from the criminal records database pursuant to the Criminal Records Database Act;
- 6) the fund manager has failed to implement a precept of the Financial Supervision Authority by the due date or to the extent prescribed;
- 7) the risks arising from the activities of the branch are significantly greater than risks arising from the activities of the fund manager;
- 8) the activity licence of the fund manager has been revoked;
- 9) the financial supervision authority of the third country has informed the Financial Supervision Authority that the fund manager has committed a violation of the requirements provided for in the legislation of the third country and established by the financial supervision authority of the third country.

(3) The Financial Supervision Authority shall promptly send a precept for prohibition of the provision of services to the fund manager. The fund manager is required to terminate provision of the services not later than by the date specified by the Financial Supervision Authority.

Subdivision 4

Activities of Fund Managers founded in Estonia or Other EEA Member States upon Offer in Estonia or other EEA Member States of Alternative Funds founded or established in Third Countries

§ 419. General provisions and general requirements for offer of funds of third countries

(1) The provisions of this Subdivision apply to fund managers of Estonia or other EEA Member States which offer or wish to offer alternative funds of third countries in Estonia.

(2) A fund manager of Estonia or another EEA Member State may offer a fund of a third country in Estonia (hereinafter in this Subdivision *fund offer*) under the following conditions:

1) an information exchange agreement has been entered into between the Financial Supervision Authority and the financial supervision authority of the home country of the fund which allows the Financial Supervision Authority to verify the compliance of the activities of the fund manager with the requirements of this Act;
2) the home country of the fund carries out international cooperation in the area of prevention of money laundering and terrorist financing;
3) an agreement in accordance with the standards provided for in Article 26 of the OECD Model Tax Convention on Income and on Capital has been entered into between the home country of the fund and Estonia, including multilateral tax agreement which ensures effective exchange of information in tax issues.

(3) If the agreement specified in clause (2) 1) of this section does not allow, in the estimation of the Financial Supervision Authority, sufficient control over compliance of the activities of a fund manager with the requirements of this Act or the cooperation specified in clause (2) 2) is not sufficient, the Financial Supervision Authority may submit a settlement request for settlement of the dispute to the European Securities and Markets Authority.

§ 420. Activities of Estonian fund managers upon offers of funds in Estonia

(1) In order to offer a fund in Estonia, an Estonian fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and append the following data and documents to it (hereinafter in this section *information*):

1) an action plan which contains a list of the funds the offer of which units or shares in Estonia is requested, and information concerning the country in which each fund was founded;
2) the basic document of the fund;
3) the information concerning the depositary of the fund;
4) the description of the information provided to investors concerning the fund;
5) in the case of a feeder fund, the information on where the master fund was founded;
6) the information which shall be provided to the investors on each fund in accordance with the provisions of § 269 of this Act;
7) where appropriate, the information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) The Financial Supervision Authority shall inform the fund manager within 20 working days after receipt of proper information whether the Financial Supervision Authority decided to authorise the offer of the fund in Estonia or not. Since the day of receipt of an authorising notice, the fund manager may offer the fund in Estonia. The information prohibiting the offer of the fund may be submitted only in the case the activities of the fund manager do not comply with the requirements provided for in this Act.

(3) The Financial Supervision Authority shall notify the European Securities and Markets Authority of authorising an offer of a fund.

(4) Prior to making any significant changes in the information, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes.

(5) The Financial Supervision Authority shall prohibit the enforcement of any changes in the information by a fund manager if the activities of the fund manager no longer comply with this Act as a result of the changes entering into force.

(6) If the changes in information which are in conflict with this Act enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified in this Act to bring the activities of the fund manager into compliance with law, including to prohibit the offer of the fund in Estonia.

(7) The Financial Supervision Authority shall notify the European Securities and Markets Authority of amendment of information in accordance with this Act in the case this will result in termination of the offer of the fund.

§ 421. Activities of fund managers founded in Estonia upon offers of funds in other EEA Member States

(1) In order to offer a fund in another EEA Member State, an Estonian fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and append the following data and documents to it (hereinafter in this section *information*):

1) an action plan which contains a list of the funds the offer of which units or shares in the other EEA Member State is requested, and information concerning the country in which each fund was founded;
2) the fund rules or articles of association of the fund;
3) the information concerning the depositary of the fund;
4) the description of the information provided to investors concerning the fund;
5) in the case of a feeder fund, the information on where the master fund was founded;
6) the information which shall be provided to the investors on each fund in accordance with the provisions of § 269 of this Act;
7) the name of the country of destination where the offer of the units or shares of the fund is requested;

8) an overview of the procedure of the fund offer in Estonia and, where appropriate, information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) The Financial Supervision Authority shall submit proper information to the financial supervision authority of the country of destination together with its statement in the English language concerning that the fund manager has been issued an activity licence in accordance with the provisions of Directive 2011/61/EU of the European Parliament and of the Council. The statement and the information shall be submitted within 20 working days after receipt of proper information from the fund manager.

(3) The Financial Supervision Authority shall notify a fund manager promptly of submission of information to the financial supervision authority of the country of destination. Since the day of receipt of the specified notice, the fund manager may commence the offer of the fund in the country of destination.

(4) Prior to making any significant changes in the information, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes.

(5) The Financial Supervision Authority shall prohibit the enforcement of any changes in the information by a fund manager if the activities of the fund manager no longer comply with this Act as a result of the changes entering into force.

(6) If the changes in information which are in conflict with this Act enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified in this Act to bring the activities of the fund manager into compliance with law, including to prohibit the offer of the fund.

(7) The Financial Supervision Authority shall notify the European Securities and Markets Authority of amendment of information in accordance with law in the case this will result in termination of the offer of the fund in the country of destination.

§ 422. Activities of fund managers founded in EEA Member States upon offer of funds in Estonia

(1) Fund managers of other EEA Member States which wish to offer funds in Estonia shall notify the Financial Supervision Authority thereof through the financial supervision authority of their home country. A written offer notice in English shall be submitted to the Financial Supervision Authority and the following information and documents shall be appended to it (hereinafter in this section *information*):

- 1) an action plan which contains a list of the funds the offer of which units or shares in Estonia is requested, and information concerning the country in which each fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund;
- 4) the description of the information provided to investors concerning the fund;
- 5) in the case of a feeder fund, the information on where the master fund was founded;
- 6) the information which shall be provided to the investors on each fund in accordance with the provisions of § 269 of this Act;
- 7) the name of the country of destination where the offer of the units or shares of the fund is requested;
- 8) an overview of the procedure of the fund offer in Estonia and, where appropriate, information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) After the Financial Supervision Authority has received information to which a written statement of the financial supervision authority of the home country of the fund manager in English is appended stating that the fund manager has been issued an activity licence in accordance with the provisions of Directive 2011/61/EU of the European Parliament and the Council, the fund manager may commence the offer of the fund in Estonia.

(2¹) A public offer of a fund may be commenced after receipt of consent of the Financial Supervision Authority. [RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(3) A fund manager shall notify the Financial Supervision Authority promptly in writing of any changes in information if the changes result in termination of the offer of the fund in Estonia.

§ 423. Activities of fund managers founded in Estonia or EEA Member States upon offer of funds in Estonia under simplified procedure

(1) A fund manager founded in Estonia or another EEA Member State may offer the units of a fund in Estonia with the authorisation of the Financial Supervision Authority without compliance with the requirements

provided for in §§ 419-422 of this Act in the case there is no intention to offer the fund in other EEA Member States and the units or shares of the fund are not publicly offered in Estonia.

(2) Offer of a fund in Estonia in the manner specified in subsection (1) of this Act is permitted under the following conditions:

- 1) the Financial Supervision Authority and the financial supervision authority of the home country of the fund have entered into an information exchange agreement for the purpose of systemic risk monitoring;
- 2) the home country of the fund carries out international cooperation in the area of prevention of money laundering and terrorist financing.

(3) In order to offer a fund in the manner specified in subsection (1) of this section, the fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and append the following data and documents to it:

- 1) an action plan which contains a list of the funds the offer of the units or shares of which in Estonia is requested, and information stating the country in which each fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund, if available;
- 4) the description of the information provided to investors concerning the fund;
- 5) an overview of the procedure of the fund offer in Estonia and information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(4) In addition to the data and documents specified in subsection (3) of this section, a fund manager shall submit to the Financial Supervision Authority data and documents which confirm compliance with the following conditions:

- 1) the fund is not a feeder fund;
- 2) the fund manager complies with all the requirements established for fund managers, with the exception of the requirements related to depositaries and provided for in §§ 285-300 of this Act;
- 3) the fund manager shall ensure that the functions of the depositary provided for in § 289 of this Act are performed instead of the fund manager by a third party whose name and address of the seat thereof shall be submitted by the fund manager to the Financial Supervision Authority;
- 4) if applicable, the fund manager shall comply with the requirements specified in §§ 375-378 of this Act.

(5) The Financial Supervision Authority shall notify a fund manager within 30 working days after receipt of information in compliance with subsections (3) and (4) of this section whether the offer of the fund in Estonia is authorised or not. After the day of receipt of an authorising notice, the fund manager may commence the offer of the fund in Estonia.

(6) The Financial Supervision Authority may refuse to authorise the offer of a fund or refuse the offer of a fund offer in Estonia in the case the conditions specified in this section are not met.

Subdivision 5

Activities in Estonia of Alternative Fund Managers founded in Third Countries

§ 424. Bases for activities in Estonia of fund managers founded in third countries

(1) The provisions of this Subdivision apply to fund managers founded in third countries which wish to offer or manager a fund in Estonia.

(2) A fund manager may offer a fund or manage a fund (hereinafter in this Subdivision *offer of fund*) pursuant to an authorisation issued by the Financial Supervision Authority or financial supervision authority of another EEA Member State. For issue of the specified authorization, the fund manager shall determine one EEA Member State (hereinafter in this Subdivision *primary host country*).

(3) In addition to an offer of a fund, a fund manager may provide investment services or ancillary services in Estonia under the conditions specified in the Securities Market Act.

(4) A fund manager may provide services by founding a branch for this purpose or by providing cross-border services.

§ 425. Principles for determination of primary host country

(1) If a fund manager wishes to manage in Estonia a fund which home country is Estonia and which shares or units are not offered in any other EEA Member State, the primary host country is Estonia.

(2) If a fund manager wishes to manage in Estonia funds which have been established or founded in different EEA Member States (hereinafter in this Subdivision *fund of EEA Member State*) and which are not offered in any other EEA Member State, the primary host country is the home country which has either the largest number of funds or the largest volume of funds.

- (3) If a fund manager wishes to offer a fund in Estonia which home country is an EEA Member State and which shares or units are not offered in any other EEA Member State, the primary host country may be Estonia in the case the home country of the fund is Estonia. If Estonia is not the home country of the fund but the intention is to offer the fund in Estonia, the primary host country of the fund is Estonia.
- (4) If a fund manager wishes to offer a fund in Estonia which home country is a third country and which shares or units are not offered in any other EEA Member State, the primary host country is Estonia.
- (5) If a fund manager wishes to offer a fund in other EEA Member States in addition to Estonia, the primary host country may be Estonia in the case the home country of the fund is Estonia.
- (6) If a fund manager wishes to also offer a fund in other EEA Member States in addition to Estonia and the home country of the fund is a third country, Estonia can be the primary host country.
- (7) If a fund manager wishes to also offer several funds in other EEA Member States in addition to Estonia and the home country of the funds is Estonia, the primary host country of the funds is Estonia or the country where it is intended to offer the fund. If the home countries of the funds are different EEA Member States, the primary host country is the country where it is intended to offer most of the funds.
- (8) If a fund manager wishes to also offer several funds in other EEA Member States in addition to Estonia and the home countries of the funds are both the EEA Member States as well as third countries, the primary host country of the funds is the country where it is intended to offer most of the funds.
- (9) In the cases provided for in subsections (2), (3) and (5)-(8) of this section, if any other EEA Member State may also be the primary host country in addition to Estonia, a fund manager shall submit an application to the Financial Supervision Authority for determination of the primary host country. The Financial Supervision Authority shall decide in cooperation with the financial supervision authorities of other EEA Member States on determination of the primary host country within one month after submission of the application.
- (10) If Estonia is designated in the manner specified in subsection (9) of this section as the primary host country, the Financial Supervision Authority shall promptly notify thereof the fund manager which submitted the application.
- (11) If a fund manager is not notified of making the decision specified in subsection (9) of this section within seven days or the required decision is not made within one month after submission of the application, the fund manager may determine itself the primary host country.
- (12) If the primary host country is Estonia in the opinion of a fund manager, the fund manager shall submit to the Financial Supervision Authority, together with the application, an offer plan reflecting the offer strategy of the fund.

§ 426. Verification of correctness of determination of primary host country

- (1) When the Financial Supervision Authority receives an application for authorization, it shall verify whether the fund manager has complied with the criteria for determination of the primary host country provided for in § 425 of this Act. If the criteria for determination of the primary host country have not been complied with in the estimation of the Financial Supervision Authority, it shall provide reasons for denial of an application to the fund manager.
- (2) If an application for authorization is subject to satisfaction in the estimation of the Financial Supervision Authority, it shall notify the European Securities and Markets Authority thereof and request an the opinion thereof on whether the fund manager has complied with the criteria for determination of primary host country. For this purpose, the Financial Supervision Authority shall submit to the European Securities and Markets Authority an assessment submitted by the fund manager of compliance with the criteria for determination of the primary host country and a fund offer plan.
- (3) If the Financial Supervision Authority does not agree to the assessment of the European Securities and Markets Authority specified in subsection (2) of this section, it shall notify the specified authority thereof and also submit reasons for the disagreement.
- (4) The Financial Supervision Authority shall submit the reasons of disagreement to an assessment of the European Securities and Markets Authority to the financial supervision authorities of the EEA Member States where the shares or units of a fund are offered in addition to Estonia. As appropriate, the Financial Supervision Authority shall also notify the financial supervision authority of the home country of the fund thereof.
- (5) If the Financial Supervision Authority does not agree to the primary host country chosen by a fund manager, it has the right to submit a settlement request to the European Securities and Markets Authority for settlement of the dispute.

§ 427. Conditions of operation in Estonia of fund managers founded in third countries

(1) In order to manage or offer a fund in Estonia, a fund manager must comply with the requirements provided in this Act for alternative fund managers, with the exception of the requirements provided for in §§ 409-414 of this Act.

(2) A fund manager need not comply with the provisions of this Act if it is contrary to the requirements of the home country of the fund manager or the fund offered and if it can prove that:

- 1) the requirements of this Act cannot be reconciled with the requirements of the home country of the fund manager or the fund offered;
- 2) the requirements in force in the home country of the fund manager and the fund offered have similar objectives and investor protection principals as those provided for in this Act and the fund manager complies with these.

(3) The Financial Supervision Authority has the right to issue an activity licence to a fund manager for operating in Estonia if the fund manager and the home country of the fund comply with following requirements:

- 1) the fund manager has appointed as its representative a natural person or legal entity whose place of residence or which seat is in Estonia (hereinafter in this Subdivision *representative of fund manager*);
- 2) the representative of the fund manager together with the fund manager are the contact persons in the activities covered by the authorisation for the investors of the fund, the European Securities and Markets Authority and the Financial Supervision Authority;
- 3) an information exchange agreement has been entered into between the Financial Supervision Authority and the financial supervision authorities of the home country of the fund and the fund manager which allows the Financial Supervision Authority to verify compliance of the activities of the fund manager with the requirements provided for in this Act;
- 4) the home country of the fund carries out international cooperation in the area of prevention of money laundering and terrorist financing;
- 5) an agreement in accordance with the standards provided for in Article 26 of the OECD Model Tax Convention on Income and on Capital has been entered into between the home country of the fund and Estonia, including multilateral tax agreement which ensures effective exchange of information in tax issues;
- 6) the laws, regulations or administrative provisions of the home country of the fund manager do not hinder the Financial Supervision Authority in exercise of supervision functions over the activities of the fund manager.

(4) If the financial supervision authority of the home country of a fund does not enter into the information exchange agreement specified in clause (3) 3) of this section, the Financial Supervision Authority may submit a request for settlement to the European Securities and Markets Authority for entry into the information exchange agreement.

(5) A fund manager must submit to the Financial Supervision Authority the data specified in subsections 271 (3) and (4) of this Act on use of leverage concerning the funds of EEA Member States and third country funds managed by the fund manager which units or shares are offered in the EEA Member State.

§ 428. Issue of authorisation for operation to fund managers founded in third countries

(1) The provisions of §§ 314-321 of this Act concerning issue of activity licences to fund managers for operation in Estonia with the specifications provided for in this Division apply to issue of authorisations to fund managers in Estonia.

(2) A fund manager shall submit the following written data and documents in the English language to the Financial Supervision Authority for obtaining an authorisation for operation in Estonia:

- 1) fund offer plan together with an explanation of compliance with the criteria for determining the primary host country provided for in § 425 of this Act;
- 2) list, if it exists, of the requirements established in this Act to fund managers with which the fund manager is unable to comply due to their conflict with the requirements of the home country of the fund manager or the fund offered;
- 3) written evidence based on the standards developed by the European Securities and Markets Authority that the fund manager complies with the requirements in force in the home country of the fund manager and the fund offered which have similar objectives and investor protection principals as those provided for in this Act;
- 4) name and address of the representative of the fund manager.

(3) In the case specified in clause (2) 2) of this section, a legal assessment shall be appended to the evidence specified in clause (2) 3) of this section which describes the objective of the requirements in force in the home country of the fund manager and the fund offered.

(4) If a fund manager makes changes in a fund offer plan two years after receipt of an authorisation as a result of which the primary host country would change, the fund manager shall notify the Financial Supervision Authority thereof before entry into force of the changes to the offer plan and also submit to the Financial Supervision Authority the reasons for determining a new primary host country together with the new offer plan and the name and address of the seat of the representative of the fund manager in the new primary host country. The provisions of subsections 429 (7)-(9) of this Act apply to processing of applications.

(5) Disputes between the Financial Supervision Authority and fund managers shall be settled under the Estonian law. Disputes between a fund manager and investors of a fund which home country is Estonia shall be settled under the Estonian law.

§ 429. Rights and obligations of Financial Supervision Authority upon issue of authorisations to fund managers founded in third countries

(1) If an authorisation of the financial supervision authority of a primary host country has been issued to a fund manager and the Financial Supervision Authority does not agree to it, the Financial Supervision Authority may submit a request for settlement of disputes to the European Securities and Markets Authority.

(2) If making of an exception to a fund manager from compliance with the requirements specified in clause 428 (2) 2) of this Act is justified in the opinion of the Financial Supervision Authority, it shall notify the European Securities and Markets Authority thereof and append the documents specified in clause 428 (2) 3) and subsection (3) of this Act to the notification.

(3) Proceedings of issue of an authorisation to a fund manager shall be suspended until the European Securities and Markets Authority submits to the Financial Supervision Authority an assessment on whether making of an exception to the fund manager from compliance with the requirements specified in clause 428 (2) 2) of this Act is justified.

(4) If the Financial Supervision Authority does not agree to the assessment of the European Securities and Markets Authority specified in subsection (3) of this section but decides to issue an authorisation to a fund manager, the Financial Supervision Authority shall notify the European Securities and Markets Authority and, as appropriate, other EEA Member States where it is intended to offer the fund thereof and thereupon also submit to the European Securities and Markets Authority reasons for disagreement with the assessment.

(5) If the Financial Supervision Authority does not agree to the assessment of the European Securities and Markets Authority specified in subsection (3) of this section, the Financial Supervision Authority shall have the right to submit a request for settlement to the European Securities and Markets Authority for settlement of the dispute.

(6) The Financial Supervision Authority shall promptly notify the European Securities and Markets Authority of issue of an authorisation to a fund manager, refusal to issue an authorisation and bases for refusal, changes made in the authorisation and revocation of an authorisation.

(7) The Financial Supervision Authority shall submit an assessment to the European Securities and Markets Authority on whether a fund manager operated in accordance with law upon determining a new primary host country specified in subsection 428 (4) of this Act. The Financial Supervision Authority shall also submit to the European Securities and Markets Authority, in addition to the assessment, a new offer plan of the fund and reasons for determining the new primary host country prepared by the fund manager.

(8) The Financial Supervision Authority shall notify the fund manager, representative of the fund manager and the European Securities and Markets Authority of whether they agree with the assessment of the European Securities and Markets Authority specified in subsection (3) of this section.

(9) If the Financial Supervision Authority agrees with the assessment of the European Securities and Markets Authority specified in subsection (3) of this section, they shall notify the financial supervision authority of the new primary host country thereof and also promptly forward a transcript of the authorisation of the fund manager and supervision materials related to the fund manager to them. Starting from the date of forwarding of the specified materials, the fund manager shall be subject to supervision by the financial supervision authority of the new primary host country.

(10) The Financial Supervision Authority shall require determination by the fund manager of a new primary host country instead of Estonia on the basis of the fund offer plan in the case the bases for determination of Estonia as a primary host country no longer apply. If the fund manager fails to determine a new primary host country, the Financial Supervision Authority shall have the right to revoke the authorisation issued to the fund manager.

(11) If the Financial Supervision Authority does not agree to the determination of the primary host country specified in subsection 428 (4) of this Act, the Financial Supervision Authority shall have the right to submit a request for settlement to the European Securities and Markets Authority for settlement of the disputes.

§ 430. Activities of fund managers founded in third countries upon offer of funds of EEA Member States in Estonia

(1) In order to offer a fund in Estonia, a fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer application in English and append the following data and documents to it (hereinafter in this section *information*):

- 1) an action plan which contains a list of the funds the offer of which in Estonia is requested, and information stating in which country the fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund;
- 4) the description of the information provided to investors concerning the fund;
- 5) in the case of a feeder fund, the information on where the master fund was founded;
- 6) the information which shall be provided to the investors on the fund in accordance with the provisions of § 269 of this Act;
- 7) where appropriate, the information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including even in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) The Financial Supervision Authority shall inform the fund manager within 20 working days after receipt of proper information whether the fund offer in Estonia is permitted. As of the day of receipt of a authorising notice, the fund manager may commence the offer of the units of the fund in Estonia. Submission of information prohibiting the offer of the fund is permitted only in the case the activities of the fund manager do not comply with the requirements provided for in this Subdivision.

(3) The Financial Supervision Authority shall notify the European Securities and Markets Authority of forwarding of a notice permitting the offer of a fund.

(4) Prior to making any significant changes in the circumstances stated in the information, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes.

(5) The Financial Supervision Authority shall prohibit the enforcement of any significant changes in the information by a fund manager if the activities of the fund manager no longer comply with this Act as a result thereof.

(6) If the changes in information which are in conflict with this Act enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified in this Act in order to bring the activities of the fund manager into compliance with this Act, including to prohibit the offer of the fund.

(7) A fund shall notify the European Securities and Markets Authority and, as appropriate, the financial supervision authority of the country of destination of amendment of information in accordance with this Act in the case this will result in termination of the offer of the fund.

§ 431. Activities of fund managers founded in third countries upon offer of funds of EEA Member States in EEA Member States through Estonia

(1) If the primary country of destination is Estonia and it is intended to offer a fund in any other EEA Member State in addition to Estonia, a fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and add the following data and documents to it (hereinafter in this section *information*):

- 1) an action plan which contains a list of the funds the offer of which in another EEA Member State is requested, and information concerning the country in which each fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund;
- 4) the description of the information provided to investors concerning the fund;
- 5) in the case of a feeder fund, the information on where the master fund was founded;
- 6) the information which shall be provided to the investors on each fund in accordance with the provisions of § 269 of this Act;
- 7) the name of the country of destination where the offer of the fund is requested;
- 8) an overview of the procedure of the fund offer in the country of destination and, where appropriate, information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) The Financial Supervision Authority shall submit proper information to the financial supervision authority of the country of destination together with its statement in the English language concerning that the fund manager has been issued an authorisation in accordance with the provisions of Directive 2011/61/EU of the European Parliament and of the Council. The statement and the information shall be submitted within 20 working days after receipt of proper information.

(3) The Financial Supervision Authority may refuse to submit information to the financial supervision authority of the country of destination only in the case the activities of the fund manager or the information submitted to the Financial Supervision Authority do not comply with the requirements provided for in this Act.

(4) The Financial Supervision Authority shall notify a fund manager promptly of submission of information to the financial supervision authority of the country of destination. Since the day of receipt of the information, the fund manager may offer the fund in the country of destination.

(5) Prior to making any significant changes to the circumstances presented in the information, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes.

(6) The Financial Supervision Authority shall prohibit the enforcement of any significant changes in the information by a fund manager if the activities of the fund manager no longer comply with this Act as a result of the changes entering into force.

(7) If the changes in information which are in conflict with this Act enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified by law to bring the activities of the fund manager into compliance with this Act, including to prohibit the offer of the fund.

(8) A fund shall notify the European Securities and Markets Authority and, as appropriate, the financial supervision authority of the country of destination of amendment of information in accordance with this Act in the case this will result in termination of the offer of the fund.

§ 432. Activities of fund managers founded in third countries upon offer of third country funds in Estonia

(1) A third country fund may be offered in Estonia under the following conditions:

- 1) an information exchange agreement has been entered into between the Financial Supervision Authority and the financial supervision authority of the home country of the fund which allows the Financial Supervision Authority to verify the compliance of the activities of the fund manager with the requirements provided for in this Subdivision;
- 2) the home country of the fund carries out international cooperation in the area of prevention of money laundering and terrorist financing;
- 3) an agreement in accordance with the standards provided for in Article 26 of the OECD Model Tax Convention on Income and on Capital has been entered into between the home country of the fund and Estonia, including multilateral tax agreement which ensures effective exchange of information in tax issues.

(2) In order to offer a fund in Estonia, a fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and append the following relevant data and documents in English to it (hereinafter in this section *information*):

- 1) an action plan which contains data of the fund which offer in Estonia is requested, and information stating in which country the fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund;
- 4) the description of the information provided to investors concerning the fund;
- 5) in the case of a feeder fund, the information on where the master fund was founded;
- 6) the information which shall be provided to the investors on the fund in accordance with the provisions of § 269 of this Act;
- 7) where appropriate, the information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(3) The Financial Supervision Authority shall inform the fund manager within 20 working days after receipt of proper information whether the fund offer in Estonia is permitted or not. As of the day of receipt of a authorising notice, the fund manager may commence the offer of the units of the fund in Estonia. Submission of information prohibiting the offer of the fund is acceptable only in the case the activities of the fund manager do not comply with the requirements provided for in this Act.

(4) The Financial Supervision Authority shall notify the European Securities and Markets Authority of authorising an offer of a fund.

(5) Prior to making any significant changes to the circumstances presented in the information, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes.

(6) The Financial Supervision Authority shall prohibit the enforcement of any changes in the information by a fund manager if the activities of the fund manager no longer comply with this Act as a result of the changes entering into force.

(7) If the changes in information which are in conflict with this Act enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified by law to bring the activities of the fund manager into compliance with this Act, including to prohibit the offer of the fund.

(8) A fund shall notify the European Securities and Markets Authority and, as appropriate, the financial supervision authority of the country of destination of permissible amendment of information in the case this will result in termination of the offer of the fund.

§ 433. Activities of fund managers founded in third countries upon offer of funds of third countries in EEA Member States through Estonia

(1) In order to also offer a fund in another EEA Member State in addition to Estonia, a fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and append the following relevant data and documents in English to it (hereinafter in this section *information*):

- 1) an action plan which contains data of the fund which offer in another EEA Member State is requested, and information stating in which country the fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund;
- 4) the description of the information provided to investors concerning the fund;
- 5) in the case of a feeder fund, the information on where the master fund was founded;
- 6) the information which shall be provided to the investors on the fund in accordance with the provisions of § 269 of this Act;
- 7) the name of the country of destination where the offer of the fund is requested;
- 8) an overview of the procedure of the fund offer in Estonia and, where appropriate, information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(2) The Financial Supervision Authority shall submit proper information to the financial supervision authority of the country of destination together with its statement in the English language concerning that the fund manager has been issued an authorisation in accordance with the provisions of Directive 2011/61/EU of the European Parliament and of the Council. The specified statement and the information shall be submitted within 20 working days after receipt of proper information.

(3) The Financial Supervision Authority may refuse to submit information to the financial supervision authority of the country of destination only in the case the activities of the fund manager or the information submitted do not comply with the requirements provided for in this Subdivision.

(4) The Financial Supervision Authority shall notify a fund manager promptly of submission of information to the financial supervision authority of the country of destination. As of the day of receipt of the specified notification, the fund manager may commence the offer of the fund in the country of destination.

(5) Prior to making any significant changes to the circumstances presented in the information, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after any unforeseeable changes.

(6) The Financial Supervision Authority shall prohibit the enforcement of any changes in the information by a fund manager if the activities of the fund manager no longer comply with the provisions of this Subsection as a result of the changes entering into force.

(7) If the changes in information which are in conflict with law enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified in §§ 467 and 469 of this Act to bring the activities of the fund manager into compliance with law, including to prohibit the offer of the fund.

(8) A fund shall notify the European Securities and Markets Authority and, as appropriate, the financial supervision authority of the country of destination of amendment of information in accordance with this section in the case this will result in termination of the offer of the fund.

§ 434. Activities of fund managers founded in third countries upon management of funds of EEA Member States in Estonia

(1) If the primary country of destination is not Estonia and a fund manager wishes to manage a fund in Estonia, the fund manager shall submit, before commencement of the management, the following written information in English to the financial supervision authority of the primary country of destination to the Financial Supervision Authority:

- 1) an action plan which contains a list of the intended services and a list of the fund which management in Estonia is requested;
- 2) whether the fund manager intends to manage the fund itself or through a branch.

(2) For management of a fund through a branch, the fund manager shall submit the following written information in English in addition to that specified in subsection (1) of this section:

- 1) the organizational structure of the branch;
- 2) the address of the fund through which it is possible to obtain information;
- 3) the name and contact details of the managers of the branch.

(3) After the Financial Supervision Authority has received the information specified in subsection (1) of this section and if a branch exists, in subsection (2) of this section, to which a written statement of the financial supervision authority of the primary country of destination of the fund in English is appended stating that the fund manager has been issued an authorisation in accordance with the provisions of Directive 2011/61/EU of the European Parliament and the Council, the fund manager may commence the management of the fund in Estonia.

(4) The financial supervision authority of the home country of a fund manager shall notify the Financial Supervision Authority promptly in writing of any changes made in the information specified in subsection (1) or (2) of this section.

§ 435. Activities of fund managers founded in third countries upon management of funds of EEA Member States in EEA Member States through Estonia

(1) If the primary country of destination is Estonia and a fund manager wishes to manage a fund in another EEA Member State in addition to Estonia, the fund manager shall submit, before commencement of the management, the following written information in English to the Financial Supervision Authority:

- 1) an action plan which contains a list of the funds the management of which in Estonia is requested, and information stating in which country each fund was founded;
- 2) whether the fund manager intends to manage the fund itself or through a branch.

(2) For management of a fund through a branch, the fund manager shall submit the following written information in English in addition to that specified in subsection (1) of this section:

- 1) the organizational structure of the branch;
- 2) the address of the fund through which it is possible to obtain information;
- 3) the name and contact details of the managers of the branch.

(3) The Financial Supervision Authority shall forward to the financial supervision authority of the country of destination the information specified in subsection (1) of this section and if the case a branch exists, the information specified in subsection (2) of this section, together with its statement in the English language that the fund manager has been issued an authorisation in accordance with the provisions of Directive 2011/61/EU of the European Parliament and the Council. The information specified in subsection (1) of this section shall be submitted within one month after receipt of proper information. The information specified in subsection (2) of this section shall be submitted within two month as of the receipt of proper information.

(4) The Financial Supervision Authority may refuse to forward the information specified in subsections (1) and (2) of this section to the financial supervision authority of the country of destination only in the case the activities of the fund manager or the information submitted does not comply with the requirements provided for in this Subdivision.

(5) The Financial Supervision Authority shall promptly notify the European Securities and Markets Authority and the fund manager of submission of the information specified in subsections (1) and (2) of this section to the financial supervision authority of the country of destination.

(6) Prior to making any changes in the information specified in subsections (1) and (2) of this section, a fund manager shall notify the Financial Supervision Authority in writing thereof at least one month before such changes enter into force or promptly after the unforeseeable changes.

(7) The Financial Supervision Authority shall prohibit the enforcement of any changes specified in the information specified in subsections (1) and (2) of this section by a fund manager if the activities of the fund manager no longer comply with this Act as a result of the changes entering into force.

(8) If the changes in the information specified in subsections (1) and (2) of this section, which are in conflict with this Subdivision, enter into force, the Financial Supervision Authority shall have the right to implement all the measures specified by law to bring the activities of the fund manager into compliance with law, including to prohibit the offer of the fund.

§ 436. Activities of fund managers founded in third countries upon offer of third country funds in Estonia pursuant to simplified procedure

(1) A fund manager may offer third country funds in Estonia with the authorisation of the Financial Supervision Authority without compliance with the requirements provided for in §§ 424-435 of this Act in the case it is not intended to offer the fund in other EEA Member States and the fund shall not be offered publicly in Estonia.

(2) Offer of a fund in Estonia in the manner specified in subsection (1) of this Act is permitted under the following conditions:

- 1) the Financial Supervision Authority and the financial supervision authority of the home country of the fund have entered into an information exchange agreement for the purpose of systemic risk monitoring;
- 2) the home country of the fund carries out international cooperation in the area of prevention of money laundering and terrorist financing.

(3) In order to offer a fund in the manner specified in subsection (1) of this section, the fund manager shall submit to the Financial Supervision Authority, before commencement of the offer, a written offer notice in English and append the following data and documents to it:

- 1) an action plan which contains a list of the funds the offer of which units or shares in Estonia is requested, and information concerning the country in which each fund was founded;
- 2) the basic document of the fund;
- 3) the information concerning the depositary of the fund, if available;
- 4) the description of the information provided to investors concerning the fund;
- 5) an overview of the procedure of the fund offer in Estonia and information about how the offer of the fund to investors who cannot be regarded as professional investors is precluded, including in the case the fund is offered by a third party in the framework of the provision of investment services or ancillary services.

(4) In addition to the data and documents specified in subsection (3) of this section, a fund manager shall submit data and documents which confirm compliance with the following conditions:

- 1) the fund manager shall submit information in accordance with the provisions of §§ 270 and 271 of this Act;
- 2) if applicable, the fund manager complies with the requirements provided for in §§ 375-378 of this Act.

(5) The Financial Supervision Authority shall inform the fund manager within 30 working days after receipt of proper information whether the fund offer is acceptable or not. Since the day of receipt of an authorising notice, the fund manager may offer the fund in Estonia.

(6) The Financial Supervision Authority may refuse to authorise the offer of a fund or refuse the offer of a fund offer in Estonia in the case the conditions specified in this section are not met.

Division 3

Cross-border Activities of Pension Fund Managers and Cross-border Offers of Pension Funds

Subdivision 1

Cross-border Activities of Pension Fund Managers and Cross-border Offers of Pension Funds in Foreign States

§ 437. Activities in foreign states of pension fund managers founded in Estonia

(1) A pension fund manager may manage a pension fund established or founded in a foreign state by founding a branch for this purpose or by providing cross-border services.

(2) In order to provide services in a foreign state, a pension fund manager shall notify the Financial Supervision Authority and submit the data and documents specified in subsection 399 (1) of this Act.

(3) The Financial Supervision Authority may prohibit, by its precept, provision of the service of a pension fund manager in a foreign state, if it does not manage any pension funds or the circumstances provided for in clauses 399 (5) 1), 3)-5) or clause (11) 2) of this Act appear, by applying the provisions of subsection (12) of the same section.

(4) Upon provision of services in a foreign state, a pension fund manager must comply with the requirements provided by this Act, legislation issued on the basis thereof and legislation of the foreign state.

(5) A pension fund manager may offer in a foreign state the units of a voluntary pension fund established in Estonia by notifying the Financial Supervision Authority thereof.

(6) In order to offer in a foreign state a voluntary pension fund established in Estonia, the pension fund offer in this foreign state must be registered, taking account of the provisions of the legislation in force there.

(7) The provisions of § 438 of this Act apply to offers in other EEA Member States of occupational pension funds established in Estonia.

§ 438. Offers of Estonian occupational pension funds in another EEA Member State

(1) The provisions of this section apply to offers of occupational pension funds to employees, public servants and members of managing and controlling bodies of employers of an EEA Member State.

(2) In order to offer an occupational pension fund to employees, public servants and members or managing and controlling bodies of employers of an EEA Member State, the fund manager shall notify the Financial Supervision Authority and submit the following data and documents:

- 1) the name of the EEA Member State to the employees, public servants and members of managing and controlling bodies of employers of which the fund manager wishes to offer the occupational pension fund;
- 2) a description of the rules of the occupational pension fund, including the rules for investment of assets in the occupational pension fund;
- 3) the name of the employer of the EEA Member State with whom making of contributions to the respective occupational pension fund was agreed.

(3) If the data submitted comply with the requirements and a fund manager has sufficient funds, organisational capacity and experience for offer of an occupational pension fund in another Contracting Party, the Financial Supervision Authority shall send the data specified in subsection (2) of this section together with a statement that the offered occupational pension fund complies with the requirements provided for in Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, pp. 37-85) within three months after receipt of the data from the fund manager to the financial supervision authority of the Contracting Party to the employees, public servants and members of managing and controlling bodies of which the offer of the occupational pension fund is requested.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(4) The Financial Supervision Authority shall promptly notify a fund manager of submission of the data and documentation specified in subsections (2) and (3) of this section to the financial supervision authority of the other EEA Member State. If the Financial Supervision Authority decides not to send the information and documents specified in subsections (2) and (3) of this section to the financial supervision authority of the other contracting state, it shall notify the fund manager thereof within three months after receipt of the latest information.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(5) A fund manager may commence the offer of an occupational pension fund to employees, public servants and members of managing and controlling bodies of employers of another EEA Member State after receiving, through the Financial Supervision Authority, the conditions set by the financial supervision authority of the specified EEA Member State for offer of the occupational pension fund in this EEA Member State.

(6) If the financial supervision authority of another EEA Member State does not submit its conditions within two months after receipt of the data and documents specified in subsections (2) and (3) of this section from the Financial Supervision Authority, a fund manager may commence the offer of an occupational pension fund in this EEA Member State, taking into consideration the requirements established by legislation for occupational pensions in this EEA Member State.

(6¹) The Financial Supervision Authority shall notify the fund manager, if the financial supervision authority of the other contracting state has notified of any amendments to the terms and conditions established for the offer of an occupational pension fund in this contracting state.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(7) Fund managers shall notify the Financial Supervision Authority of any changes made in the data specified in clauses (2) 2) and 3) of this section.

Subdivision 2

Cross-border Activities of Pension Fund Managers of Foreign States and Cross-border Offers of Pension Funds in Estonia

§ 439. Activities in Estonia of fund managers founded in foreign states

(1) A foreign fund manager may manage a voluntary pension fund established in Estonia by founding a branch for this purpose or by providing cross-border services. A fund manager of an EEA Member State to which an activity licence has been issued for management of a UCITS may manage a mandatory pension fund established in Estonia by founding a branch for this purpose.

(2) In order to provide services in Estonia, a foreign fund manager must apply to the Financial Supervision Authority for a pension fund manager activity licence, taking account of the provisions of § 313 of this Act and

by submitting, in the case of foundation of a branch, the business name and address thereof and the names of the persons responsible for the management of the branch. Upon application for an activity licence for management of a mandatory pension fund, a document certifying assumption of the obligation to pay a single contribution to the Pension Protection Sectoral Fund must be also submitted to the Financial Supervision Authority.

(3) The consent of the financial supervision authority of the home country of a foreign fund manager must be also submitted to the Financial Supervision Authority for respectively founding a branch or cross-border provision of services in Estonia and the data concerning the activity licence issued to the fund manager and the amount of the own funds thereof.

(4) The provisions of §§ 314-318 and subsections 332 (2) and (3) of this Act apply to issue of activity licences and revocation thereof. In addition to the provisions of §§ 316 and 318 of this Act, the Financial Supervision Authority may refuse to issue an activity licence or revoke an activity licence if it becomes evident that the financial supervision authority of a foreign state has no legal basis, opportunities or willingness for sufficient and effective cooperation with the Financial Supervision Authority and this hinders exercise of sufficient supervision over cross-border provision of services of a fund manager or activities of a branch thereof.

(5) A foreign fund manager which wishes to manage a voluntary pension fund established in Estonia by cross-border provision of the service, must enter a contract for organisation of the purchase and sale of the units of this fund with a fund manager, investment firm, credit institution, insurer or other financial institution subject to financial supervision which itself or the branch of which has been founded in Estonia.

(6) When providing services in Estonia, a foreign fund manager to whom the Financial Supervision Authority has issued an activity licence for the management of a voluntary or mandatory pension fund, or a branch thereof must comply with all the requirements established for the activities of a pension fund manager pursuant to this Act, including for the establishment of a pension fund and management of a pension fund, the requirements established for the management of a pension fund manager and prudential requirements and submission of reports and disclosure of information, the conditions provided for in the Funded Pensions Act and other requirements provided by the legislation of Estonia for operation in Estonia.

(7) A foreign pension fund manager may offer in Estonia the units or shares of a voluntary pension fund established or founded in its home country by registering the offer with the Financial Supervision Authority.

(8) In order to register a voluntary pension fund offer, the data and documents specified in clauses 432 (2) 1)-3) of this Act and the data to investors concerning the pension fund in accordance with the provisions of § 93 of this Act must be submitted to the Financial Supervision Authority, including the key information in compliance with the provisions of subsection 94 (1) of this Act together with a statement of the financial supervision authority of the home country of the fund manager that this is a voluntary pension fund. In order to register an offer of a voluntary pension fund established or founded in a third country, the data and documents provided for in subsection 432 (1) of this Act must also be submitted to the Financial Supervision Authority.

(9) The provisions of the first sentence of subsection 432 (3) and subsections (5)-(7) of this Act apply to registration of a voluntary pension fund established or founded in a foreign state. The Financial Supervision Authority may prohibit the offer of a voluntary pension fund established or founded in a foreign state if this does not comply with the requirements provided for in this section, the financial supervision authority of the home country has no legal basis or opportunities to cooperate with the Financial Supervision Authority or if refusal to register is necessary to protect the legitimate interests of investors other reasons.

(10) If a foreign pension fund manager has not founded a branch in Estonia which would *inter alia* organise the offer of a voluntary pension fund established or founded in the home country thereof, it has to enter into the contract specified in subsection (5) of this section.
[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

(11) The provisions of § 440 of this Act apply to offer in Estonia of an occupational pension fund established or founded in an EEA Member State.

§ 440. Offer of occupational pension funds of EEA Member States in Estonia

(1) If the place of residence or seat of an employer is in Estonia (hereinafter *Estonian employer*), the provisions of this Division apply to offers of occupational pension funds of an EEA Member State to employees, servants and members of the managing and controlling bodies thereof.

(2) The assets of an occupational pension fund of a contracting state which correspond to the share of the workers, employees, members of the management and control bodies of an Estonian employer must be held in custody by the depositary in accordance with the requirements established in subsection 286 (3) and §§ 289-292, 296-299 and 302 of this Act concerning the functions of a depositary of an occupational pension fund.
[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(3) Employees, servants and members of managing and controlling bodies of an Estonian employer may not be offered occupational pension retirement funds of an EEA Member State with a guaranteed rate of return, defined-benefit funds or funds covering mortality, survival and incapacity for work risks.

(4) The person which offers an occupational pension fund of an EEA Member State shall notify the Financial Supervision Authority through the financial supervision authority of its EEA Member State of the offer of an occupational pension fund of the EEA Member State to employees, servants and members of the managing and controlling bodies of Estonian employers. The following data and documents shall be submitted to the Financial Supervision Authority:

1) a statement of the financial supervision authority of the EEA Member State that the offered occupational pension fund of the EEA Member State complies with the requirements provided for in Directive (EU) 2016/2341 of the European Parliament and of the Council;

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

2) a description of the principal rules of the occupational pension fund of the EEA Member State, including the rules for investment of assets of the occupational pension fund of the EEA Member State;

3) the name of the Estonian employer with whom making of contributions to the occupational pension fund of the EEA Member State was agreed.

(5) Within two months after submission to the Financial Supervision Authority of the data and documents specified in subsection (4) of this section, the Financial Supervision Authority shall notify the financial supervision authority of the EEA Member State of the requirements for the information to be disclosed about occupational pension funds and other terms and conditions to which an offer of an occupational pension fund of the EEA Member State must comply with in Estonia in accordance with this Act, Income Tax Act, Employment Contracts Act and other relevant acts and legislation issued on the basis thereof.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(6) The Financial Supervision Authority shall notify a person who offers an occupational pension fund of an EEA Member State and the financial supervision authority of the respective EEA Member State of the conditions specified in subsection (5) of this section.

(7) The offer of an occupational pension fund of an EEA Member State in Estonia may be commenced after receipt of the conditions specified in subsection (5) of this section from the Financial Supervision Authority or after expiry of the term specified in subsection (5) of this section.

(8) The Financial Supervision Authority is required to notify the financial supervision authority of the person who offers an occupational pension fund of an EEA Member State of all significant changes in the conditions specified in subsection (5) of this section which arise from amendments made to the respective acts and legislation issued on the basis thereof.

Chapter 29

Small Fund Managers

Division 1

Foundation of Small Fund Managers pursuant to Activity

Licences and Requirements for Activities Thereof

Subdivision 1

Activity Licences of Small Fund Managers

§ 441. Application for activity licences

(1) In order to apply for an activity licence, the members of the management board of a small fund manager (hereinafter in this Division *applicant*) shall submit to the Financial Supervision Authority a written application and the following data and documents (in general, application, data and documents hereinafter in this Subdivision *application*):

1) the memorandum of association or foundation resolution and document certifying payment of the share capital;

2) the internal rules of the fund manager or a draft thereof which provide for the rules for mitigation and avoidance of conflicts of interests of the small fund manager and the investments risk management rules of the fund;

3) the data of the managers of the small fund manager which contain the given names and surname, personal identification code of each of them, or in the absence thereof the date of birth, citizenship, place of residence, educational background and complete list of places of employment and positions held, and documents certifying compliance with the requirements prescribed for managers of small fund managers in this Act;

4) a list of the shareholders or unit-holders of the applicant which sets out the name, registry code or personal identification code, if any, or date of birth in the absence thereof for each shareholder or unit-holder, and data on the number of shares or units and votes of each shareholder or unit-holder;

5) the opening balance of the applicant and a review of income and expenditure, or in the case of an operating company the balance sheet and income statement as at the end of the month prior to submission of the application and the three last annual reports, if such documents exist.

(2) In addition to the provisions of subsection (1) of this section, a small fund manager must submit to the Financial Supervision Authority the data specified in subsection 453 (2) of this Act on the required form. In the absence of funds, the respective business plan must be submitted.

(3) The accuracy of the data and documents submitted with regard to managers of a small fund manager shall be confirmed by the specified persons by their signatures.

(4) If changes are made in the data specified in subsections (1) and (2) of this section during processing of an application, the applicant shall promptly submit relevant updated data and documents to the Financial Supervision Authority. If the change is important, the Financial Supervision Authority may deem the moment of becoming aware of this important change to be the beginning of time limit of proceedings. In this case, the Financial Supervision Authority must notify the applicant of the new time limit of proceedings.

(5) If an application is not in compliance with the requirements provided for in subsections (1) and (2) of this section, the Financial Supervision Authority shall request elimination of the deficiencies by the applicant.

(6) The Financial Supervision Authority may refuse to review an application or demand elimination of deficiencies by the applicant if the applicant fails to eliminate the deficiencies specified in subsection (5) of this section within the prescribed term, submit the data, documents or information requested by the Financial Supervision Authority by the due date or has submitted these with significant deficiencies.

(7) If obvious deficiencies are found in a submitted application, the Financial Supervision Authority may refuse to review the application.

(8) In order to verify submitted applications, the Financial Supervision Authority shall have the right to request submission of additional data and documents, perform on-site inspections, order expert assessments and special audits, consult state databases and request oral explanations from managers of the applicant and third parties.

(9) A small fund manager may submit the application required for obtaining an activity licence either in Estonian or English. The Financial Supervision Authority has the right, as appropriate, to require translation into Estonian of the data and documents submitted in English.

(10) The Financial Supervision Authority shall make a decision on issue or refusal to issue an activity licence to an applicant within three months after receipt of all the required data and documents but not later than within four months after receipt of a proper application. The Financial Supervision Authority shall immediately notify the fund manager of a decision to issue or refuse to issue an activity licence.

(11) The Financial Supervision Authority may refuse to issue an activity licence if:

- 1) the managers of the small fund manager do not comply with the requirements provided for in this Act;
- 2) the full payment of the share capital of a company being founded or existence of the initial capital of an operating company are not proved;
- 3) the applicant does not have the necessary resources and experience to operate as a small fund manager with success and continuity;
- 4) close links between the applicant and another person prevent sufficient supervision over the small fund manager, or the facts confirm reasonable doubt in the existence of close links which prevent effective supervision over the applicant, or the requirements provided by legislation or the implementation of legislation of the state where the persons with whom the applicant has close links are established prevent sufficient supervision over the small fund manager;
- 5) the internal rules of the applicant are not sufficiently accurate or unambiguous for the regulation of the activities of a small fund manager, including for mitigation and avoidance of conflicts of interests, taking account of the nature, scope and complexity of the activities of the small fund manager;
- 6) the applicant or the managers thereof have been punished for an economic offence, official misconduct, offence against property or offence against public trust and the data concerning the punishment have not been deleted from the criminal records database in accordance with the Criminal Records Database Act;
- 7) the additional data, documents or information submitted by the applicant during the proceedings of the application materially change that submitted in the application and these changes are not adequately explained.

(12) The following shall be *inter alia* considered upon assessment of that provided for in clause (11) 3) of this section:

- 1) the level of the organisational and technical administration of the activities of the applicant;
- 2) the professional qualifications and experience of persons engaged in the management of funds, and transparency of their rights, obligations and liability;
- 3) the activities, financial situation and reputation of the applicant, its parent company and persons which belongs to the same consolidation group as the applicant;
- 4) the volume of the funds managed by the applicant and the number of investors or relevant forecasts.

§ 442. Revocation of activity licences

- (1) Revocation of an activity licence means deprivation of the rights granted by an activity licence.
- (2) An activity licence is revoked upon deprivation of fund management authority.
- (3) The Financial Supervision Authority may revoke an activity licence if:
- 1) a small fund manager has not commenced the management of the fund within 24 months after issue of the activity licence thereto or the fund manager has not managed any funds or assets of any funds within a period of 24 consecutive months;
 - 2) false information was submitted upon application for an activity licence which was of material importance in the decision to issue the activity licence;
 - 3) the small fund manager, the managers, shareholders or partners thereof do not comply with the requirements established in this Act or the activities of the small fund manager have demonstrated inability thereof to organise the management of the small fund manager in such a manner that the interests of the fund, unit-holders or shareholders and creditors of the fund would be sufficiently protected;
 - 4) the small fund manager has violated, repeatedly or to a material extent, the provisions of legislation governing the activities thereof, the small fund manager or the manager thereof has been punished for an economic offence, official misconduct, offence against property or offence against public trust if information concerning the punishment has not been deleted from the criminal records database pursuant to the criminal records database Act or the activities or inactivity of the small fund manager are not in compliance with good business practice;
 - 5) the small fund manager has published materially incorrect or misleading information or advertising concerning the activities or manager thereof;
 - 6) close links between the small fund manager and another person prevent sufficient supervision over the small fund manager, or the facts confirm reasonable doubt in the existence of close links which prevent effective supervision over the applicant, or the requirements provided by legislation of the state where the persons with whom the applicant has close links are established prevent sufficient supervision over the small fund manager;
 - 7) the small fund manager is unable to perform the obligations it has assumed or if, for any other reason, its activities materially damage the interests of the fund, the unit-holders or shareholders thereof or adversely affect the regular functioning of the securities market;
 - 8) the small fund manager has violated the fund rules or management contract of the fund managed by it and such violation may compromise the interests of the fund managed by it, the unit-holders or shareholders thereof;
 - 9) the small fund manager has failed to implement a precept of the Financial Supervision Authority by the due date or to the extent prescribed;
 - 10) the small fund manager is involved in money laundering or violates the procedure for preventing money laundering and terrorist financing established by legislation;
 - 11) according to the information submitted to the Financial Supervision Authority by a foreign financial supervision authority, the small fund manager has violated the conditions provided by legislation or submitted by the financial supervision authority of the home country of the small fund manager;
 - 12) the small fund manager has submitted an application to the Financial Supervision Authority for revocation of an activity licence in accordance with § 449 of this Act.
- (4) Before deciding on complete revocation of the rights granted by an activity licence, the Financial Supervision Authority may issue a precept to a small fund manager and set a term for elimination of the deficiencies which constitute the basis for revocation of the activity licence.
- (5) A decision on revocation of an activity licence shall be promptly communicated to an applicant, it shall also be communicated to a public limited fund, limited partnership fund managed by it and the depositary of the fund managed by the small fund manager, if it exists.
- (6) A decision on revocation of an activity licence enters into force on the date indicated in the decision but not before communication of the decision to its addressee.
- (7) On the basis of an application of a small fund manager, the Financial Supervision Authority shall decide on revocation of an activity licence within two months after receipt of the application. The Financial Supervision Authority shall promptly communicate the decision on revocation of an activity licence to the fund manager. The Financial Supervision Authority may refuse to revoke an activity licence if the requirements provided for in § 449 of this Act are not complied with.

§ 443. Notification of changes in data which are basis for activity licence

- (1) A small fund manager is required to promptly notify the Financial Supervision Authority of any changes in the data and circumstances which were the basis upon making the decision to issue an activity licence of the fund manager, and submit the following data and documents:
- 1) in the case of a change in the business name, address of the seat or contact details of the small fund manager, the new business name, address of the seat or contact details;

- 2) in the case of a change in the share capital of the small fund manager, the amount of the amount of share capital and the date the entry is made;
- 3) in the case of changes in the articles of association of the small fund manager, the amendments to and the amended text of the articles of association;
- 4) in the case of exchange of a manager, the data of the manager of the applicant which contain the given names and surname, personal identification code or in the absence thereof the date of birth, place of residence, educational background and complete list of places of employment and positions held and documents certifying compliance with the requirements provided for in this Act, unless the fund manager has earlier submitted these documents to the Financial Supervision Authority;
- 5) in the case of exchange of persons who have qualifying holdings in the small fund manager, changes in the list of shareholders or partners specified in clause 441 (1) 4) of this Act;
- 6) upon amendment of the internal rules concerning the activities of the fund manager, a document showing the amendments to the internal rules or the new internal rules to which a summary of substantial changes to the internal rules has been appended.

(2) A fund manager is required to inform the Financial Supervision Authority promptly of amendments to its internal rules and establishment of new internal rules.

Subdivision 2

Capital, Management and Activities of Small Fund Managers with Activity Licences

§ 444. Legal forms of fund managers

A small fund manager may operate as a public limited company or private limited company.

§ 445. Share capital of fund managers

(1) Upon foundation of a small fund manager, the share capital must be at least 25,000 euros and it has to be increased to 50,000 euros within three months after the foundation. Only amounts actually paid in may be indicated as the share capital.

(2) In the case of an operating company, the minimum amount of the initial capital of a fund manager must be equivalent to at least 50,000 euros.

§ 446. Requirements for mitigation and avoidance of conflicts of interests

(1) A small fund manager shall establish a procedure for mitigation and avoidance of conflicts of interests which provides for the legal, technical and organisational measures which are required and proportionate, taking account of the nature, scope and complexity of the activities of the small fund manager, and implement these to mitigate and avoid conflicts of interests, upon management of the fund, between the following parties:

- 1) between the small fund manager, the managers, employees thereof and the fund managed by the small fund manager or the investors of this fund;
- 2) between the small fund manager and persons exercising control over it;
- 3) between the funds managed by the small fund manager and the investors of these funds.

(2) Upon detection of any conflicts of interests, a fund manager shall take into consideration the obligations of the small fund manager in connection with the management of funds and if the small fund manager belongs to a consolidation group, any circumstances of which the small fund manager is or should be aware of in the case a conflict of interests may arise as a result of the structure and business activities of the other members of this consolidation group.

(3) The procedure for mitigation and avoidance of conflicts of interests must ensure that the persons who are connected with the business activities which involve or may involve conflicts of interests carry out their business activities in such a manner which mitigates, as much as possible, the risk of damaging the interests of the investors of the fund.

(4) A procedure for mitigation and avoidance of conflicts of interests must contain the procedure for personal transactions of the relevant persons and other employees connected to the small fund manager, ensure protection of the interests of the investors of the funds managed by the small fund manager and lawful and regular operation of the market.

(5) If the procedure for mitigation and avoidance of conflicts of interests does not ensure avoidance of the risk of damage to the interests of the fund or investors thereof, the managers, employees or other relevant persons must promptly notify the management board and supervisory board, if any, of the small fund manager thereof to ensure making of decisions for acting in the best interests of the fund and the investors thereof.

(6) Before conduct of transactions with an investor, a small fund manager shall notify the investor of the general nature and source of conflicts of interests if the measures established by it for mitigation and avoidance

of conflicts of interests do not ensure avoidance of the risk of damage to the interests of the investor in the specific case.

§ 447. Outsourcing of functions of small fund managers

(1) A small fund manager has the right to outsource the activities related to the management of a fund to a third party under the conditions provided for in the basic document of the fund.

(2) Outsourcing of the functions of a small fund manager to a third party shall not release the small fund manager from liability for the performance of these functions, unless otherwise provided for in the basic document of the fund.

(3) The functions of a small fund manager may not be outsourced to a third party in such a manner that the small fund manager is no longer engaged in the management of the fund or has no competence for this, particularly due to outsourcing of the management function of the fund manager.

§ 448. Acquisition of qualifying holding in small fund managers

(1) Qualifying holdings in a small fund manager may be acquired, held and increased and control over a small fund manager may be gained, held and increased by any person:

- 1) who has impeccable business reputation and whose activities in connection with the acquisition comply with the principles of sound and prudent management of the small fund manager;
- 2) whose financial situation is sufficiently secure to ensure regular and reliable operation of the small fund manager and, in the case of a legal entity, which accounts allow for a correct assessment to be made of its financial situation;
- 3) with regard to whom there is no justified reason to believe that the acquisition, holding or increase of a holding in or control over the small fund manager is related to money laundering or terrorist financing or an attempt thereof or increases such risks.

(2) The provisions of §§ 323-329 of this Act concerning acquisition of qualified holdings apply to small fund managers, unless otherwise provided for in this section. The provisions of §§ 323-329 of this Act concerning shares of fund managers which are public limited companies also apply to shares of fund managers which are private limited companies.

(3) The acquirer of a qualifying holding may, upon notification of the Financial Supervision Authority of acquisition of a holding submit, instead of the data specified in subsection 324 (1) of this Act, the name of the acquirer of the holding, registry code or personal identification code, if any, or in the absence thereof the date of birth, the name of the company in which a qualifying holding is acquired or it is increased, and the number of the shares to be acquired by the acquirer or held by the acquirer. For assessment of compliance of the acquirer, the Financial Supervision Authority may request in writing the data and documents specified in subsection 324 (1) of this Act.

Subdivision 3 Dissolution and Bankruptcy of Small Fund Managers with Activity Licence

§ 449. Dissolution of small fund managers

The general meeting of a small fund manager may decide on dissolution of the small fund manager after dissolution of all the funds managed by it or outsourcing of the management thereof. A fund manager shall promptly submit the decision of the general meeting to the Financial Supervision Authority and append to it an application for revocation of the activity licence and a confirmation that all the funds managed by the fund manager have been dissolved or the management thereof has been outsourced.

§ 450. Application of Bankruptcy Act in case of bankruptcy of small fund managers

The provisions of the Bankruptcy Act apply to submission of a bankruptcy petition, declaration of bankruptcy and bankruptcy proceedings of a small fund manager, unless otherwise provided for in this Subdivision.

§ 451. Obligations and rights of trustees in bankruptcy

In addition to the provisions of the Bankruptcy Act, a trustee in bankruptcy shall:

- 1) publish a bankruptcy notice at least in one national daily newspaper and on the website of the small fund manager, the consolidation group to which the small fund manager belongs;

- 2) promptly submit to the Financial Supervision Authority the data requested by it and enable the Financial Supervision Authority to examine the documentation concerning the bankruptcy proceedings of the small fund manager;
- 3) as appropriate or prescribed by the legislation of another EEA Member State, inform the commercial register, registrar of the land register or similar registrar in the EEA Member State where a branch of the Estonian fund manager has been founded of the court ruling on declaration of bankruptcy of the small fund manager.

§ 452. Assets of small fund managers, recovery thereof and sale of bankruptcy estate

(1) In the course of bankruptcy proceedings of a small fund manager, transaction conducted in connection with transfer of a fund managed by the small fund manager before declaration of bankruptcy of the fund manager shall not be subject to recovery.

(2) A trustee in bankruptcy shall have the right to sell all the assets of a small fund manager at once.

Division 2

Operation of Small Fund Managers on Basis of Registration

§ 453. Registration of operation of small fund managers without activity licence

(1) A small fund manager established in Estonia that does not apply to the Financial Supervision Authority for an activity license pursuant to subsection 306 (3) of this Act must register its operation promptly after commencement of the management of a fund or if the small fund manager intends to manage a limited partnership fund, including as a general partner.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(2) In order to register a small fund manager, the management board of the fund manager shall submit to the Financial Supervision Authority a written application and the following data and documents on the form provided for in Annex 4 to Commission Delegated Regulation (EU) No 231/2013 (the application, data and documents in general hereinafter in this section *application*):

- 1) the contact details and articles of association or other equivalent document of the small fund manager;
- 2) the number of funds managed and their names or business names;
- 3) the dates of foundation or establishment of the funds managed and the country under which law the funds were founded or established;
- 4) the information concerning the investment policy of the funds, including the investments and instruments traded, trading venues of the fund, main risks of the fund and composition and total value of the assets managed.

(3) The Financial Supervision Authority has the right to request additional data or explanations in order to specify the data and documents specified in subsection (2) of this section or determine the registration obligation.

(4) The application may be submitted in the Estonian or English language. The Financial Supervision Authority has the right, as appropriate, to require translation into Estonian of the data and documents submitted in English.

(5) If an application is not in compliance with the requirements provided for in subsection (2) of this section, the Financial Supervision Authority shall request elimination of the deficiencies by the applicant or deny the application.

(6) The Financial Supervision Authority shall enter the name and contact details of a small fund manager on the basis of a decision of the management board of the Financial Supervision Authority in the register within two months after the day of receipt of a proper registration application.

(7) A small fund manager shall promptly notify the Financial Supervision Authority of any changes in its contact details and articles of association or other equivalent documents and submit the respective documents.

(8) A small fund manager shall regularly prepare and submit information to the Financial Supervision Authority in accordance with the provisions of § 454 of this Act.

(9) A small fund manager shall promptly notify the Financial Supervision Authority of termination of its operation as a small fund manager or of it has failed to commence the management of the fund within two months and submit the data confirming it. In this case, the Financial Supervision Authority shall delete the small fund manager from the register.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

Division 3

Submission of Information and Reports to Financial Supervision Authority concerning Activities of Small Fund Managers

§ 454. Submission of information concerning small fund managers and funds managed thereby

(1) A small fund manager shall regularly submit to the Financial Supervision Authority the following information concerning the funds managed by it (hereinafter in this section *information*):

- 1) the number of the funds and their names or business names;
- 2) the dates of establishment or foundation of the funds and the country under which law the funds were established or founded;
- 3) the investment policy of the funds, including description of the investments and instruments traded, trading venues of the fund, main risks of the fund and composition and total value of the assets managed.

(2) The information reporting period is a calendar year and the information shall be submitted within one month after the end of the reporting period.

(3) The requirements for providing information are provided for in Commission Delegated Regulation (EU) No 231/2013.

(4) The Financial Supervision Authority shall publish the information concerning established or founded funds on the website of the Financial Supervision Authority within one month after receipt of the information.

(5) The provisions provided for funds in this Division also apply to providing of information concerning sub-funds.

(6) A small fund manager operating on the basis of an activity licence shall submit its annual report, the sworn auditor's report, an extract from the proposal for and decision on distribution of profits or covering of losses of the financial year and the minutes of the general meeting concerning the approval of or refusal to approve the annual report to the Financial Supervision Authority within two weeks after the general meeting of the shareholders but not later than by 1 May of the year following the financial year. A small fund manager need not submit the specified documents to the Financial Supervision Authority if these documents have been disclosed on the website of the fund manager or the consolidation group to which the fund manager belongs.

(7) In addition to the provisions of this section, the Financial Supervision Authority shall have the right to request, for the purpose of exercising supervision, additional information and reports from a small fund manager operating on the basis of an activity licence concerning the small fund manager and funds managed by it. The Financial Supervision Authority shall determine the frequency and time limit for submission of additional information and reports.

(8) The persons who submit information or reports to the Financial Supervision Authority are required to preserve the documents which are the sources of the information used in the preparation of the information or reports for at least five years. In the case any deficiencies are found in the information or reports submitted, the fund manager shall promptly correct the information or reports.

(9) The contents, bases for preparation and procedure for submission of the information and reports to be submitted to the Financial Supervision Authority may be established by a regulation of the minister responsible for the area.

(10) Based on the information and reports specified in this section and submitted to the Financial Supervision Authority, the Financial Supervision Authority may also submit data, as appropriate, to the Ministry of Finance for performance of the functions pursuant to the Government of the Republic Act, and to *Eesti Pank* for performance of the functions pursuant to the Official Statistics Act.

Part 6 SUPERVISION AND LIABILITY

Chapter 30 Supervision

Division 1

General Provisions

§ 455. Bases of supervision and application

(1) The purpose of supervision is to ensure that foundation or establishment, activities and dissolution of all funds and fund managers comply with this Act and legislation issued on the basis thereof pursuant to public interest.

(2) The Financial Supervision Authority exercises supervision over the following persons:

- 1) a fund manager;
- 2) a fund;
- 3) a depositary, including a branch of a foreign credit institution which is the depositary of a pension fund;
- 4) a third party to whom the duties of a management company or a depositary have been transferred;
- 5) a person who has a qualifying holding if a fund manager.

(3) The Financial Supervision Authority shall exercise supervision over compliance of the activities of the persons specified in subsection (2) of this section with the requirements provided for in this Act, the Funded Pensions Act, Securities Market Act, Guarantee Fund Act, Money Laundering and Terrorist Financing Prevention Act, International Sanctions Act and legislation issued on the basis thereof and regulations of the European Union.

(4) Upon exercise of supervision, it is presumed in general that the decisions made at the general meeting of the investors of a fund are in compliance with the interests of the investors of the fund.

(5) The Financial Supervision Authority shall exercise supervision over the activities of a foreign fund manager, with the exception of a fund manager to which the Financial Supervision Authority has issued an activity licence for management of a voluntary or mandatory pension fund, and a depositary and an offer of a foreign fund in Estonia pursuant to the procedure provided for in §§ 467-472 of this Act.

(6) If a fund manager is part of a financial conglomerate for the purposes of § 110¹ of the Credit Institutions Act, the fund manager shall comply with the provisions of Chapters 110¹-110¹³ of the Credit Institutions Act.

(7) The provisions of this Part concerning fund managers also apply to defined-benefit occupational pension funds and foreign fund managers to which the Financial Supervision Authority has issued an activity licence for management of voluntary pension funds, and an Estonian branch of a fund manager of an EEA Member State to which the Financial Supervision Authority has issued an activity licence for management of mandatory pension funds.

(8) The Financial Supervision Authority shall exercise supervision in the case small fund managers which have registered their activities in the Financial Supervision Authority, only over compliance with the registration obligation and submission of information.

(9) The Financial Supervision Authority shall exercise supervision over small fund managers with activity licence only to the extent provided for in subsection 306 (2) of this Act.

(10) In the proceedings of the Financial Supervisory Authority conducted pursuant to this Act, investors or clients of fund managers shall not be treated as participants in the proceedings for the purposes of the Administrative Procedure Act and they shall not be involved in the proceedings.

(11) The provisions of this Part concerning investors of funds also apply to persons covered by pension schemes of defined-benefit occupational pension funds.

Division 2

Rights and obligations of Financial Supervision Authority

§ 456. Rights of Financial Supervision Authority upon receipt of information

(1) In order to exercise supervision, the Financial Supervision Authority shall be entitled to demand information, documents and oral or written explanations free of charge concerning facts which are relevant in the exercise of supervision from the following persons:

- 1) a fund manager and manager and employee of a fund manager;
- 2) a manager and employee of a company which belongs to the same consolidation group as the fund manager;
- 3) a fund and a manager and employee of a fund;
- 4) a depositary and manager and employee of a depositary;
- 5) a third party to whom the duties of a management company or a depositary have been transferred;
- 6) a fund manager and a liquidator of a fund or a trustee in bankruptcy;
- 7) a shareholder or partner of a fund manager;
- 8) an audit firm and sworn auditor of a fund manager;
- 9) an investor of a fund;

- 10) a state and a local government authority, including the authorised processor of a general national register;
- 11) communications undertaking for obtaining data from the persons specified in subsections 111¹(2) and (3) of the Electronic Communications Act under the conditions specified in subsections 231 (2)-(4) of the Securities Market Act;
- 12) a third party only in the case of justified need.

(2) The Financial Supervision Authority may obligate the person specified in subsection (1) of this section to appear at the premises of the Financial Supervision Authority at the time determined by the Financial Supervision Authority in order to provide explanations.

(3) The Financial Supervision Authority may obligate the person specified in clauses (1) 1)-7) of this section to reply to the submitted questions in writing during the term determined by the Financial Supervision Authority.

(4) The Financial Supervision Authority may require that data and documents in foreign languages are submitted together with a translation into Estonian made by a sworn translator or certified by a notary.

(5) For the purpose of supervision, the Financial Supervision Authority may obligate the persons specified in clauses (1) 1)-7) of this section to submit additional data or reports on any data medium.

(6) The Financial Supervision Authority may issue an order whereby it designates a term for the performance of the requirements provided for in subsections (1)-(4) of this section.

(7) In order to exercise supervision, the Financial Supervision Authority has the right to receive from credit institutions information which contains banking secrets concerning a fund, fund manager, depositary and investors of a fund, and a third party to whom the duties of a fund manager or a depositary have been transferred.

(8) For the purposes of supervision, the Financial Supervision Authority has the right to receive information from a third party concerning a fund manager or a depositary without informing the specified fund manager or depositary of communication of the information, and the third party is required, upon communication of the information, not to inform the fund manager or depositary thereof.

(9) The Financial Supervision Authority shall have the right to disclose the personal data of the managers, internal auditors and sworn auditors specified in this Act and gathered in supervision proceedings, with the exception of sensitive personal data, to the subjects of financial supervision connected to the respective person.

§ 457. Rights of Financial Supervision Authority upon Disclosure of Decisions made in Misdemeanour Matters

(1) The Financial Supervision Authority shall disclose, in connection with any violation of the requirements provided for in this Act for UCITS or UCITS managers, the type and nature of the misdemeanour offence, the data of the person responsible for the offence (in the case of legal entities the business name and registry code, if any, in the case of natural persons the given names and surname and personal identification code or in the absence thereof the date of birth) and information on challenging the decision or administrative act, or if a complaint or challenge is submitted after disclosure of the decision or administrative act, respectively updated information.

(2) The Financial Supervision Authority shall publish the information specified in subsection (1) of this section promptly after entry into force thereof. The Financial Supervision Authority shall have the right to postpone disclosure of the specified information or not to disclose it if one of the following conditions is met:

- 1) in the case of the sanction imposed on a person, the publication of the personal data is disproportionate compared to the sanction;
- 2) the disclosure of the decision or administrative act made in a misdemeanour matter or the identity of the offender would seriously compromise the stability of the financial system or ongoing supervision proceedings;
- 3) the disclosure of the decision or administrative act made in a misdemeanour matter or the identity of the offender would cause disproportionate and serious damage to the persons involved.

§ 458. Precepts

(1) The Financial Supervision Authority has the right to issue a precept:

- 1) if any violation of the requirements of this Act, the Funded Pensions Act, the Securities Market Act, the Guarantee Fund Act, the Money Laundering and Terrorist Financing Prevention Act or the International Sanctions Act or legislation established on the basis thereof or connected to them or the basic documents of funds are discovered as a result of the supervision;
- 2) for the prevention of the offences specified in clause 1) of this subsection;
- 3) if the risks assumed by a fund manager or depositary have increased significantly or if other circumstances emerge which endanger or may endanger their activities or the interests of the investors of the fund or clients of the investment services or the reliability or transparency of the securities market as a whole.

- (2) The recipient of a precept must commence compliance with the precept promptly after the receipt thereof.
- (3) The filing of an appeal against a precept and proceedings thereof do not suspend the requirement to comply with the precept, unless otherwise prescribed by the Financial Supervision Authority.
- (4) The Financial Supervision Authority has the right, by issuing a precept, to:
- 1) prohibit certain transactions or activities from being conducted or to establish restrictions on their volume;
 - 2) prohibit, wholly or partially, payments from the profit of a fund manager;
 - 3) demand restrictions on the operating expenses of a fund manager;
 - 4) demand amendment of the internal rules of a fund manager, including demand reduction of references to credit ratings of rating agencies in the risk management rules of the fund manager or that assessment of the risks of the assets of the managed fund would not be based on credit ratings;
 - 5) demand the removal of the manager of a fund manager;
 - 6) demand that the auditor of a fund manager be changed;
 - 7) demand that an employee of a fund manager be suspended from work;
 - 8) demand that performance of the functions of a fund manager outsourced by the fund manager to a third party be terminated before the prescribed time;
 - 9) terminate the authority of a fund manager to manage a fund;
- (10) demand reduction of the performance pay of the members of the management board and employees of a fund manager, suspension of their payment or refunding of the payments made, if the bases specified in subsection 354 (12) of this Act exist;
- 11) demand prompt disclosure of information by a fund manager, a fund managed by which is offered, if the obligation to disclose such information arises from legislation;
 - 12) demand amendment of a prospectus or key information and disclosure of the amendments if the these do not meet the requirements of legislation;
 - 13) demand that the depositary of the fund be changed;
 - 14) demand acquisition or redemption by a fund manager of the units or shares of a fund managed by the fund manager;
 - 15) demand suspension of the issue or redemption of the units or shares of a fund;
- (16) demand storage of data concerning transactions made for the account of a UCITS or data of the applications for issue and redemption of units for more than five years or for five years after the expiry of the activity licence of the fund manager or making the data for the past five years accessible, if the performance of the functions of the fund manager has been outsourced to a third party;
- 17) demand dissolution of a fund managed by a fund manager;
 - 18) demand payment by a fund manager of contributions to the Investor Protection Sectoral Fund prescribed in the Guarantee Fund Act;
 - 19) make other demands for compliance with the requirements of this Act, the Funded Pensions Act, the Securities Market Act, the Guarantee Fund Act, the Money Laundering and Terrorist Financing Prevention Act and the International Sanctions Act and legislation established on the basis thereof.

- (5) The Financial Supervision Authority may issue a precept by which the authority of a fund manager to manage a fund is terminated if:
- 1) the fund has no depositary but the fund must have a depositary pursuant to this Act;
 - 2) the management of a fund by this fund manager or the fund does not comply with the requirements provided for in this Act;
 - 3) this is necessary due to the legitimate interests of the investors of the fund;
 - 4) another Act, management contract or basic document of the fund prescribes it.

- (6) The Financial Supervision Authority may issue a precept by which dissolution of a public fund managed by a fund manager is *inter alia* required if:

- 1) the net asset value of a public limited fund is less than one-half of the share capital indicated in the articles of association or the amount of the share capital specified in § 222 of the Commercial Code;
- 2) The circumstances which constituted the basis for suspension of issue of units or shares have not ceased to exist during the period established in subsection 57 (7) of this Act or the redemption of the units or shares of the fund has been repeatedly suspended and such suspension damages the legitimate interests of the unit-holders or shareholders.

§ 459. Calling meetings of managing bodies

- (1) In order to protect the interests of the investors of a fund, the Financial Supervision Authority has the right to issue a precept to a fund manager:

- 1) to call a meeting of the supervisory board or management board or general meeting of the fund manager;
- 2) to call a general meeting of the investors of the fund if the general meeting is prescribed by law or the fund rules;
- 3) to include an issue on the agenda of the meeting of the management board or supervisory board or the general meeting of the fund manager or general meeting of the investors of the fund.

- (2) The Financial Supervision Authority has the right to send a representative of the Financial Supervision Authority to the meetings specified in subsection (1) of this section. At the meetings, the representative of the

Financial Supervision Authority has the right to state positions, make proposals and demand recording thereof in the minutes of the meeting.

(3) If the precept specified in (1) of this section is not complied with during the determined term, the Financial Supervision Authority shall have the right to call itself a meeting of the management board or supervisory board, the general meeting or the general meeting of the investors of the fund and determine the agenda of the meeting. The costs of organising a general meeting shall be borne by the fund manager.

§ 460. On-site inspections

(1) In order to exercise supervision, the Financial Supervision Authority has the right to carry out on-site inspections at the seat or place of business of a fund manager, depositary and third parties to whom the duties of the fund manager or depositary have been outsourced.

(2) On-site inspections can be carried out if:

- 1) it is necessary to check whether the data submitted corresponds to reality;
- 2) the Financial Supervision Authority suspects that the provisions provided for in this Act, the Funded Pensions Act, the Securities Market Act, the Guarantee Fund Act, Money Laundering and Terrorist Financing Prevention Act or the International Sanctions Act or legislation established on the basis thereof have been violated;
- 3) it is necessary to verify any information received from the fund manager of the EEA Member State on the basis of the respective application of the financial supervision authority of the EEA Member State;
- 4) it is necessary for exercise of the supervisory functions.

(3) In order to carry out an on-site inspection, the Financial Supervision Authority shall issue an order which sets out the purpose and extent, duration of the period and time of the inspection. The order shall be delivered to the person being inspected at least three working days before the on-site inspection is commenced, unless giving such notice damages attainment of the objectives of the inspection. An on-site inspection shall be carried out by an employee authorised by the Financial Supervision Authority, unless otherwise prescribed in this Act.

(4) In the course of an on-site inspection, inspectors have the right to:

- 1) enter all premises in compliance with the security requirements in force with regard to the person being inspected;
- 2) use a separate room necessary for their work;
- 3) examine documents and media necessary for exercising supervision, make excerpts and copies thereof and monitor the work processes without restrictions;
- 4) obtain oral and written explanations from the managers and employees of the fund manager.

(5) The person being inspected is required to appoint a competent representative in whose presence the inspection is carried out and who shall provide the inspectors with documents and other information necessary for the performance of their duties, including the sworn auditor's report and special reports of the auditor concerning the reports of the person being inspected, and provide necessary explanations with regard to such documents and information.

(6) In the case specified in clause (2) 3) of this section, the Financial Supervision Authority may authorise a financial supervision authority of an EEA Member State or an audit firm or expert appointed by it to perform on-site inspections.

(7) An inspector is required to prepare a report concerning the results of the inspection within two months after completion of the on-site inspection and the Financial Supervision Authority shall promptly communicate the report to the person being inspected.

(8) The manager and an employee of a person being inspected have the right to provide written explanations within one month after the date of delivery of the report.

(9) After receipt of the written explanations of a person being inspected, but not later than within four months after the on-site inspection is completed, the Financial Supervision Authority shall prepare a final report which is delivered to the person being inspected. In the case of disagreement with the facts indicated in the final report, the person being inspected has the right to append a written dissenting opinion to the report.

(10) If additional circumstances become evident after an on-site inspection or obtaining of the written explanations of the person being inspected or the Financial Supervision Authority obtains additional information, the term for preparation of the report specified in subsection (7) of this section or the final report specified in subsection (9) of this section may be extended by the Financial Supervision Authority by up to two months, and the new term for preparation of the report or final report shall be promptly communicated to the person being inspected and the reasons for extension of the initial term shall be stated therein.

§ 461. Expert assessments and special audits

(1) The Financial Supervision Authority may involve experts in proceedings in the cases where expertise is required to ascertain facts which are relevant to the matter.

(2) The Financial Supervision Authority has the right to demand a special audit if there is doubt that:

- 1) the reports or information submitted to the Financial Supervision Authority or the public are misleading or incorrect;
- 2) transactions have been conducted which may result or have resulted in significant damage to a fund manager or the investors of a fund;
- 3) other issues relevant to the financial situation of a fund, fund manager, depository or company belonging to their consolidation group need additional clarification in the supervisory proceedings.

(3) The Financial Supervision Authority shall involve an expert or for a special audit a sworn auditor on its own initiative or at the request of a participant in the proceeding. The name of an expert or sworn auditor and the reasons for involvement of the expert or sworn auditor shall be communicated to a participant in the proceeding before the involvement of the expert or sworn auditor, unless the proceedings regarding the matter need to be conducted quickly or communication of the information may impede attainment of the objectives of the assessment or special audit.

(4) If an expert or a sworn auditor who performs a special audit ascertains facts relevant in the supervision proceedings and the Financial Supervision Authority did not directly assign the task of ascertaining these facts to the expert or sworn auditor, the expert or sworn auditor shall also provide their opinion or assessment with regard to the facts.

(5) An expert and a sworn auditor who performs a special audit has the right to exercise all the rights provided for in subsection 460 (4) of this Act and make proposals to the Financial Supervision Authority and parties to proceedings for submission of additional data and documents. The expert is required to maintain the confidentiality of any confidential information which becomes known to him or her in connection with performance of the functions of an expert.

(6) Costs related to the conduct of an expert assessment or a special audit shall be covered from the budget of the Financial Supervision Authority. If an expert or sworn auditor is involved at the request of a participant in the proceeding, costs related to the conduct of an assessment or a special audit shall be covered by the participant in the proceedings.

§ 462. Restriction on use and disposal of assets

(1) In order to exercise supervision, the Financial Supervision Authority has the right to obtain information directly and promptly from credit and financial institutions and the central securities depository and registrar of the pension register concerning the turnover and balances of the accounts of fund managers, depositories and third parties performing the functions thereof. In the case of reasonable doubt about an offence being committed, the Financial Supervision Authority has the right to seize the above mentioned accounts by its precept for up to ten working day after entry into force of the precept.
[RT I, 26.06.2017, 1 - entry into force 06.07.2017]

(2) In the case of reasonable doubt about an offence being committed, the Financial Supervision Authority has the right to establish by its precept a prohibition on the use or disposal of the assets of the persons specified in subsection (1) of this section or a restriction to ensure preservation of the assets for up to ten working days after entry into force of the precept.

(3) During a restriction on the use of an account, credit and financial institutions do not execute orders to use or dispose of the assets in the account, which are made by the account holder to whom the prohibition or restriction communicated by the Financial Supervision Authority is addressed or by a third party.

(4) The Financial Supervision Authority shall terminate seizure of an account or release assets from the prohibition or restriction after the expiry of the term specified in subsections (1) and (2) of this section. If the doubt that an offence was committed ceases to exist before expiry of the term specified in subsection (1) or (2) of this section, the Supervision Authority is required to release the assets or account promptly from seizure.

(5) The use or disposal of assets may be prohibited or restricted for a period which is longer than that provided for in subsection (2) of this section only if criminal proceedings have been commenced in the matter. If criminal proceedings have been commenced in the matter, prohibitions and restrictions shall be made and assets shall be released pursuant to the procedure provided for in the Code of Criminal Procedure.

§ 463. Penalty payments

(1) In the case of failure to comply or improper compliance with a precept issued pursuant to this Act or another administrative act, the Financial Supervision Authority shall be entitled to impose a penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act.

(2) In the case of failure to comply or improper compliance with an administrative act, the upper limit for a penalty payment shall be in the case of a natural person up to 5000 euros for the first occasion and up to 50,000 euros for each following occasion to enforce the performance of the same obligation, but in total not more than 5,000,000 euros, and in the case of a legal entity up to 32,000 euros for the first occasion and in total up to 100,000 euros for the following occasions to enforce the performance of the same obligation, but in total not more than ten per cent of the entire annual net turnover of the legal entity.

§ 464. Requirements for supervision over alternative fund managers

(1) When exercising supervision over a leveraged alternative fund manager, the Financial Supervision Authority shall:

- 1) monitor the submitted information, reports and other documents and verify the extent to which the leverage of an alternative fund contributes to the build-up of the systemic risk, risk of disorderly market or risks to the long-term growth of the economy;
- 2) assess the risks related to the fund manager and the fund which use leverage and shall establish, as appropriate, restrictions for mitigation of systemic risks and risks of disorderly markets on the use of leverage by the fund manager or the fund (hereinafter *restriction on use of leverage*);
- 3) notify the European Securities and Markets Authority, the European Systemic Risk Board of establishment of restrictions on use of leverage and in the case of establishment of restrictions on use of leverage for foreign funds, the financial supervision authority of the home country of the fund.

(2) The Financial Supervision Authority shall notify the European Securities and Markets Authority, the European Systemic Risk Board and in the case of establishment of restrictions on use of leverage for foreign funds, the financial supervision authority of the home country of the fund of establishment of restrictions on use of leverage within ten working days before the establishment of the restriction and submit information on the conditions of, reasons for restrictions on use of leverage and the time of entry into force of the restriction. In exceptional circumstances, the Financial Supervision Authority may decide to enforce restrictions on use of leverage before the due date provided for in this subsection.

(3) The Financial Supervision Authority must give reasons to the European Securities and Markets Authority if it fails to take into account the positions of the European Securities and Markets Authority when establishing restrictions on use of leverage.

(4) The Financial Supervision Authority shall promptly notify the supervision authority of the foreign state where a fund manager manages or offers an alternative fund of revocation of an activity licence of the fund manager.

Division 3 Rights and Obligations of Participants in Proceedings and Third Parties

§ 465. Rights of participants in proceedings

(1) Participants in proceedings have the right to access the data concerning themselves and collected by the Financial Supervision Authority, and to copy or make extracts of such data. The Financial Supervision Authority has the right to refuse to provide data if this damages or is likely to damage the justified interests of third parties, or if examining of the data damages attainment of the objectives of supervision or ascertainment of truth in criminal proceedings.

(2) In supervisory proceedings, a participant in a proceeding has the right to submit written questions to witnesses through the Financial Supervision Authority. The Financial Supervision Authority has the right to refuse to forward questions to witnesses with good reason.

(3) A participant in a proceeding shall submit to the Financial Supervision Authority an application for an authorisation, consent or approval of the Financial Supervision Authority provided for in this Act or legislation issued on the basis thereof or for issue of an administrative act or taking of a measure, in writing or in a format which can be reproduced in writing, if the application has a digital signature.

(4) If a participant in a proceeding fails to appear upon a summons by the Financial Supervision Authority in the course of administrative proceedings without a legal impediment, the Financial Supervision Authority has the right to impose penalty payment to the participant in the proceeding.

§ 466. Bases for refusal to provide information

(1) The following have the right to refuse to provide information on the basis of subsections 456 (1)-(4) of this Act:

1) advocates, employees of advocates' law offices and employees of the Bar Association in respect of circumstances which become known to them in connection with provision of legal assistance;
2) notaries, ministers of religion and doctors concerning circumstances which becomes known to them in connection with their professional activities;
3) agencies conducting state statistical surveys in respect of data which becomes known to them in connection with a survey.

(2) The relatives of the following persons also have the right specified in subsection (1) of this section, unless they have to provide information in connection with their duties of employment or official duties:

- 1) the manager, internal auditor or employee of a fund manager;
- 2) the manager, the head and employees of the internal audit unit of a company which belongs to the same consolidation group as the fund manager;
- 3) the manager, the head and employees of the internal audit unit of a third party performing the duties of a fund manager;
- 4) the manager, the head and employees of the internal audit unit of a depositary;
- 5) the manager, the head and employees of the internal audit unit of an investor which is a legal entity.

(3) For the purposes of subsection (2) of this section, the spouse, cohabitee, relatives in ascending line and descending line, adoptive parents and adoptive children and sisters and brothers are deemed to be relatives.

(4) Persons obligated to provide information and explanations may refuse to provide information and explanations to the Financial Supervision Authority on the bases provided for in §§ 71 or 73 of the Code of Criminal Procedure.

Division 4

Principles of Cross-border Supervision

§ 467. Supervision over fund managers providing services in foreign states

(1) If a fund manager which branch is founded in a foreign state or which provides cross-border services in a foreign state violates the requirements of legislation established in a third country or an EEA Member State, the Financial Supervision Authority shall promptly apply measures for termination of the violation on the proposal of the financial supervision authority of the third country or the EEA Member State. The Financial Supervision Authority shall inform the financial supervision authority of the third country or EEA Member State of the measures applied.

(2) If a fund manager manages a UCITS founded in another EEA Member State, the Financial Supervision Authority shall exercise supervision over compliance with the requirements provided for in this Act concerning fund managers and the management of UCITS established in other EEA Member States and the procedures and proceedings established by fund managers for implementation thereof and promptly implement measures for termination of violations of the requirements imposed on the activities of fund managers.

(3) The Financial Supervision Authority shall promptly communicate any violations of the requirements specified in subsection (2) of this section and the measures implemented by the Financial Supervision Authority to the financial supervision authority of the EEA Member State.

(4) The Financial Supervision Authority shall promptly communicate to the financial supervision authority of the foreign state where the branch of a fund manager is founded or where a fund manager provides cross-border services of revocation of an activity licence or an authorisation for foundation of a branch in a foreign state and of precepts.

(5) A branch of a fund manager or a fund manager which provides cross-border services shall, at the request of the financial supervision authority of a third country or an EEA Member State, submit information which is necessary for the exercise of supervision over the activities of the fund manager in that state.

(6) The Financial Supervision Authority shall cooperate with the financial supervision authority of the third country or EEA Member State in order to ensure performance of the obligations of the fund manager specified in subsection (5) of this section.

§ 468. Supervision over fund managers of EEA Member States which provide services in Estonia and branches thereof founded in Estonia

(1) The Financial Supervision Authority may demand additional data and documents from a fund manager of an EEA Member State providing services in Estonia and the branch thereof founded in Estonia which are required for exercise of supervision over the fund manager.

(2) A fund manager which provides services in Estonia and which activity licence is suspended or revoked by the financial supervision authority of an EEA Member State may not provide services in Estonia.

(3) The Financial Supervision Authority may demand that a fund manager of an EEA Member State which has founded a branch in Estonia or provides cross-border services in Estonia terminate violation of the requirements provided by legislation.

(4) If a fund manager of an EEA Member State manages a UCITS founded in Estonia, the Financial Supervision Authority shall exercise supervision over compliance with the requirements established in this Act for establishment, management and offer of a UCITS and promptly implement measures for termination of any violations of the requirements established for management of UCITS. If a fund manager of an EEA Member State has founded a branch in Estonia, the Financial Supervision Authority shall promptly implement measures for termination of violations of the requirements established in this Act for the general organisational structure of fund managers, settlement of client complaints, mitigation and avoidance of conflicts of interests and operation in the best interests of UCITS and investors.

(5) The Financial Supervision Authority shall promptly communicate any violations of the requirements specified in subsection (4) of this section and the measures implemented by the Financial Supervision Authority to the financial supervision authority of the EEA Member State.

(6) If a fund manager of an EEA Member State manages or offers the units or shares of an alternative fund in Estonia through a branch, the Financial Supervision Authority shall exercise supervision over compliance with the requirements provided for in §§ 340-353 of this Act for the general organisational structure of fund managers, settlement of complaints, mitigation and avoidance of conflicts of interests and operation in the best interests of the fund and investors.

(7) If a fund manager of an EEA Member State specified in subsections (3)-(6) of this section continues to violate the requirements provided by legislation, the Financial Supervision Authority shall inform the financial supervision authority of the EEA Member State thereof.

(8) If the measures applied by a financial supervision authority of an EEA Member State are insufficient and the fund manager of the EEA Member State continues to violate the requirements provided by legislation, the Financial Supervision Authority may in turn, by its precept, apply measures provided for in this Act for termination of the violation or prohibit the activities of the fund manager of the EEA Member State in Estonia and inform the financial supervision authority of the EEA Member State thereof beforehand. As appropriate, the Financial Supervision Authority may also notify the European Securities and Markets Authority of an offence by a fund manager of an EEA Member State and the Authority shall adopt measures in accordance with the powers conferred on it.

(9) The Financial Supervision Authority shall communicate the measures applied thereby to the fund manager of the EEA Member State.

(10) In exceptional cases, the Financial Supervision Authority may, in order to protect investors or the public interest, apply measures with regard to a fund manager of an EEA Member State which violates the requirements provided by legislation without advance notice to the financial supervision authority of the EEA Member State.

(11) The Financial Supervision Authority shall promptly communicate the application of the measures specified in subsections (9) or (10) of this section to the European Commission, the European Securities and Markets Authority and the financial supervision authority of an EEA Member State.

(12) The Financial Supervision Authority shall notify the European Securities and Markets Authority, the financial supervision authority of the home country and host country of the fund manager if, as far as the Financial Supervision Authority knows, a fund manager of the EEA Member State violates or starts to violate the requirements established for alternative fund managers in this Act.

(13) The Financial Supervision Authority shall also implement the measures specified in subsections (8) and (12) of this section in the case bases exist, as far as it knows, for challenging the authorisation of the fund manager issued by the primary host country.

(14) The Financial Supervision Authority shall notify the European Commission and the European Securities and Markets Authority of the cases where the Financial Supervision Authority fails to review the documents submitted to it pursuant to subsection 399 (4) of this Act or prohibits the fund manager from managing a fund on the basis of subsection 407 (5) of this Act.

§ 469. Supervision over fund managers of third countries which provide services in Estonia and branches thereof founded in Estonia

(1) The Financial Supervision Authority may demand additional data and documents from a fund manager of a third country which provides services in Estonia and the branch thereof founded in Estonia which are necessary for exercise of supervision over it.

(2) A fund manager which provides services in Estonia and which authorisation is suspended or revoked by the financial supervision authority of an EEA Member State may not provide services in Estonia.

(3) If a fund manager of a third country which provides services in Estonia violates the requirements provided by legislation, the Financial Supervision Authority may apply measures necessary for the termination of the violation or revoke the authorisation for foundation of the branch or for cross-border provision of services.

(4) If a fund manager of a third country for which Estonia is the primary host country violates the requirements provided by legislation, the Financial Supervision Authority shall promptly notify the European Securities and Markets Authority thereof.

§ 470. Supervision over public offer of units or shares of foreign funds in Estonia

(1) The Financial Supervision Authority shall exercise supervision over compliance of public offer of a foreign fund in Estonia with the conditions provided for in this Act and other legislation.

(2) If, upon public offer of a foreign fund, the requirements provided by legislation are violated, the Financial Supervision Authority may prohibit the public offer of the foreign fund in Estonia or apply measures for termination of the violation.

(3) If the requirements provided by legislation are violated upon public offer or marketing of a UCITS of another EEA Member State, the financial supervision authority of the other EEA Member State shall be informed thereof at first. The Financial Supervision Authority itself may apply measures for termination of violations in the case the measures implemented by the financial supervision authority of the other EEA Member State are insufficient or the violations of the requirements provided by legislation are continued upon public offer or marketing of the units or shares of the UCITS.

(4) The Financial Supervision Authority shall promptly communicate the measures adopted to the financial supervision authority of the home country and the European Commission in the case of a UCITS founded in another EEA Member State. As appropriate, the Financial Supervision Authority may also inform the European Securities and Markets Authority of the measures implemented.

(5) The Financial Supervision Authority may, by its precept, suspend the public offer of a foreign fund in Estonia if:

- 1) the offer does not comply with the requirements provided by legislation;
- 2) upon application for the registration of the offer, giving notification of the offer or during the offer, incorrect, misleading or contradictory data have been submitted or the data is not submitted in due time;
- 3) the re-purchase or redemption of the units or shares in the home country is suspended;
- 4) the fund, foreign fund manager or the distributor of the units or shares of the fund submits or publishes incorrect, misleading or contradictory data, advertising or reports concerning the fund;
- 5) the terms and conditions prescribed in the prospectuses are not complied with upon the offer of the fund;
- 6) the requirements of this Act have been violated upon the re-purchase or redemption of the units or shares of the fund;
- 7) the data contained in the prospectuses which are in Estonian and offer a UCITS of an EEA Member State are different from the data contained in the prospectuses published in the EEA Member State.

(6) When suspending an offer, the Financial Supervision Authority shall issue a precept to oblige the offeror to eliminate the circumstances constituting the basis for the suspension of the offer. After eliminating such circumstances, the offeror may resume the offer with the permission of the Financial Supervision Authority.

§ 471. Supervision over depositaries of foreign funds offered in Estonia and branches thereof founded in Estonia

(1) The Financial Supervision Authority may request data and documents from a depositary of a foreign fund offered in Estonia and the branch thereof founded in Estonia which are necessary for determination of compliance with the requirements provided for in §§ 286, 288 and 297-299 of this Act.

(2) The Financial Supervision Authority may prohibit the offer of a foreign fund in Estonia if the depositary or the branch thereof founded in Estonia does not comply with the requirements specified in subsection (1) of this section or the depositary fails to submit to the Financial Supervision Authority the information which is necessary to determine compliance with the requirements established for the depositary.

(3) The Financial Supervision Authority may, by a precept, request the entry of the depositary in the Estonian commercial register as a public limited company or a branch or oblige a fund manager to change a depositary if:

- 1) the foreign financial supervision authority does not ensure sufficient supervision over the depositary;
- 2) the foreign financial supervision authority has no legal basis, possibilities or readiness for sufficient and efficient cooperation with the Financial Supervision Authority;
- 3) the Financial Supervision Authority is unable to monitor compliance with the requirements for depositaries established in legislation or such monitoring is impeded.

§ 472. Cooperation in exercise of cross-border financial supervision

(1) The Financial Supervision Authority as the financial supervision authority of the home country shall submit to the financial supervision authority of the country of destination the cooperation agreements concluded with the financial supervision authority and required for the cross-border provision of services provided for in §§ 421, 427 and 432 of this Act.

(2) In addition to the information specified in subsection (1) of this section, the Financial Supervision Authority shall send to the financial supervision authority of the country of destination the information and statement specified in subsection 421 (2) of this Act which was received on the basis of the cooperation agreements entered into with the financial supervision authorities of third states with respect to the alternative fund.

(3) As appropriate, the Financial Supervision Authority may send an inquiry, for the assessment of the legality of the contents of the cooperation agreement specified in subsection (1) of this section, to the European Securities and Markets Authority which may adopt measures in accordance with the powers conferred on it.

(4) If the Financial Supervision Authority does not agree, upon exercise of cross-border supervision, with any position of the financial supervision authority of the EEA Member State, it has the right to file a complaint to the European Securities and Markets Authority.

Division 5

Specifications for Supervision over Pension Funds and Defined-benefit Occupational Pension Funds

§ 472¹. Specifications for restrictions on use and disposal of assets of occupational pension funds offered in other contracting states

When exercising supervision over a fund manager in the case of which the occupational pension fund managed by it is offered in another contracting state, the Financial Supervision Authority shall also adopt, as appropriate, the measures provided for in § 462 of this Act if this is requested by the financial supervision authority of this contracting state.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

§ 473. Supervision over offers of occupational pension funds of EEA Member States

(1) The Financial Supervision Authority has the right to exercise supervision over compliance of offers of occupational pension funds of EEA Member States with the conditions provided for in subsections 440 (2) and (5) of this Act and demand additional data and documents which are necessary for exercise of supervision over it.

(2) If the conditions provided for in subsection 440 (2) or (5) of this Act are violated upon offer of a occupational pension fund of an EEA Member State, the Financial Supervision Authority shall inform the financial supervision authority of the EEA Member State thereof.

(3) If the measures implemented by the financial supervision authority of an EEA Member State are insufficient and the offeror of an occupational pension fund of the EEA Member State continues to violate the requirements provided for in subsection 440 (2) or (5) of this Act, the Financial Supervision Authority may, in turn, implement measures for the termination of the violation or prohibit the offer of the occupational pension fund in Estonia.

(4) The Financial Supervision Authority shall inform the financial supervision authority of the EEA Member State of the measures applied thereby beforehand.

(5) If any of the terms and conditions provided for in subsection 440 (2) or (5) of this Act is violated upon offer of an occupational pension fund of a contracting state, the Financial Supervision Authority shall have the right to request from the financial supervision authority of this contracting state that the latter would seize the accounts of the occupational pension fund manager of the contracting state or the depository thereof or prohibit or restrict the use or disposal of the assets of the specified persons in order to ensure preservation of the assets.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

(6) If the Financial Supervision Authority has disagreements upon exercise of supervision over an offer of an occupational pension fund of a contracting state with the financial supervision authority of this contracting state, the Financial Supervision Authority shall have the right to contact the European Insurance and Occupational Pensions Authority for settlement of disagreements in accordance of Article 31(c) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

§ 474. Rehabilitation plans of defined-benefit occupational pension funds

(1) If a defined-benefit occupational pension fund fails to comply with prudential ratios, it is required to submit a rehabilitation plan to the Financial Supervision Authority by the date determined by a precept.

(2) The Financial Supervision Authority shall have the right to demand that a defined-benefit occupational pension fund order an expert assessment of the rehabilitation plan from one or more audit firms designated by it.

(3) The Financial Supervision Authority has the right to demand increase of the own funds of a defined-benefit occupational pension fund, including increase of the share capital, and prescription in the rehabilitation plan of other measures to guarantee the financial soundness of the fund.

(4) A defined-benefit occupational pension fund must describe in its rehabilitation plan in detail the measures it intends to apply in order to achieve compliance with prudential requirements during the term determined by the Financial Supervision Authority.

(5) If a rehabilitation plan is not feasible or it does not ensure protection of the interests of the persons covered by the pension scheme of the defined-benefit occupational pension fund according to the opinion of the Financial Supervision Authority or if the defined-benefit occupational pension fund is unable to perform the acts or apply the measures specified in the rehabilitation plan on time, the Financial Supervision Authority shall have the right to prohibit, by a precept, performance of acts or conduct of transactions related to the assets of the fund or restrict the volume thereof, revoke the activity licence of the fund or apply other measures provided for in this Act.

(6) The Financial Supervision Authority shall promptly notify the financial supervision authorities of the EEA Member States where the defined-benefit occupational pension fund is offered of the measures applied.

(7) The Financial Supervision Authority may also adopt the measures provided for in § 462 of this Act at the request of the financial supervision authority of the contracting state where the defined-benefit occupational pension fund is offered.

[RT I, 28.12.2018, 1 - entry into force 13.01.2019]

Chapter 31 Liability

Division 1 Liability of Fund Managers, Defined-benefit Occupational Pension Funds and Third Parties

§ 475. Violation of requirements for offers of funds

(1) Public offer of a fund without approval of fund rules or without a prospectus or without disclosure of the prospectus or without knowingly discussing the rules with sufficient accuracy in the disclosed prospectus is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 476. Violation of requirements for offers of foreign funds

(1) Public offer of a foreign fund without registration of the offer, upon failure to give notice of the offer or without disclosure of the prospectus or disclosure of the prospectus to an insufficient extent is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 477. Violation of suspension of public offers of funds

(1) Violation of the procedure for public offer of a fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 478. Violation of requirements for maintenance of registers of units or shares

(1) Violation of the requirements established in §§ 60-63 of this Act for registration of units and shares or examination of register data is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 479. Violation of requirements for general meetings of unit-holders or shareholders

(1) Knowing disregard of the competence of general meetings, failure to comply with the obligation to call a general meeting or notify of calling thereof is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 480. Violation of obligation to disclose prices and net asset values of units or shares and misuse

(1) Wrong establishment of the net asset value of a unit or share or disclosure of wrong net asset value or implementation of unfair net asset value or untimely or incomplete disclosure of net asset value is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 481. Violation of requirement to treat investors on equal basis

(1) Violation of the requirement to treat all potential investors on equal basis during an offer of a fund, including disclosure of information and other documents, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 482. Violation of requirements to disclose information

(1) Disclosure of incorrect, misleading or untimely information concerning a fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 483. Failure to submit information or data required for supervision over fund managers or defined-benefit occupational pension funds

(1) Refusal to submit reports, documents, explanations or other information or data required for supervision or failure to submit thereof on time, incorrect or incomplete submission thereof or submission of information or data in a format which does not permit exercise of supervision is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 484. Failure to submit information or data required for supervision over fund managers without activity licence registered in Financial Supervision Authority

(1) Refusal to submit reports, documents, explanations or other information or data required for supervision or failure to submit thereof on time, incorrect or incomplete submission thereof or submission of information or data in a format which does not permit exercise of supervision is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 16,000 euros.

§ 485. Violation of requirements for risk management

(1) Failure to establish or apply measures required for risk management and incomplete or untimely application thereof is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 486. Failure to establish internal control systems

(1) Failure to establish or apply measures required for internal control of a fund manager or defined-benefit occupational pension fund and incomplete or untimely application thereof is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 487. Violation of application of internal rules

(1) Knowing failure to establish, update or implement the internal rules provided for in this Act or establishment of insufficient internal rules is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 488. Misuse of fees, charges and expenses related to funds

(1) Covering of any fees, charges or expenses not established in the fund rules, articles of association, prospectus or management contract of a fund or prohibited by legislation for the account of a fund or investor of a fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 489. Violation of procedure for acquisition of qualifying holdings in fund managers

(1) Acquisition or transfer of a qualifying holding in a fund manager or turning a fund manager into a controlled company without giving an advance notice to the Financial Supervision Authority according to this Act, including incomplete or untimely notification, or in violation of the precept specified in subsection 327 (1) of this Act, and exercise of the right to vote or other rights enabling control in the insurer in violation of the precept of the Financial Supervision Authority, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 490. Violation of investment restrictions and other requirements prescribed for loan transactions and transactions related to investment of assets

(1) Violation of restrictions provided by law upon investment of the assets or a fund or disposal or possession thereof in any other manner, including upon conduct of loan transactions and other transactions related to investment of assets, and violation of restrictions provided for in the fund rules, articles of association, prospectus or management contract, transfer or the assets of a fund contrary to the laws or issue of securities for the account of the fund, if the fund rules, articles of association, prospectus or management contract of the fund do not prescribe such opportunity, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 491. Violation of procedure for issue or redemption of units or shares

(1) Issue or redemption of units or shares of a fund at a price which differs from the issue or redemption price or issue of a unit or without receipt of money to the extent of the net asset value or for an issue price which differs from the net asset value and has been approved by a general meeting of a closed-end fund for issue of a share of unit, or disclosure of information, which has an impact on the issue or redemption of the units or shares of the fund, if the obligation to notify investors or the public on an equal basis is violated thereby, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 492. Violation of procedure for suspension of issue or redemption of units or shares

(1) Issue or redemption of units or shares of a fund upon liquidation of the fund or during the period when issue or redemption of units or shares is suspended, or violation of the requirements for issue or redemption of the units or shares of a fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 493. Violation of procedure for outsourcing of functions of fund managers

(1) Violations of the requirements provided for in §§ 364-367 of this Act for outsourcing of the functions of fund managers to third parties or failure to notify the Financial Supervision Authority of outsourcing of the functions is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 494. Violation of requirements for separation of assets, holding and safekeeping of assets

(1) Knowing failure to comply with the requirement for separation of assets of a fund manager or other obligations related to holding or safekeeping of the assets of a fund or untimely or insufficient compliance therewith is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 495. Violation of requirements to disclose conflicts of interests

(1) Knowing violation of the requirements provided for in this Act to disclose a conflict of interests or failure to keep a register of conflicts of interest which have arisen or may arise, enter data in such register, or entry of incorrect data in the register is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 496. Violation of requirements for management of conflicts of interests

(1) Failure to establish, update or apply measures for management and prevention of conflicts of interests related to the management and investors of a fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 497. Violation of procedure for notification of offences related to management of funds and activities of fund managers

(1) Failure to establish or implement a procedure for notification of offences specified in subsection 340 (10) of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 498. Interconnection between offers of funds and provision of investment services and mandatory funded pensions

(1) Failure to comply with the requirements for offer of funds or provision of investment services established in subsection 14 (5¹), subsection 25 (2¹) and second sentence of subsection 37 (2) of the Funded Pensions Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 499. Violation of prudential requirements

(1) Violation of the prudential requirements provided for in this Act or on the basis thereof is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 500. Violation of requirements for activities of foreign fund managers

(1) Provision of services in Estonia by a foreign person without notification of the Financial Supervision Authority or knowing violation of the requirements for the activities of foreign depositaries established in this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 501. Violation of requirements related to division, transformation, merger, dissolution, insolvency and bankruptcy of fund managers and funds

(1) Knowing violation of the restrictions or requirements provided for in this Act and related to division, transformation, merger, dissolution, insolvency or bankruptcy of a fund manager or fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 502. Violation of obligations of liquidators

(1) Violation by a liquidator of an obligation provided for in this Act or the Commercial Code in liquidation proceedings of a fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 503. Violation of name protection requirements

(1) Violation of the name protection requirements provided for in § 24 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

Division 2

Specifications for Liability of Pension Fund Managers and Defined-benefit occupational pension funds

§ 504. Violation of requirements related to own units of fund managers

(1) Violation of the restrictions for acquisition of redemption of units of mandatory pension funds managed by a fund manager or obligations related thereto is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 505. Violation of guarantee requirements

(1) Violation of prohibition on guaranteeing the rate of return of a mandatory pension fund or occupational pension fund or prohibition on guaranteeing the rate of return of another voluntary pension fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 506. Violation of requirements for offer of occupational pension funds of EEA Member States

(1) Offer of an occupational pension fund of an EEA Member State without notification of the Financial Supervision Authority pursuant to the procedure provided for in § 440 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 507. Failure by fund managers to assess suitability of units of voluntary pension funds

(1) Failure by a fund manager or another person acting in the interests of the fund manager to comply with the obligations provided for in § 54¹ of the Funded Pensions Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 508. Offer of defined-benefit occupational pension funds or occupational pension funds of EEA Member States, which are prohibited in Estonia, to employees, servants, members of managing or controlling bodies of Estonian employers

(1) Offer to employees, servants, members of managing and controlling bodies of an Estonian employer of an occupational pension retirement fund of an EEA Member State with a guaranteed rate of return or covering mortality, survival and incapacity for work risks or providing benefits in agreed amounts on other basis, or of a defined-benefit occupational pension fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

Division 3 Liability of Depositaries

§ 509. Violation of obligations of depositaries

(1) Violation of the obligations provided for in §§ 286-293 of this Act or other obligations imposed on depositaries in this Act or the Funded Pensions Act or legislation issued on the basis thereof, or untimely or incomplete compliance therewith is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 510. Violation of general organisational requirements for depositaries

(1) Failure to establish, update or implement general organisational requirements of a depositary or untimely or incomplete establishment, updating or implementation thereof is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 511. Violation of requirement to notify depositaries

(1) Failure to notify the Financial Supervision Authority or the supervisory board of the fund manager of violations during the liquidation proceedings of a common fund or of non-compliance of the activities of a fund manager with legislation, fund rules, articles or association or management contract of the fund is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 512. Violation of procedure for outsourcing of functions of depositaries

(1) Failure to verify, before outsourcing of depositary functions, whether the level of the organisational and technical administration and the financial situation of the persons for the holding of which assets, performance of which transactions or performance of other depositary functions of which the depositary functions are outsourced are sufficient for the performance of the contractual obligations thereof, or failure to verify, with due diligence, the compliance with the specified requirement during the time when the person performs the depositary functions is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

§ 513. Violation of requirements for activities of foreign depositaries

(1) Provision of services in Estonia without notifying the Financial Supervision Authority or violation of the requirements for the activities of foreign depositaries established in this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal entity, is punishable by a fine of up to 400,000 euros.

Division 4 Proceedings

§ 514. Bodies conducting proceedings

Extra-judicial proceedings concerning misdemeanours provided for in this Act shall be conducted by the Financial Supervision Authority.

Part 7 IMPLEMENTING PROVISIONS

Chapter 32 Transitional Provisions and Review of Regulation

§ 515. Renewal of activity licences

(1) A fund manager which holds a valid activity licence at the time this Act enters into force shall submit to the Financial Supervision Authority within six months after the entry into force of this Act a notice indicating the type of fund manager specified in subsection 306 (5) of this Act as which it operates.

(2) If the fund manager specified in subsection (1) of this section wishes to commence operation as such fund manager which is not permitted under its current activity licence, the fund manager must submit to the Financial Supervision Authority, together with a notice, an application for the fund management authority specified in subsection 306 (5) of this Act.

(3) If a fund manager holds an authorisation to provide securities portfolio management services in accordance with clause 43 (1) 4) of the Securities Market Act, information must be submitted, together with the notice specified in subsection (1) of this section, concerning which investment services or ancillary services the fund manager provides.

(4) If the fund manager specified in subsection (1) of this section wishes to commence provision of investment services or ancillary services which provision is not permitted under the activity licence issued to it, the fund manager must submit to the Financial Supervision Authority, together with a notice, an application for the provision of the investment services or ancillary services specified in subsections 307 (1) and (2) of this Act and which provision is not permitted under the current activity licence.

(5) The provisions of §§ 313-321 of this Act apply to processing of applications specified in subsections (2) and (4) of this Act.

§ 516. Bringing of activities of funds, fund managers and other persons into compliance with requirements of this Act

(1) Fund managers and depositaries of funds managed thereby which hold a valid activity licence at the time this Act enters into force must bring their activities and documents into compliance with the provisions of this Act within 12 months after the entry into force of this Act. Until brought into compliance with this Act, the

activities and documents of fund managers must comply with the Investment Funds Act in force until the entry into force of this Act.

(2) The basic documents of funds registered before the entry into force of this Act, the activities of the funds, registration of units, offer of funds and management of the assets of the funds must be brought into compliance with the requirements provided for in this Act within 12 months after the entry into force of this Act. Until brought into compliance with this Act, the specified activities and documents must comply with the requirements of the Investment Funds Act in force until the entry into force of this Act.

(3) In the case provided for in subsection (2) of this section, the provisions of this Act with respect to material amendments of the basic documents or prospectuses of funds do not apply if making of an amendment is required for bringing the basic document or prospectus of the fund into compliance with the requirements of this Act.

(4) A fund founded as a public limited company which was founded pursuant to the Investment Funds Act in force prior to the entry into force of this Act shall be deemed to be a fund founded pursuant to this Act to which the provisions of subsections 18 (1), (2), (7), (8), (9) and (12), § 19, subsection 24 (5), clauses 29 (2) 1), 2) and 12), § 34, subsections 42 (3) and (4), subsection 50 (2), subsection 54 (6), § 56, § 144, subsection 152 (2), subsection 242 (1), clauses 244 (2) 1), 2) and 4), subsection 256 (1) and subsection 259 (2) of this Act do not apply.

(5) The provisions specified in subsection (4) of this section only apply in the case the general meeting of a fund founded as a public limited company decides, within one year after the entry into force of this Act, to apply the specified provisions to the fund founded as a public limited company and at least two thirds of the votes represented at the general meeting are given in favour of the decision of the general meeting. The fund founded as a public limited company shall notify the Financial Supervision Authority promptly of such decision of the general meeting.

(6) The rates of redemption fees of mandatory pension funds provided for in subsection 65 (2) of this Act apply as of the entry into force of this Act.

(7) Payment of the redemption fee of the units of mandatory pension funds into pension funds provided for in the second sentence of subsection 65 (1) of this Act shall be implemented as of 1 September 2017.

(8) The rates of the management fees of mandatory pension funds provided for in subsection 65 (3¹) of this Act shall be implemented as of 2 September 2019.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(9) The coefficient which reduces the rate of the base management fee provided for in § 65¹ of this Act shall be calculated for the first time on the asset value as at 3 January 2020 and the reduction of the management fee rate shall be implemented as of 1 February of the same year.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(10) Until the reduction of the management fee rate provided for in specified in subsection (9) of this section, the procedure for reduction of the management fee rate provided for in legislation established on the basis of subsection 65 (8) which was in force until 1 January 2019 shall be implemented.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 517. Bringing of activities of alternative fund managers into compliance with requirements of Directive 2011/61/EU of European Parliament and Council

(1) The requirements for offers of alternative funds do not apply to fund managers which offered the units or shares of alternative funds in Estonia before 22 July of 2013 on the basis of a prospectus prepared pursuant to Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, pp. 64-89) for the duration of validity of that prospectus.

(2) Managers of alternative funds which offered the units or shares of closed-end funds in Estonia before 22 July 2013 are not required to comply with the requirements provided for alternative fund managers in this Act if the assets of the respective fund have not been invested after 22 July 2013.

(3) If the subscription period of the units or shares of a closed-end fund offered in Estonia is during the period from 22 July 2013 until 22 July 2016 (inclusive), the alternative fund manager of such closed-end fund must comply only with the requirements provided for in §§ 269 and 375-378 of this Act from among the requirements provided for alternative fund managers in this Act.

§ 518. Bringing of activities of alternative fund managers in foreign countries into compliance with requirements

(1) An alternative fund manager founded in Estonia and providing services in a foreign state at the time of entry into force of this Act must notify the Financial Supervision Authority pursuant to the procedure provided for in this Act of provision of services in a foreign state and bring its activities into compliance with the requirements provided for in this Act within 12 months after entry into force of this Act.

(2) An alternative fund manager which provides services in a foreign state at the time of entry into force of this Act may continue provision of services in the foreign state until performance of the obligations provided for in subsection (1) of this section but not longer than 12 months after the entry into force of the Act.

§ 519. Bringing of activities of foreign alternative fund managers into compliance with requirements

An alternative fund manager providing services in Estonia upon entry into force of this Act must bring its activities into compliance with the requirements provided for in this Act within 12 months after entry into force of this Act.

§ 520. Right of investors of funds managed by small fund managers to demand redemption of their units

(1) If a fund manager which managed only non-public funds on the basis of an activity licence prior to entry into force of this Act continues its activities as a small fund manager, it is required to redeem the units or shares of the investors of the funds managed by it without any redemption fee within one year after issue of an activity licence of a small fund manager to it. The investors shall have the right to demand redemption of their units or shares without a redemption fee only in the case they notify the fund manager thereof within one month after becoming aware of the opportunity of redemption without redemption fee.

(2) A fund manager shall promptly notify all the investors of the fund of the opportunity provided for in subsection (1) of this section after issue of an activity licence of a small fund manager to it. The fund manager shall promptly also publish the respective notice on its website.

(3) Notices sent to investors and published on the website of the fund manager must indicate at least the following:

- 1) the data concerning issue of an activity licence of a small fund manager to the fund manager;
- 2) the information concerning the period of redemption of the units or shares without redemption fee;
- 3) the date of publishing of the notice.

§ 521. Merger of funds of same fund manager into sub-funds of one fund

(1) Common funds managed by a fund manager may be merged in such a manner that a new common fund with sub-funds is established. The provisions of § 144 of this Act with regard to redemption and exchange of units do not apply to mergers of such funds.

(2) Upon merger of common funds in the manner specified in subsection (1) of this Act, the importance of the amendment of the fund rules and prospectuses of the merging and acquiring fund for the unit-holders must be assessed and the procedure for making material amendments to the rules and prospectuses of funds provided for in this Act apply to merger of funds. If the rules or prospectuses of the fund being acquired have materially changed compared to the rules of the acquiring fund, the unit-holders must be ensured the condition specified in subsections 38 (4) and 78 (4) of this Act at least during one month before the fund rules and the prospectus of the fund being acquired enter into force. Material amendments to the fund rules and prospectus of the fund being acquired shall be made known in the merger information specified in § 156 of this Act. The merger information shall be submitted after receipt of the authorisation for merger but in the case of application of the regulation for material amendments of fund rules and prospectuses at the latest one month before the entry into force of the fund rules of the acquiring fund.

(3) Decisions on merger of funds in the manner specified in this section may be made at the latest on 31 December 2017.

[RT I, 03.07.2017, 2 - entry into force 13.07.2017]

§ 522. Transitional provisions related to reports and other requirements applicable to fund managers

(1) Until establishment of the legislation specified in subsection 54 (15), subsection 65 (8), subsection 83 (7), subsection 88 (8), subsection 105 (6), subsection 179 (3), subsection 266 (7), subsection 334 (9), subsection 345 (7), subsection 346 (11), subsection 370 (9) and subsections 374 (2) and (4) of this Act, fund managers shall operate pursuant to the provisions of legislation established on the basis of subsection 70 (5), subsection 151 (5), subsection 187 (1), subsection 237 (1²), subsections 238 (6), (7) and (11) and subsection 244 (4) of the Investment Funds Act in force until the entry into force of this Act, unless otherwise provided for in this Act.

(2) Pursuant to this Act and legislation issued on the basis thereof, reports shall be prepared for accounting periods beginning on 1 January 2017 or later.

(3) Reports for accounting periods beginning before the date specified in subsection (2) of this section shall be prepared pursuant to legislation established on the basis of the Investment Funds Act which was in force until the entry into force of this Act.

§ 523. Maximum rate of management fees of mandatory pension funds

(1) Before 2 September 2019, the rate of the management fee of a mandatory pension fund shall not exceed in total two per cent of the market value of the assets of the pension fund calculated based on a year of 365 days.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(2) Before 2 September 2019, the rate of the management fee of a conservative pension fund shall not exceed in total 1.2 per cent of the market value of the assets of the pension fund calculated based on a year of 365 days.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

(3) The Ministry of Finance shall analyse before 1 May 2018 the expedience and practicability of implementation of the restrictions on rates specified in subsections (1) and (2) of this section and, as appropriate, present a proposal for their amendment or extension of their term of validity.

(4) The Ministry of Finance shall analyse before 1 October 2024 the expedience and practicability of implementation of the restrictions on rates specified in subsections (1) and (2) of this section and of the success fee as a part of the management fee provided for in § 65² of this Act and, as appropriate, present a proposal for their amendment or extension of their term of validity.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 523¹. Success fee of mandatory pension fund

(1) If success fee is applied to a mandatory pension fund registered before 31 August 2019, the cumulative increase in the net asset value of a unit of this pension fund must exceed the cumulative increase in receipt of the pension insurance part of social tax after 31 August 2019.

(2) In the case provided for in subsection (1) of this section, the pension fund manager shall equalize, for the purpose of calculation of the success fee, the starting values of the net value index and the reference index provided for in subsection 65²(3) of this Act at 31 August 2019.

(3) The start date of the accounting period of the success fee of the mandatory pension fund specified in subsection (1) of this section is 31 August 2019, and the accounting period is four months.

(4) Instead of the value on 31 December of the highest net value index of the last ten years of the mandatory pension fund provided for in 65²(5) of this Act, the value of the net value index of the start date of the success fee accounting period shall be compared during the period of 2019-2029 with all the values of this net value index on 31 December as of the moment of the first payment of the success fee, and the highest thereof shall be used as the basis as the start date value upon calculation of the success fee.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 524. Offer of occupational pension funds of EEA Member States in Estonia

If an Estonian employer has made contributions before 30 March 2012 for its employees, servants, members of managing or controlling bodies to an occupational pension fund of a Contracting Party with guaranteed rate of return, defined-benefit or covering mortality, survival and incapacity for work risks, the employer may continue making of contributions for such employees, servants, members of managing and controlling bodies to such fund.

§ 525. Bringing of activities of mandatory pension fund managers into compliance with requirements

(1) The restrictions established in subsections 130 (4) and (6) of this Act apply to investments of mandatory pension funds made after 1 August 2011.

(2) In the case of fund managers which operated before the entry into force of this Act, the two-year period provided for in subsection 363 (3) of this Act shall start to run after the entry into force of this Act.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

§ 526. Ex post evaluation of regulation on public limited funds and limited partnership funds

The Ministry of Finance shall analyse by 1 January 2022 the expedience and practicability of the regulation on public limited funds and limited partnership funds provided for in this Act and, as appropriate, submit proposals for amendment of the regulation.

§ 527. Ex post evaluation of regulation of investment of assets of pension funds

The Ministry of Finance shall analyse by 1 October 2024 the expedience and practicability of implementation of the requirements provided for in this Act for investment of the assets of pension funds and risk spreading and, as appropriate, submit proposals for amendment of legislation.
[RT I, 28.12.2018, 1 - entry into force 01.01.2019]

Chapter 32¹ Additional implementing provisions

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

§ 527¹. Implementation of clause 38 (4) 3)

Clause 38 (4) 3) of this Act shall apply to decisions made at the general meetings of funds after 10 January 2018.

[RT I, 30.12.2017, 3 - entry into force 03.01.2018]

Chapter 33 Amendment and Repeal of Acts

§ 528.–§ 538.[Omitted from this text.]

Chapter 34 Entry into Force of Act

§ 539. Entry into Force of Act

§§ 27, 34, 243 and 244 of this Act enter into force on 1 January 2017.

¹Commission Directive 2007/16/EC implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions (OJ L 79, 20.03.2007, pp. 11-19); Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, pp. 32-96), amended by Directives 2011/61/EU (OJ L 174, 01.07.2011, pp. 1-73) and 2013/14/EU (OJ L 145, 31.05.2013, pp. 1-3); Commission Directive 2010/43/EU implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk managing and content of the agreement between a depository and a fund manager (OJ L 176, 10.07.2010, pp. 42-61); Corrigendum to Council Directive 2010/44/EU implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure (OJ L 176, 10.07.2010, pp. 28-41), constituting the basis for the Committee Directive 2010/42/EL (implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure) (OJ L 176, 10.07.2010) (OJ L 179, 14.07.2010, p. 16); Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, pp. 37-85). [RT I, 28.12.2018, 1 - entry into force 13.01.2019]