

## Law on Private Pension Funds

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## Chapter I General Rules

### Article 1. Terms and definitions

The following terms are used in this Law:

- 1) **individual participating contract** – a contract concluded between a natural person and a private pension fund regarding the participation of such person in a specified pension plan;
- 2) **group participating contract** – a contract concluded between an employer and a private pension fund regarding the participation of employees of such employer in a specified pension plan;
- 3) **(asset) manager of funds** – a commercial company, which manages the funds accumulated according to a pension plan;
- 4) **custodian** – a commercial bank, which stores the assets of a private pension fund and carries out other duties specified in this Law and the contract of the custodian;
- 5) **pension plan participant** – a natural person who herself or himself or for whom an employer or another natural person makes contributions in a private pension fund and who has the right to receive pension benefits in conformity with this Law and a pension plan;
- 6) **pension benefits capital** – means funds that during a specific period of time in accordance with this Law have been accumulated in favour of a participant of the defined contribution plan;
- 7) **retirement age** – the age of a pension scheme participant upon reaching of which such participant has the right to receive the pension benefits accumulated in the pension fund in accordance with the procedures prescribed by this Law;
- 8) **related persons** – two or several persons if they conform to at least one of features of affiliated undertakings referred to in the Law On Enterprise Income Tax;
- 9) **pension plan** – an aggregate of systemised provisions, according to which pension benefits are accumulated in the pension fund, funds are invested and the funds accumulated are disbursed;

- 10) **defined benefit plan** – a pension plan, which provides for pay-out of specific pension benefits when a pension plan participant reaches the retirement age and in which the coverage of biometrical risks may be provided for;
- 11) **defined contribution plan** – a pension plan, which provides for regular or irregular contributions for a pension plan participant and in which the coverage of biometrical risks may be provided for or a specific return on investments may be guaranteed;
- 12) **recipient of pension benefits** – a person who receives pension benefits after reaching the age specified in the pension plan;
- 13) **sponsoring employer** – a person who is an employer and who makes contributions in private pension funds in favour of the employees thereof, or a self-employed person who makes contributions in his or her own favour;
- 14) **biometrical risks** – risks linked to death, disability and longevity;
- 15) **pension benefits** – a pension benefits capital accumulated in accordance with the defined contribution plan, or payments or services specified for the beneficiary of pension benefits in accordance with the defined benefit plan. Payments may be specified as a payment throughout the life of the beneficiary of pension benefits, or a payment during a specific time period, or a single lump sum;
- 16) **chief actuary** – an official of the private pension fund who assesses the liabilities included in pension plan and the sufficiency of technical reserves created;
- 17) **technical reserves** – the potential liabilities of the pension fund, which have been calculated according to the defined contribution plans of the pension fund with guaranteed investment return, defined benefit plan and pension plans with a planned coverage of biometrical risks;
- 18) **analysis of critical situation** – an analysis conducted by the pension fund in order to determine and assess the potential impact of different extraordinary, but potentially unfavourable events or changes in market conditions on the investment portfolio of a pension plan;
- 19) **Financial Supervisory Authority** – Central Bank of Azerbaijan, which performs supervisory functions for private pension funds.
- 20) **open investment fund** - a collective investment undertaking aimed at investing money assets aggregated from the public in the investment objects in line with the principle of diversification and investment restrictions where the company managing such fund shall have an obligation, upon request of fund investors, to repurchase investment certificates not later than within one month. Open investment fund shall be registered in the Republic of Azerbaijan or OECD member state.
- 21) **investment object** — transferable securities money market instruments, deposits in banks and other financial instruments, which in accordance with the provisions of this Law an investment management company is entitled to acquire for the fund property;
- 22) **transferable securities** — equity securities (shares and other equity securities which certify participation in the issuer's capital), bonds and other debt securities, other negotiable securities whose alienation rights are not restricted and to which the rights to acquire the above mentioned transferable securities by means of subscription or exchange are attached;
- 23) **alternative investment fund** - a collective investment undertaking which raises capital from a number of investors with a view to investing it in

accordance with an investment policy for the benefit of those investors. Alternative investment fund is not open investment fund in the meaning of the Law. Alternative investment fund shall be registered in the Republic of Azerbaijan or OECD member state.

- 24) **Independent auditor** is a natural person or commercial company authorized to provide independent audit services in the territory of the Republic of Azerbaijan on the basis of the license issued by the Chamber of Auditors in accordance with the Law on Audit Services.

## Article 2. Purpose of Law

The purpose of the Law is to provide additional income for use in old age and Law prescribes the accumulation of pension benefits both in the defined contributions pension plans and defined benefit pension plans, types of private pension funds, the basis for activities thereof, the types of pension plans, the rights and duties of pension plan participants, the management of funds, the competence of custodian, as well as State supervision of such activities.

## Article 3. Concept of Private Pension Fund and General Rules

- (1) A private pension fund (hereinafter – pension fund) is a commercial legal entity - joint stock company, registered in the public register of legal entities of the Republic of Azerbaijan and **The Financial Supervisory Authority** has issued a licence for the activities of a pension fund (hereinafter – licence) in accordance with the procedures specified in this Law.
- (2) A pension fund shall, in accordance with this Law and pension plans, accumulate and invest voluntary made contributions by pension plan participants themselves or voluntary made contributions on their behalf in order to ensure pension benefits to such participants.
- (3) A pension fund may issue registered stocks on the name of shareholder only. Stocks of pension fund may not be issued for public trading.
- (4) A pension fund may only carry out activities provided by this Law.
- (5) Only the funds (cash) may be invested in the equity capital of the pension fund, except cases when the pension fund is reorganized by permission of the **Financial Supervisory Authority**.
- (6) The pension fund shall not take loans for fulfilment of liabilities arising from a pension plan, except loans for the provision of short-term liquidity for a time period up to 3 months.
- (7) The excess of income over expenses (profit) of the pension fund may be paid out to shareholders in dividends. Part or full amount of pension fund profit may be paid out also to pension plan participants by decision of pension fund shareholders.

## Article 4. Types of Pension Funds

- (1) Pension funds may be closed or open. The pension funds may have one or several pension plans
- (2) Only such persons may be pension plan participants of a closed pension fund who are employees of one or several founders (shareholders) of the pension fund.
- (3) An open pension fund is such pension fund, the founders (shareholders) of which are legal persons referred to in Article 5, Paragraph 1 and 2 of this Law. Any natural person may become a participant in such pension plan on a basis of a contract in accordance with the procedures described by this Law.
- (4) The legal name of the fund shall include the expression “pension fund” with reference whatever it is closed or an open pension fund. Only the pension funds founded in accordance with the procedures prescribed by this Law have the right to use such expression in their legal name.

## Chapter II Establishment of Private Pension fund

### Article 5. Shareholders of Private Pension Fund

- (1) Only such persons (employers) who enter into a group participating contract with a pension fund may be founders (shareholders) of a closed pension fund.
- (2) Only the following persons may be founders (shareholders) of an open pension fund:
  - 1) a bank if the bank has received a banking licence related to attraction of deposits from natural persons or legal entities or other reimbursable funds in the Republic of Azerbaijan;
  - 2) a life insurance company that has received licence for the carrying out life insurance in the Republic of Azerbaijan;
  - 3) an investment management company that has received licence for carrying out asset management in the Republic of Azerbaijan.
- (3) A person who wishes to obtain the stocks of a pension fund shall inform the **Financial Supervisory Authority** at least one month prior to carrying out the transaction, indicating the number of stocks and the shareholder who will sell stocks. The **Financial Supervisory Authority** may within one month after receipt of information request additional information or prohibit the carrying out of such transaction.
- (4) If after commencing of activities of an open pension fund a shareholder of the pension fund does not conform to the requirements specified in Paragraph 2 of this Section, the stocks owned by shareholder shall be alienated in accordance with the procedures prescribed by the **Law on State Registration of Legal**

**entities in the Republic of Azerbaijan.** If none of shareholders of an open pension fund no longer conforms to the requirements in Paragraph 2 of this Section, the **Financial Supervisory Authority** shall determine a time period by which the stocks must be alienated by the shareholders to such person who conforms to the requirements specified in Paragraph 2 of this Section for a shareholder of an open pension fund, or determine other measures to be performed for the continuation of activities of such pension fund.

#### Article 6. Articles of Association of a Pension Fund

Founders of a pension fund shall develop and approve (adopt) the articles of association of the fund in accordance with this Law and the **Law on State Registration and State Register of Legal entities in Azerbaijan.**

#### Article 7. Licensing of Pension Fund

- (1) Pension fund may not carry on business without license from the **Financial Supervisory Authority.**
- (2) The operating plan for the subsequent three years shall be submitted together with the application for licensing; it shall disclose the purpose and structure of the business, clearly state the conditions which shall secure that the future liabilities of the pension fund may be fulfilled at any time.
- (3) The following shall be submitted as part of the operating plan:
  - 1) The operating plan shall contain a forecast of the number of pension plan participants (for each pension plan), the forecasts of the amount of contributions and pay-outs (for each pension plan) shall be indicated, indicating individually the forecast of the amount of contributions and pay-outs for the coverage of biometrical risks, the forecast of administrative expenditure of the pension fund and the sources for covering them.
  - 2) The articles of association.
  - 3) Agreements for the outsourcing of functions in accordance with Article 18 and in accordance with **Article 19** of this Law and other outsourcing agreements of a pension fund activities in accordance with **Article 8** of this Law.
- (4) In addition, the following shall be submitted:
  - 1) An estimate of expenses for setting up administration, sales network and others; the pension fund shall prove that it disposes of the necessary funds for this purpose (organization fund);
  - 2) a document certifying payment of the initial capital,
  - 3) a list of shareholders,

- 4) as regards each member of the council and the board of directors, also the head of the internal control service of the pension fund, the chief actuary, the person who is responsible for asset management of pension plans, as well as the person who is authorised to take decisions on behalf of the pension fund, the following information necessary to assess their reliability and qualification should be submitted for the licensing:
  - a) the firm name of the pension fund and the office, to which the person is applying;
  - b) the given name, surname, year and date of birth and citizenship;
  - c) education (academic degree);
  - d) raising of qualification;
  - e) criminal record;
  - f) whether the right to perform commercial activities has been suspended;
  - g) the previous places of employment during the preceding 10 years and a short description of the work duties.
- 5) a copy of such page of the passport of the persons referred to in **Paragraph 4 Clause 4 of this Article** or of another personal identification document, in which the identification data of the person [given name, surname, year and date of birth] is indicated, and copies of documents certifying education;
- 6) a description of organisation and management structure, in which duties and authorisations of members of the council (if such has been established) and board of directors are clearly indicated, as well as the tasks and duties of other officials of the pension fund are clearly specified and distributed;
- 7) a description of the accounting policy, indicating the main principles for organising accounting;
- 8) a description of the management information system;
- 9) a description of the investment policy developed for each pension plan according to the requirements of **Article 21** of this Law;
- 10) a sample individual participating contract, if direct participation of participants is provided for in the pension plan of the pension fund by entering into an individual participating contract;
- 11) If the pension fund wishes to offer a defined benefit plan or a defined contribution plan with guaranteed investment return or to provide the coverage of the biometrical risks in the pension plan, the following documents shall be submitted in addition to the documents mentioned above of this Section:
  - a) a description of the guaranteed investment return, pension benefits and biometrical risks provided in the pension plan;
  - b) the methodology for the calculation of contributions, indicating separately the calculation of contributions for the coverage of biometrical risks;
  - c) the methodology for the calculation of technical reserves;
  - d) the forecast of the amount of technical reserves for the subsequent three years of activities;
  - e) the forecast of the amount of own funds necessary for activities for the subsequent three years of activities.

- 12) A description of organisation and management structure, in which duties and authorisations of members of the board of managers and board of directors are clearly indicated, as well as the tasks and duties of other officials of the pension fund are clearly specified and distributed;
  - 13) a description of the internal control system;
  - 14) a description of the procedure for identification of suspicious financial transactions, developed by the pension fund;
  - 15) a description of the policy for the prevention of conflict of interest situations, developed by the pension fund;
  - 16) a pension plan developed in accordance with the requirements of **Article 11** of this Law;
  - 17) a description of the investment policy developed for each pension plan according to the requirements of **Article 21** of this Law;
  - 18) a sample individual participating contract, if direct participation of participants is provided for in the pension plan of the pension fund by entering into an individual participating contract;
  - 19) a description of the procedures, by which the pension fund shall register and perform record-keeping of individual and collective participating contracts (hereinafter – participating contract). Registration and record-keeping of participating contracts may be carried out only in electronic form, ensuring the third parties with an opportunity of tracing the making of amendments to entries of the register. The pension fund shall be responsible for immediate registration and record-keeping of participating contracts in accordance with the approved procedures. The terms and conditions of a participating contract shall not be in contradiction with the provisions of the pension plan.
- (5) If until taking of the decision on issuance of the relevant licence changes in the information provided to the **Financial Supervisory Authority** occur or amendments are made to documents, the pension fund has a duty to provide the new information or a complete text of the relevant documents with the amendments made to the **Financial Supervisory Authority** without delay.
- (6) The **Financial Supervisory Authority** shall not issue the licence if: the record-keeping and accounting system of the pension fund or the system for arranging of individual accounts of pension plan participants does not conform to the description provided, the description of the organisational and management structure or the pension fund or the pension plan of the pension fund submitted for registration;
- (7) If the pension fund wishes that conditions are changed in the licence issued thereto, it shall submit a relevant application to the Financial Supervisory Authority and the documents referred to in **Article 7, Paragraph 2 and 4 Clauses 9 and 10** of this Law updated according to the changes in the conditions of the licence, as well as, if necessary, amendments to contracts with the external asset manager and the custodian.



- (8) If the pension fund wishes to offer a defined benefit plan or a defined contribution plan with guaranteed investment return or to provide the coverage of the biometrical risks in the pension plan, it shall submit the documents referred to in **Article 7, Paragraph 2 and 4** of this Law to the **Financial Supervisory Authority**.
- (9) The **Financial Supervisory Authority** shall examine the application of the pension fund regarding granting of a licence and take a decision not later than within 60 working days from the day when all the documents specified in this Law, which are necessary for taking of the decision and which have been prepared and developed in accordance with the requirements of regulatory enactments, are received.
- (10) If the firm name of the pension fund is changed, the **Financial Supervisory Authority** shall re-register the licence of the pension fund. An application of the pension fund regarding re-registration of the licence of the pension fund shall be submitted to the **Financial Supervisory Authority** not later than within seven working days after changes regarding the firm name have been registered. The **Financial Supervisory Authority** shall re-register the licence not later than within seven working days after receipt of the relevant application.
- (11) The **Financial Supervisory Authority** may request further requirements and conditions placed in the licensing process.
- (12) Review of application on obtaining of pension fund license for establishment comprised of two stages:
- 1) First stage for obtaining of pension fund license and its review, pension fund has to submit the documents referred to in **Paragraph 2,3 and 4** of this Article and
  - 2) In the second stage the Financial Supervisory Authority is entitled to request additional documents if it is necessary to receive further information.
- (13) The license granted for pension fund business will be terminated by the **Financial Supervisory Authority**, if the pension fund:
- 1) expressly refrains from accepting the license;
  - 2) has not made use of the license within twelve months of its being granted;  
or
  - 3) has ceased operations for more than six months.
- (14) The **Financial Supervisory Authority** shall publish a notice of the granting, the termination of the license in the **Enterprise Register according to the Law on State Registration of Legal entities in Azerbaijan** as described in **Article 23** of this Law.

- (15) The pension fund has to re-licence its activities after 5 years in accordance with **Paragraph 3,4,5 of this Article**, started at the day of license confirmation. During re-licensing process pension fund continue its operations in accordance of this Law until **Financial Supervisory Authority** has been taken decision of re-licensing of pension fund.

## Article 8. Outsourcing rules of Pension Fund Activities

- (1) Activities and processes may be outsourced, as long as the soundness of administrative procedures of pension funds is not affected.
- (2) Outsourcing may not result in the responsibilities of the governing bodies being delegated to the external service provider and management functions of pension fund. Risks associated with outsourcing shall be identified, analysed and evaluated, and treated in an appropriate manner. Performance of the outsourced activities and processes shall be properly monitored (includes regular assessments consistent with established criteria of the services of the outsourcing provider). The pension fund shall determine clear responsibilities for monitoring and management the outsourcing activities.
- (3) Asset management and custodian functions shall be carried out in accordance to the **Articles 18 and 19** of this Law.
- (4) A permission from the **Financial Supervisory Authority** for outsourcing is necessary in case of accounting, management or development of information technologies, systems or organising of internal control of the pension fund.
- (5) In cases of delegating other external services such as distribution, individual account administration, internal auditing, risk management, compliance the pension fund shall, within five working days after entering into a contract of external service, inform the **Financial Supervisory Authority** thereof.
- (6) Carrying out of an internal audit of the pension fund as an external service may be delegated only to a sworn auditor, a commercial company of sworn auditors or the internal audit service of the parent company of the pension fund, complying with the requirements specified in **Article 9** of this Law for the head of the internal control service.
- (7) In order for the pension fund to commence the receipt of external services, it shall develop a relevant policy and procedure for the use of external services, determining:

- 1) the procedures, by which decisions on the use of external services shall be taken in the pension fund;
  - 2) the procedures for the entering into a contract of external services, the supervision of execution and termination thereof;
  - 3) the persons (officials and employees) and units responsible for cooperation with the provider of external services and supervision of the amount and quality of the external service received, as well as the rights and duties of such persons;
  - 4) the action of the pension fund in case when the provider of external services does not fulfil or is going to be unable to fulfil the provisions of the contract of external service.
- (8) The pension fund shall submit the policy and procedure referred to in **Paragraph 7 of this Article** to the **Financial Supervisory Authority** prior to receipt of external services. The Financial Supervisory Authority shall, within 30 days after receipt of the referred to documents, examine and assess their conformity with the requirements of this Law.
- (9) Following criteria shall be taken into account and form part of the contractual outsourcing agreement of pension funds:
- a. services to be performed by the company to which the activity is outsourced must be specified and where appropriate delineated;
  - b. information/ audit rights of the internal audit function as well as of external auditors must be determined;
  - c. information/ audit rights as well as the controlling options of the **Financial Supervisory Authority** must be ensured;
  - d. rights to issue instructions: clearly define;
  - e. data protection provisions are taken into account;
  - f. periods of notice (appropriate) must be specified;
  - g. Pension fund must inform the undertaking of developments that affect the proper performance of outsourced activities and processes.
- (10) In case of **Paragraph 4**, the pension fund shall, in addition to the documents referred to in **Paragraph 7** of this Article, submit an application to the **Financial Supervisory Authority** regarding provision of external service and an original or copy of the contract of external service, the authenticity of which has been certified by a person who is entitled to take decisions on behalf of the pension fund. A provider of external services may commence the provision of the service, if the **Financial Supervisory Authority**, within 30 days after sending of the contract of external service, does not send a decision to the pension fund, by which it prohibits that the pension fund receives the relevant external service from the provider of external services.
- (11) If amendments are made to the documents referred to in this Article, the pension fund shall, within five working days after approval of the relevant amendments, submit them to the **Financial Supervisory Authority** for knowledge.

- (12) After the termination of the outsourcing agreement, the pension fund must take measures to ensure the continuity and quality of the outsourced activities and processes after the agreement has been terminated. Pension fund must be ensured that in the event of termination the organisational structure allows the outsourced functions to be smoothly reintegrated, without the quality of the activities and processes being affected.
- (13) The **Financial Supervisory Authority** has the right to conduct an inspection of activities of the provider of external service at the respective location. The **Financial Supervisory Authority** is allowed to make copies, as well as to request information from the provider of external services.
- (14) The requirements for outsourcing activities and processes are also to be observed in subcontracting outsourced activities and processes.
- (15) The **Financial Supervisory Authority** shall prohibit the pension fund to receive the planned external service from the provider of external services if:
- 1) the receipt of external service may infringe the interests of pension plan participants;
  - 2) the receipt of external service may cause restrictions to the administrative bodies of the pension fund for the performance of the duties specified for them in regulatory enactments, articles of association or other internal regulatory enactments of the pension fund;
  - 3) the receipt of external service will preclude or cause restrictions to the **Financial Supervisory Authority** in relation to the performance of the functions specified thereto in this Law;
  - 4) the contract of external service does not comply with this Law and does not provide a clear and true idea of the intended co-operation of the pension fund and the provider of external services and the amount and quality of external service.
- (16) The **Financial Supervisory Authority** is entitled to request that the pension fund, which receives external service from a provider of external service, terminates a contract of external service without delay, if the **Financial Supervisory Authority** detects that any of the circumstances referred to in **Paragraph 15 of this Article** has set in.

#### Article 9. Governance Rules for Pension Fund

- (1) The **Law of the Republic of Azerbaijan on Joint Stock Company** shall regulate the establishment and activities of governing bodies of a pension fund unless prescribed otherwise by this Law.
- (2) The pension fund shall create an efficient internal control system in order to ensure timely identification and management of all risks related to activities of the

pension fund, efficient protection of pension plan assets, the veracity and timeliness of the information provided to governing bodies of the pension fund, the compliance with laws, other regulatory enactments, regulatory provisions and orders of the **Financial Supervisory Authority**, the compliance with the policies and procedures developed by the pension fund, as well as shall ensure permanent and independent from executive body oversight on internal control system of the pension fund.

- (3) A person who complies with the following requirements may be a member of the executive board of directors of the pension fund, head of the internal control service, the chief actuary, person responsible for asset management of pension plans, as well as person who is authorised to take decisions on behalf of the pension fund:
  - 1) he or she has sufficient competence in the field, for which he or she will be responsible, ensuring that the board of directors is created in such a way that the pension fund would be able to carry out the accumulation of pension benefits independently, professionally, in good quality and in accordance with the requirements of regulatory enactments;
  - 2) he or she has a higher education and corresponding professional experience of not less than three years;
  - 3) he or she has an excellent reputation;
  - 4) he or she has not been suspended the right to perform commercial activities.
- (4) The chief actuary must have a certification in accordance of legal enactments of the Republic of Azerbaijan.
- (5) A person who is competent in financial management and conforms to the requirements of Paragraph three, Clauses 3 and 4 of this Article may be a member of the supervisory council of the pension fund.
- (6) A person may not be a member of the supervisory council or a member of the board of directors of the pension fund, the head of the internal control services of the pension fund, the chief actuary, person responsible for asset management of pension plans, as well as he or she may not be authorised to take decisions on behalf of the pension fund in the following cases:
  - 1) he or she has been convicted of intentional bringing of a commercial company to insolvency or bankruptcy (fraudulent bankruptcy) or of committing another intentional criminal offence;
  - 2) he or she has been held criminally liable for committing an intentional criminal offence, however, the criminal matter against him or her has been terminated for reasons other than exoneration.
- (7) Any changes, which are related to the composition of the supervisory council and board of directors of the pension fund, as well as changes in relation to candidates of members of the council and board of directors of the pension fund, the head of the internal control service of the pension fund, the chief actuary, persons responsible for asset management of pension plans and persons who are authorised to take decisions in behalf of the pension fund, shall be in effect, if they have been coherent in advance with the **Financial Supervisory Authority**.

- (8) In order to coherent the candidates of persons referred to in Paragraph three of this Article, the pension fund shall have to submit the following documents to the **Financial Supervisory Authority**:
- 1) an application, in which the documents appended thereto are indicated;
  - 2) a copy of the decision of the governance body of the pension fund on appointing of the referred to person in the relevant office;
  - 3) information and documents (they shall be submitted in accordance with the requirements of **Article 7 Paragraph 4, Clauses 4 and 5 of this Law**) regarding persons who are candidates for the relevant offices.
- (9) Persons who are candidates for the position of a member of the supervisory council or board of directors of the pension fund, the chief actuary, the head of the internal control service, persons responsible for asset management of pension plans shall take up the position, if the **Financial Supervisory Authority** has not expressed motivated objections in relation to the conformity of such persons with the requirements of the law within 30 days after receipt of the application and the documents specified in this Law regarding the appointed persons.
- (10) The governance body of the pension fund has a duty, upon its own initiative or upon the request of the **Financial Supervisory Authority**, to remove the persons referred to in Paragraph three of this Article from the office without delay, if they do not conform to the requirements of this Article.
- (11) If an administrative act issued by the **Financial Supervisory Authority** regarding removal of the persons referred to in Paragraph six of this Article from the position is appealed, appealing shall not suspend the execution thereof.
- (12) Within the meaning of this Law a conflict of interests is a situation when the pension fund and the persons related thereto take decisions on transactions with pension plan assets and concurrently perform the execution of such decisions or the control of execution thereof.
- (13) For the prevention of a conflict of interests a member of the supervisory council and board of directors of the pension fund, the head of the internal control service of the pension fund, the chief actuary, persons responsible for asset management of pension plans and persons who are authorised to take decisions on behalf of the pension fund shall refrain from taking decision on transactions of the pension fund, in which such persons find or may find themselves in a conflict of interests, as well as notify the supervisory council of the pension fund regarding such transactions.
- (14) If the pension fund, the external asset manager, the custodian, a provider of external services or employer making contributions are related persons, the pension fund shall develop a description of the policy for the prevention of conflict of interests situations, which ensures timely identification and management of the potential conflict of interests situations. The description of the policy for the prevention of conflict of interest's situations shall include the action

of employees for the prevention of conflict of interests situation, including it shall determine:

- 1) a restricted access to information, which is not necessary for the performance of work duties and which causes or may cause a conflict of interests;
- 2) a different organisational subordination that ensures mutual independence of the structural units thereof, which perform such activities that cause or may cause a conflict of interests;
- 3) that the conditions for transactions with persons related to the pension fund are not different from the conditions in relation to similar transactions of the pension fund with persons not related to the pension fund and is not in contradiction with the pension plan and the interests of the participants thereof.

#### Article 10. Own funds of Pension Fund Company

- (1) The minimum amount of authorized capital for pension funds is set as **100,000 AZN**. For a pension fund, which offers a defined contribution plan with guaranteed investment return or a defined benefit plan or provides the coverage of biometrical risks in the pension plan, the minimum size of own funds shall be **3,000,000 AZN**. The requirements of this Section shall not be applicable to a closed pension fund, if the employer has responsibility for the fulfilment of the liabilities specified in pension plans of the pension fund.
- (2) If the amount of assets under management of the pension fund exceeds **250,000,000 AZN**, the pension fund shall ensure an additional own fund in the amount of 0,02 per cent of the amount by which the value of the assets under management exceeds **250,000,000 AZN**. The requirements stated in this Paragraph shall not apply to a pension fund whose own funds are equal **10,000,000 AZN** or more.
- (3) In order to ensure the adequate solvency of pension fund, the **Financial Supervisory Authority** is authorized to issue by regulation provisions on the following:
  - 1) The calculation and the amount of the solvency margin,
  - 2) The minimum amount of the guarantee fund relevant to pension funds, and
  - 3) The items that may be considered own funds within the meaning of Paragraph 1 in this Article, and the extent to which these may be counted towards the solvency margin.
- (4) In order to ensure the stability of the financial activities of the pension fund, the own funds according to the requirements of this Article shall be at the continuous disposal thereof.
- (5) The pension fund shall inform the **Financial Supervisory Authority** without delay regarding the reasons for reduction of the own funds, if they have reduced by 10 per cent or more in comparison with the amount indicated in the previous financial report.

- (6) If the own funds of a pension funds fall, or threaten to fall, below the solvency margin, the pension fund shall submit to the **Financial Supervisory Authority** for approval a plan for the restoration of a sound financial position, so called solvency plan.
- (7) If the own funds of a pension funds fall below the amount of the guarantee fund<sup>1</sup> or are not eligible for inclusion in this fund in the required amount, the pension fund shall, upon request, submit to the **Financial Supervisory Authority** for approval a plan for the short-term procurement of the necessary own funds, so called financing plan.
- (8) If there are any indications that the financial position will continue to deteriorate, the **Financial Supervisory Authority** may restrict or prohibit free disposal of the assets of the pension fund.
- (9) Additionally, the **Financial Supervisory Authority** may restrict or prohibit free disposal of the pension funds assets at any time. This shall be applied accordingly, also if a pension funds does not establish adequate technical provisions, fails to provide adequate coverage for its technical provisions, or deviates without the permission of the **Financial Supervisory Authority** from the requirements pertaining to the location of the assets.
- (10) If there is evidence to suggest that the pension funds may not be able to fulfill its liabilities under the pension plans, the pension funds shall submit to the **Financial Supervisory Authority** a plan detailing how it intends to improve its financial position, so called financial recovery plan. The plan must explain how the pension fund intends to ensure its ability to meet the solvency requirements in the near future. The financial recovery plan should contain the following information with regard to the subsequent three financial years:
  - 1) Estimates of operating costs, in particular current general expenses and commissions,
  - 2) A detailed list of estimated income and expenditures,
  - 3) A projected balance sheet,
  - 4) Estimates of the financial resources that will be available to cover insurance liabilities and the required solvency margin.
- (11) If losses of a pension fund, which offers only the defined contribution plan without guaranteed investment return or does not provide for the coverage of biometrical risks in such plan, exceed one half of the equity capital of the pension fund, the pension fund shall, without delay, inform the **Financial Supervisory Authority** thereof and, not later than within 10 working days, submit a plan for improvement of the financial situation for co-ordination to the

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<sup>1</sup> Authorisation of the Financial Supervisory Authority to introduce it. To ensure that their liabilities under the pension contracts may be fulfilled at all times, pension funds are obliged to maintain own funds free of all foreseeable liabilities in an amount not less than the solvency margin, which is determined in relation to the total volume of business. One-third of the required solvency margin is deemed to be the guarantee fund.



**Financial Supervisory Authority**, indicating the activities to be carried out and the deadlines for the execution thereof.

(12) If in the cases referred to in **Paragraph 6,7 and 10** of this Article the pension fund refuses to submit plans for improvement of the financial situation or the carrying out of the measures provided for in the plan does not ensure the restoration of own funds, or the plan submitted is not being implemented, the **Financial Supervisory Authority** may take a decision:

- 1) to prohibit the pension fund to make free use of the assets thereof and to undertake new liabilities;
- 2) to specify mandatory advance co-ordination of the pay-outs to be performed by the pension fund or parts thereof with the **Financial Supervisory Authority**;
- 3) to cancel the licence issued to the pension fund.

## Chapter III Pension Plans and Rules of Participation

### Article 11. Pension Plans and their amendments

(1) A **pension plan** shall be developed by the relevant **pension fund**, but the **Financial Supervisory Authority** shall register it.

(2) The title of the pension plan shall contain words "*pension plan*". Only such pension plans, which have been created and registered in accordance with the procedures specified in this **Law**, has the right to include the words "*pension plans*" in the title.

(3) Any contribution, accumulation, investment of assets means in a **pension fund** or paying-out for the provision of pension benefits may take place only in conformity with the pension scheme registered by the **Financial Supervisory Authority**.

(4) The **pension fund** shall submit documents for registration of a pension plan together with an application for the receipt of a **pension fund** licence.

(5) If after issuance of a licence the pension fund develops a new **pension plan** and wishes to register it with the **Financial Supervisory Authority**, it shall submit an application to the **Financial Supervisory Authority** regarding registration of a **pension plan** and the documents referred to in Article 7, Paragraph 2, 3 and 4 of this Law, as well as, if necessary, amendments to contracts with the manager of funds and the holder of funds. The **Financial Supervisory Authority** shall examine the documents submitted by the **pension fund** and take a decision on registration of the **pension plan** or refusal to register the **pension plan** within 30 days after all the documents specified in this Law, which are necessary for taking of the decision and which have been prepared and developed in accordance with the requirements of regulatory enactments, are received.

(6) The following shall be indicated in a pension plan:

- 1) the type, name and legal address of the **pension fund**;
- 2) the title of the **pension plan**;
- 3) information regarding the asset manager of funds, if asset management is outsourced, and the custodian bank;
- 4) the criteria and conditions relating to the participants withdrawing from the pension scheme;
- 5) the procedures for contribution of funds and consequences in cases of violation of such procedures;
- 6) the provisions for the calculation and record-keeping of individual accounts of the pension plan participants, contributions made and pension benefits capital accumulated;
- 7) the provisions of retirement age;
- 8) the procedures by which a beneficiary of the pension benefits shall be paid out the pension benefits capital according to the defined contribution plan;
- 9) other cases when the paying-out of the pension benefits capital shall be carried out, and the procedures by which they shall be paid out in such cases;
- 10) the investment provisions that will be complied with in the pension plan, and a description of the risks related to investments and the procedures for income distribution;
- 11) the procedures for covering the expenses of the pension plan and provision of information regarding maximum payments to the management of the pension plan and to the manager of funds, if outsourced, and the amount of remuneration to be paid out to the custodian bank, as well as the procedures by which pension plan participants shall be informed regarding such pay-outs of the pension plan;
- 12) other information necessary to the pension plan;
- 13) the procedures, by which a pension plan participant and a beneficiary of pension benefits will be ensured the information referred to in Article 17 of this Law;
- 14) for the **defined contribution plan** with guaranteed investment rate – in addition also a description of guarantees;
- 15) for the **defined benefit plan** – in addition also the amount and period of paying out the pension benefits, as well as the procedures for paying out of pension benefits;
- 16) for the pension plan with the coverage of biometrical risks – in addition also the biometrical risks covered, the amount of and procedures for payments in case of risks setting in.

(7) The pension plan may provide that a participant thereof upon reaching the age specified in the pension plan may continue participation in the scheme making an additional agreement with the pension fund regarding the procedures for paying out of the pension benefits. If the pension fund provides for a possibility to receive the pension benefits capital in parts, the pension fund shall submit to the **Financial**

**Supervisory Authority**, together with a pension plan, the methodology for paying out of the pension benefits capital approved by the board of directors of the pension fund.

(8) The pension plan, the fulfilment of the liabilities of which has been undertaken by the sponsoring employer, may only have one participating contract, which has been entered into with the sponsoring employer, which has guaranteed the fulfilment of such liabilities.

(9) After registration of the pension plan with the **Financial Supervisory Authority** amendments thereto may be made only with a written consent of the **Financial Supervisory Authority**.

(10) A written consent of the **Financial Supervisory Authority** for amendments to the pension plan shall not be required, if amendments thereto are made due to the change of officials of the pension fund, the firm name or legal address of the pension fund, the manager of funds, if outsourced, or custodian bank of the pension fund. In such case amendments to the pension plan shall enter into effect on the day following approval thereof, and the pension fund shall, within seven days after approval of amendments, submit them to the **Financial Supervisory Authority**.

(11) In order to receive a permit for making amendments to the pension plan, the pension fund shall submit the following documents to the **Financial Supervisory Authority**:

- 1) an application regarding making of amendments to the pension plan;
- 2) a motivated request of the board of directors of the pension fund (a certified copy or an extract) regarding the necessity of amendments to the pension plan;
- 3) amendments to the pension plan (in two copies);
- 4) the text of the pension plan containing amendments. The pension fund shall submit a full text of the pension plan to the **Financial Supervisory Authority** in one of the forms referred to in [Article 7, Paragraph 4](#).

(12) The **Financial Supervisory Authority** shall examine an application regarding making of amendments to the pension plan and take a decision within 30 days after all the documents specified in this Law, which are necessary for taking of the decision and which have been prepared and developed in accordance with the requirements of regulatory enactments, are received.

(13) If amendments to the pension plan provide for amending the investment rules of the pension plan, increasing the administrative costs or the amount of remuneration to be paid to the manager of funds, if outsourced, or custodian bank, the pension fund shall determine that amendments to the pension plan shall enter into effect not earlier than six months (if at least one **group participating contract** has been entered into regarding participation in the relevant pension plan) or not earlier than a month (if only individual participating contracts have been entered into regarding participation in the relevant pension plan) after a permit of the **Financial Supervisory Authority** to make amendments to the pension plan has been received and the participants of the relevant pension plan and the beneficiaries of pension benefits have been sent a written notification regarding amendments to the pension plan.

(14) The pension fund need not comply with the time periods referred to in Paragraph 13 of this Article, if a certification is submitted to the **Financial Supervisory Authority**, together with amendments to the pension plan, that the committee of the relevant pension plan (if the pension scheme participants participate in the relevant pension scheme according to a **group participating contract**) or the pension plan participants (if the pension plan participants participate in the relevant pension scheme according to an **individual participating contract**) do not object against making of such amendments to the pension plan.

## Article 12. Public Announcement (Advertising) of Services to be provided

(1) Any public announcement (advertising) of the activities and services to be provided by a pension fund in any form may take place only according to the pension plan registered by the **Financial Supervisory Authority**. In advertising such specified **defined contribution plan** offered by the pension fund, which does not guarantee investment return, profit or specific level of investment rate of return may not be guaranteed in any way. If a reference to the investment return of the pension plan is included, it shall be necessary to inform that the previous investment result does not guarantee similar investment result in the future.

(2) The following information shall be indicated in an advertisement of a pension plan (in placing advertisements or announcing the provisions of the pension plan to the public):

- 1) the title of the pension plan;
- 2) the firm name and legal address of the pension fund;
- 3) the name and legal address of the asset manager of the pension plan, if external asset manager outsourced;
- 4) the name and legal address of the custodian bank of the pension plan;
- 5) the place where one may get acquainted with the pension plan and the investment policy thereof.

## Article 13. General and mandatory rules for participation in pension plans and conditions of participating contract.

- (1) Any person living on the Territory of the Republic of Azerbaijan age 15 or older is eligible to participate in the one or several **pension plans** and pay contributions on a voluntary basis.
- (2) Pension plan participants may accumulate pension benefits for themselves only when participating in a specific pension plan.
- (3) Pension plan participants may participate in a pension plan both directly or through the intermediation of their employers. In both cases an individual account for the participant has to be set up.
- (4) Pension plan participants shall participate in a pension plan directly by entering into an individual participating contract with an open pension fund.

- (5) The pension plan participant or in case of a group **participation** contract the employer may choose the amount of contribution to be paid.

### Article 13.1 Individual Participation in Pension Plans

- (1) In case of an individual participation the pension plan may provide
- 1) that the participant may has to pay the contribution agreed for a certain minimum period
  - 2) that the participant may not terminate the contract with the fund before a certain period has elapsed
  - 3) that the participant may not change the fund before a certain period of time has elapsed.
- (2) In case of **Paragraph 1 Clause 1 and 2** the period may not exceed three years.
- (3) In case of **Paragraph 1 Clause 3** it may not exceed one year.
- (4) In case of **Paragraph 1 Clause 1** the participant may suspend contribution earlier in case of
- 1) unemployment subject to Law on Employment of the Republic of Azerbaijan
  - 2) disability as defined by Labor Pension Act of the Republic of Azerbaijan
  - 3) voluntary intermission of labour
- (5) In case of **Paragraph 1 Clause 2** the participant may terminate earlier in the cases mentioned above
- (6) In case of termination or suspension of contribution payment the accumulated capital will remain in the account of the participant until the date the pension benefits can be paid out according to this **Law**.
- (7) If in case of individual participation another person makes the contributions on behalf of a participant of the pension fund, the individual participating contract shall also include the identification data of the person making the contributions that are provided in conformity with the requirements specified in the regulatory enactments regulating the anti-money laundering
- (8) The board of directors of the pension fund shall submit the provisions of an individual participating contract to the **Financial Supervisory Authority**. The pension fund may enter into individual participating contracts in conformity with the provisions submitted to the **Financial Supervisory Authority** and the **Financial Supervisory Authority** within 10 days from the day of receipt of the provisions of the individual participating contract has not raised reasoned objections regarding non-compliance thereof with the requirements of this Law.

## Article 13.2. Occupational Participation in Pension Plans

- (1) Pension plan participants shall participate in a pension plan through the intermediation of their employer if the employer has entered into group participating contract with an open or closed pension fund, moreover, a group participating contract with a closed pension fund may be entered into only in such cases when the relevant employer is also on the shareholders of the same closed pension fund.
- (2) Legal relationships of the employer and employees arising in connection with the implementation of a pension plan and participation of employees therein shall be regulated by the employment contract or collective labour agreement.
- (3) In case the employer intends to change the pension fund in order to participate in another pension fund he or she shall notify the pension fund at least one month in advance. The transfer of funds is only possible with the agreement of the participant by individual consent or collective agreement; the Financial Supervisory Authority has to be notified about the transfer.
- (4) If an employer has entered into group participating contract with an open or closed pension fund, the employer and employees who participate in the pension plan may jointly establish a pension plan committee with equal representation of the employer and employees.
- (5) The pension plan committee shall be a control authority of the pension plan, which controls the management and execution of the relevant pension plan according to the provisions of the group participating contract.
- (6) If an employer undertakes to guarantee a specific amount of pay-outs for the beneficiaries of pension benefits of a pension plan, a provision shall be included in the pension plan and group participating contract, determining that the employer has a duty to make contributions on the behalf of its employees in such amount of the referred pay-outs.
- (7) If an employer takes a decision to make contributions in a pension plan in order to ensure pension benefits to its employees, such decision shall be applicable to all employees of the relevant employer according to profession, work experience and office held, as well with other objective criteria.
- (8) Participation issues of such persons to whom the same objective criteria referred to in this Article apply shall be no discrimination depending on the origin, material circumstances, age, race and nationality, sex or sexual orientation or relationship to religion.

### Article 13.3 Duty of information prior to entering into a contract

Prior to entering into individual or group participating contract the pension fund has a duty to introduce the potential pension plan participant or employer with the provisions of the pension plan, especially explaining the amount of deductions applied to participant, the conditions for termination of participation and procedures for paying out of the pension benefits capital.

### Article 13.4 General Rules on Payout of pension benefits

- (1) Upon reaching retirement age specified in a pension plan, a pension plan participant may act as follows:
  - 1) receive pension benefits according to the provisions of the pension plan;
  - 2) continue participation in the pension plan in conformity with the provisions of the pension plan and individual participating contract.
- (2) The retirement age specified in the pension plan may not be less than 55 years, except for persons employed in such special professions with minimums work experience and office held the list of which is determined by the Cabinet of Ministers
- (3) Such pension plan participant has the right to receive payouts of pension benefits according to provisions of the pension plan before reaching the retirement age that has been recognized as a first group invalid for life.
- (4) In case of death of a pension plan participant accumulation of pension benefits can be transferred to individual person (or several individual persons - beneficiaries) indicated by pension plan participant. If there is not indicated any person (beneficiary) the funds accumulated shall be paid to his/her legal heirs in the order established by the legislation of the Republic of Azerbaijan.
- (5) A pension plan participant has the right to transfer the accumulation of pension benefits or a part thereof to another pension plan.

### Article 14. Individual accounts of pension plans participants

- (1) The board of directors of the pension fund shall ensure the calculation and record-keeping of the pension benefits capital accumulated to each pension plan participant regardless of whatever such participant participates in the pension plan on the basis of group or individual participating contract.
- (2) If the pension fund guarantees specific investment return or specific pay-out benefits or provides coverage of biometrical risks, board of directors shall ensure separate record-keeping of all contributions and pay-outs, as well as creation of technical reserves for each pension plan participant.
- (3) All contributions in the pension fund that are made by the relevant person or that are made on his or her favour, as well as all investment income shall be

registered in individual accounts, registering separately the contributions for the coverage of biometrical risks.

- (4) The external auditor of the pension fund shall annually provide an opinion regarding whatever individual accounts are maintained in accordance with the requirements of this Law and other regulatory enactments, regarding with statutes of pension fund and provisions of the pension plan and participating contract.
- (5) The Financial Supervisory Authority shall determine the general rules and procedures for the calculation of the pension benefits capital accumulated.

#### Article 15. Guaranties to pension plan participants

- (1) A pension plan participant without any additional conditions has the right to all the pension benefits capital accumulated in his or her individual account, except the case provided in Article 13.2, Paragraph 3 of this Law when employer, upon terminating a group participating contract, has the right to transfer the pension benefits capital of the participant to another pension fund.
- (2) Funds, financial instruments and other property of pension plans shall be kept, recorded and managed separately from the funds of the pension fund, custodian bank, as well as asset manager of funds itself and other funds under management.
- (3) If a pension fund, custodian bank or asset manager has been declared insolvent or is being liquidated, the funds of pension plans may not be included in the property of the pension fund, custodian bank or asset manager of funds – debtor.
- (4) Contributions of pension plan participant made in pension fund or contributed on his or her favour shall be immediately (but not later the following working day after the day when contributions were transferred into the account opened for specific pension plan), transferred into individual account of the pension plan participant.
- (5) The pension benefits capital accumulated in an individual account may not become the property of asset manager, custodian bank or employer in any case. Recovery against the pension benefits capital shall be directed only if it has been recognised by a judgment of court that pension plan participant has caused losses to the third parties by committing a criminally punishable offence.
- (6) A pension plan participant shall be ensured a possibility of continuing participation in the pension plan, receiving the pension benefits capital and the information to be provided for pension plan participants specified in this Law also in cases when pension plan participant moves for permanent residence to foreign state after he or she has commenced participation in the pension plan.



- (7) Private pension fund shall ensure that the maximum fees and charges for covering pension plan expenses including administration, asset management and custodian expenses as well as payments to third persons, which are deducted from the pension plan assets, do not exceed 2,85 per cent of the average value of the pension plan assets per annum.

#### Article 16. Termination of participation in pension plans

- (1) If the employer wishes to terminate the group participating contract in order to participate in another pension fund, relevant application must be submitted to the board of directors of the pension fund and the **Financial Supervisory Authority** at least one month in advance.
- (2) If the pension plan participant wishes to terminate participation in the pension plan in order to participate in another pension plan, he or she shall submit a relevant written application to the board of directors of the pension fund (or also to the relevant employer if the participant participates in the pension plan on the basis of a group participating contract) at least one calendar month in advance.
- (3) Whenever an application regarding termination of a group participating contract and transfer of the funds accumulated to another pension fund is submitted by the employer who contributes such funds in the pension fund on behalf of its employees, such transfer may be made only with the consent of the **Financial Supervisory Authority**.
- (4) Only the funds accumulated on the behalf of such employees may be transferred whose written consent the employer has received.

#### Article 17. Information provided to pension plan participants and beneficiaries of pension benefits

- (1) The pension fund shall, upon request of a pension plan participant or a beneficiary of pension benefits, or an appropriately authorized representative of such persons, issue annual accounts and annual reports of the pension fund and such annual accounts and reports, which are related to the particular pension plan, if such fund is responsible for more than one pension plan, as well as description of the investment policy of the relevant pension plan.
- (2) The pension fund shall, not later than within seven days after permit of the Financial Supervisory Authority for making of amendments to the pension plan has been received, inform the participants of the relevant pension plan and the beneficiaries of pension benefits thereof in writing, except the cases specified in Article 11, Paragraph 10 of this Law when the pension fund shall inform participants of the relevant pension plan and beneficiaries of pension benefits regarding to amendments made within seven days after approval thereof at the board of directors of the pension fund.

- (3) Upon the request of participant, the pension fund shall issue the pension plan, as well detailed information containing:
- 1) the anticipated amount of the costs of pension benefits, if such has been specified;
  - 2) the amount of the costs of pension benefits in case of discontinuing the employment relationship;
  - 3) the investment risk concerns the participant – information regarding investment opportunities, if any, and regarding the actual investment portfolio, as well as information regarding the level of risk and costs related to investments;
  - 4) the procedures, by which the participant, upon terminating employment legal relationship with the employer, may transfer the savings of pension benefits to another pension fund or pension plan.
- (4) The board of directors of the pension fund shall, at least once a year, send a written report on relevant accounting period to each participant of the pension plan and the beneficiary of pension benefits. The following information shall be indicated in the report:
- 1) the contributions made in favour of the pension plan participant;
  - 2) the pension benefits disbursed to the participant or the accumulation transferred upon the order of the participant during the accounting period for pension benefits;
  - 3) accumulation for pension benefits;
  - 4) the total sum of deductions applied to participant, which includes deductions to the pension fund, to the asset manager of funds (in case if asset manager is outsourced from pension fund), to the custodian bank, to the **Financial Supervisory Authority** and other eligible deductions;
  - 5) the given name and surname of such independent auditor or the legal name of such commercial company of independent auditors, who or which has examined the financial accounts of the pension fund;
  - 6) information regarding whatever the opinion of the independent auditor or commercial company of independent auditors is without comments, with comments or a negative opinion has been provided;
  - 7) information regarding where the pension plan participant may be acquainted with the annual operational report of the pension fund.
- (5) In addition to that specified in this Article the pension fund shall ensure that each month the pension plan participant has access to information regarding to operational results of pension plan. The pension fund may make public the relevant information on the Internet home page thereof or also choose other appropriate information communication tool or place for making the information public.
- (6) The board of directors of the pension fund has a duty to notify the pension plan participants regarding to any changes related to appointing of an independent auditor, asset manager of funds or custodian bank, as well as provide other substantial information regarding activities of the pension fund after provision of the report.

- (7) Each beneficiary of pension benefits, upon retirement or acquisition of rights to other payments or services, shall receive relevant information regarding to them.

## Chapter IV Asset Management and Custodian services

### Article 18. Asset manager of pension plan assets

- (1) Pension plan assets may be managed by the pension fund or by commercial company with whom the pension fund has signed asset management agreement.
- (2) The asset manager of pension plan assets shall ensure implementation of the investment strategy approved for each pension plan and the compliance with the provisions in relation to pension plan investments, settle accounts for pension plan contributions according to pension plan, perform transactions with financial instruments and other transactions with pension plan assets in regarding with requirements of this Law and pension plans registered by the **Financial Supervisory Authority**.
- (3) If pension plans assets are managed by the pension fund itself then pension fund shall ensure that person who is responsible for asset management of pension plans (pension plan manager) complies with the following requirements:
  - 1) he or she has sufficient competence in the field for which the referred to person will be responsible;
  - 2) he or she has higher education and appropriate professional experience of at least three years;
  - 3) he or she is of good repute;
  - 4) he or she has not been deprived of the right to engage in commercial activity.
  - 5) a responsible person for asset management of pension plans may work only in one investment company;
  - 6) a responsible person for asset management of pension plans may manage several pension plans under the management of one pension fund.
- (4) Each pension fund shall freely select the manager of pension plan assets in accordance with provisions of this Law.
- (5) If pension fund decides to outsource function of asset management of pension plan assets then only following commercial companies can be selected for this purpose:
  - 1) a bank, which is entitled to provide investment services in the Republic of Azerbaijan;
  - 2) a life insurance company that has received licence for carrying out life insurance in the Republic of Azerbaijan;
  - 3) an investment brokerage company which is entitled to provide investment services in the Republic of Azerbaijan;

- 4) an investment management company that has received licence for carrying out asset management in the Republic of Azerbaijan.
- (6) Provisions for the management of pension plan assets shall be provided in the contract between private pension fund and asset manager. The board of directors of the pension fund shall take a decision on entering into such contract. The contract with the asset manager and any amendments therein shall be submitted to the **Financial Supervisory Authority** within three working days after signing thereof.
- (7) In addition to the requirements specified in this Law asset manager shall comply with requirements of the regulatory enactments regulating asset manager activities in relation to the duties in providing asset management services, due diligence in the provision of asset management services, provisions of the best results and execution of transaction orders.
- (8) The asset manager of pension plan assets shall be liable for compliance of transactions involving the accumulated pension capital in the pension fund with the requirements of this Law and provisions of pension plans registered by the **Financial Supervisory Authority**.
- (9) The minimum information to be indicated in the contract with asset manager of pension plans shall be as follows:
  - 1) the procedures for exchange of information, which ensure the fulfilment of the duties of the asset manager of pension plans specified in this Law and the preparation of operational reports of the pension fund;
  - 2) the duty of the asset manager of pension plans to inform the pension fund regarding changes in the status thereof in accordance with the requirements of this Law;
  - 3) the provision that the contract will cease to be in effect only after a contract with a new asset manager of pension plans has been entered into;
  - 4) the right of the pension fund to request that the asset manager of pension plans, upon the receipt of a written request, terminates a contract regarding management of pension plans without delay.
- (10) The **Financial Supervisory Authority** is entitled to request that the pension fund terminates a contract with the asset manager of pension plans, if the **Financial Supervisory Authority** detects that the asset manager of pension plans does not comply with the requirements of this Law or regulatory provisions of the **Financial Supervisory Authority**. In the case referred to in this Paragraph the **Financial Supervisory Authority**, in taking a decision, is entitled to stipulate conditions to the pension fund for attraction of a new asset manager of pension plans.

#### Article 19. Custodian of pension plan assets

- (1) Pension fund shall perform transactions with pension plan assets through intermediation of the custodian, entering into a custodian agreement therewith. The contract with the custodian and any amendments therein shall be submitted to

the **Financial Supervisory Authority** within three working days after signing thereof.

(2) Custody function shall be provided by commercial bank which is entitled to provide investment services and non-core services in the Republic of Azerbaijan, including holding of financial instruments that operates independently from the pension fund and solely in the interests of pension plans participants.

(3) Appointment of custodian:

- 1) appointment of the custodian shall be treated as a mandatory outsourcing of the respective services and therefore all requirements of the outsourcing should be applied also to the entrusting of the custody function to the third party;
- 2) the process of the selection of the custodian is entrusted to the board of the pension fund. The board of the pension fund shall freely choose the custodian by concluding written contract between the pension fund and Custodian;
- 3) the pension fund is authorised to terminate the contract immediately if any conditions of the contract or legislation are not met by the custodian;
- 4) minimum requirements of the custodian contract shall include at least:
  - a. procedure for exchange of information between the custodian and the pension fund,
  - b. description of duties of the custodian in the safe-keeping as well as liabilities toward pension fund,
  - c. oversight function envisaged over activities of the asset management,
  - d. rights of the pension fund and the **Financial Supervisory Authority** to require access to all information and documentation at any period of time,
  - e. the pension fund's rights to cancel the agreement without prior notice if custodian does not comply with any requirements of the legislation or custodian agreement,
  - f. agreement on custodian fees and procedure for reimbursement of expenses.

(4) The custodian has the following duties:

- 1) the pension fund shall open a separate account in the custodian for each pension plan;
- 2) income from pension plan assets shall be transferred to the account of the relevant pension plan held in the custodian;
- 3) the custodian shall perform transactions and other payments from the account of pension plan only on the basis of an order by the pension fund in accordance with the law, pension plan rules and the custodian agreement;

- 4) the custodian shall keep pension plan assets in accordance with the law and the custodian agreement;
- 5) the custodian has to make sure that the net asset value is calculated in accordance with the law, normative acts and pension plan rules;
- 6) the custodian has to fulfil orders of pension fund if they do not contradict the law, the normative acts, pension plan rules and the custodian agreement;
- 7) the custodian has to make sure that the payments specified in transactions with pension plan assets are duly made;
- 8) the custodian has to provide information upon the **Financial Supervisory Authority's** request that the custodian has received while performing the functions of a custodian;
- 9) the oversight function shall not be delegated to third parties and should be performed by custodian itself;
- 10) appointment of sub-custodians relates only to safe-keeping function of custodian;
- 11) the safe-keeping function might be delegated to several sub-custodians to ensure proper execution of the function. However custodian always stays liable for assets entrusted to him in custody;
- 12) if the custodian delegates its functions to a third party, such agreement shall be in effect if it has been approved by pension fund and the **Financial Supervisory Authority**;
- 13) the transfer of the custodian's duties to third parties shall not release the custodian from the liability provided for in the law and the custodian agreement;
- 14) custodian shall avoid potential conflicts of interest or incompatibility that could be an obstacle for appropriate functioning of the safe-keeping and oversight duties;
- 15) besides these general provisions, private pension fund is entitled to lay down more detailed rules for the custodian to ensure elimination of the conflicts of interest or incompatibility;
- 16) the custodian bank has the duty to notify the **Financial Supervisory Authority** and private pension fund supervisory board without delay of the actions by pension fund known to the custodian which are in conflict with the law, pension plan rules, investment policy or the custodian agreement. If the custodian receives certain orders by pension fund, that demand actions by the custodian, that, with regard to the judgement of the custodian, are in conflict with the law, pension plan rules, investment policy or the custodian agreement or if there are reasonable doubts about the legitimacy of such actions, the custodian shall prevent from execution of such orders and report those orders to the **Financial Supervisory Authority**.

(4) The custodian has the following liabilities:

- 1) the custodian shall be fully liable to pension plan participants, pension fund and third persons for losses which have been caused if the custodian

has violated the Law or the custodian agreement or lawful orders of pension fund intentionally or through negligence or has performed its duties negligently;

- 2) if the custodian has consented to a transaction which does not conform to the provisions of this Law or has failed to submit an objection regarding a violation of the provisions of this Law, the custodian and pension fund shall be jointly liable for the losses caused to the fund.

## Article 20. Change of the Custodian and Asset Manager of pension plan assets

(1) If the pension fund decides to change custodian or the asset manager which has been outsourced in accordance **Article 18, Paragraph 5** – external asset manager, it shall, within three working days after entering into the new contract, submit to the **Financial Supervisory Authority** the new contract and in addition the following documents:

- 1) a motivated decision of the board of directors of the pension fund regarding the necessity of change of the custodian or asset manager and a calendar plan of respective shift approved by the board of directors;
- 2) in case of insolvency or bankruptcy of the custodian or asset manager – also information regarding measures for the protection of the assets of the pension plans.

(2) The pension fund shall, within 30 days after a new contract with the custodian has been entered into, submit to the **Financial Supervisory Authority** documents, which certify that the new custodian has received all assets accumulated in the relevant pension plan, as well as documents certifying the ownership rights of the monetary means and other assets. If necessary, the **Financial Supervisory Authority** has the right to request an ad hoc report on the activities of the pension fund, which has been prepared in accordance with the regulatory enactments regulating development of annual reports of pension funds, and an auditor's opinion.

## Article 21. Rules and principles for investments of pension plan assets

(1) Pension fund, when investing pension plan assets, shall follow prudent person principle and act solely in the interests of the of pension plan participants, as well as observe precautionary and diversification principles which ensure the reduction of risk, security of investments, quality and liquidity in accordance with the rules of pension plan, and shall implement such investment policy which is aimed towards the growth of private pension capital of pension plan participants.

(2) Pension plan assets may be invested in the following financial instruments:

- 1) securities or money market instruments issued and guaranteed by the government and international financial authorities if such securities or money market instruments have been issued and guaranteed by:
  - a) the Republic of Azerbaijan;
  - b) a Member State of the Organisation for Economic Co-operation and Development the long-term credit rating of which in foreign currency

according to the evaluation of international rating agencies conforms to

the investment category (hereinafter – OECD), or

c) international financial authorities where at least one of OECD countries is a member;

2) securities or money market instruments issued and guaranteed by municipalities, if:

a) such securities or money market instruments have been issued or guaranteed by the municipalities of the Republic of Azerbaijan, or a municipality of a Member State of OECD, and

b) such securities or money market instruments conform to the requirements specified in **Paragraph 1, Clause 3 of this Article**;

3) the shares of commercial companies and other capital securities (hereinafter– equity securities) or debt securities of commercial companies if such securities:

a) are included in the registered regulated markets of the Republic of Azerbaijan;

b) are included in the official or comparable thereto listing of a stock exchange (regulated market) registered in OECD and the referred to stock exchange is a full member of the International Stock Exchange Federation, and

c) are not included in the regulated markets referred to in Sub-clauses “a” and “b”, but in the issuance of securities regulations it is provided that the securities therein shall be included within a year from the day when the subscription for the receipt of such securities has commenced. If the referred to securities are not included in the regulated markets referred to in Sub-clauses “a” and “b” within a year from the day when the subscription for the receipt of such securities has commenced, it shall be the duty of private pension fund to repurchase these securities for a price which conforms to the purchase value thereof;

4) term deposits in a credit institution which has received a licence to operate the credit institution and to which it is permitted to provide financial services in the Republic of Azerbaijan or in OECD;

5) open investment funds if an investment fund has been registered in the Republic of Azerbaijan or in OECD;

6) alternative investment fund if an alternative investment fund has been registered in the Republic of Azerbaijan or in OECD.

7) derivative financial instruments, if

a) such derived financial instruments are included in the registered regulated markets of the Republic of Azerbaijan or in OECD and the referred to stock exchange is a full member of the International Stock Exchange Federation, and



b) a credit institution which has received a licence to operate the credit institution and to which it is permitted to provide financial services in the Republic of Azerbaijan or in OECD has assumed obligations included in such a derivative financial instrument; and

(3) Pension plan assets shall be invested in compliance with the following investment restrictions:

- 1) the total amount of investments in securities or money market instruments issued or guaranteed by one state or an international financial institution may not exceed 35 per cent of asset of funded part that are managed and invested in accordance with a systematised set of provisions developed by private pension fund which is set out in pension plan. The referred to restriction may be exceeded when performing investments in the transferable securities issued by the Republic of Azerbaijan as well as if the assets of an pension plan have securities or money market instruments from six or more issues of one issuer and the value of securities or money market instruments of each individual issue does not exceed 20 per cent of the assets of the pension plan, as well as six months following the first contribution made in the relevant pension plan, if the value of the assets of the pension plan is less than 200,000 AZN;
- 2) the total amount of investments in securities or money market instruments issued or guaranteed by one OECD municipality may not exceed 5 per cent of the assets of the pension plan. This restriction shall not apply to investments in the transferable securities issued by municipalities of the Republic of Azerbaijan;
- 3) the investments in capital securities of one issuer may not exceed 5 per cent of the assets of the pension plan and concurrently 5 per cent of the equity capital and number of voting stocks of the relevant issuer;
- 4) investment in debt securities of one issuer may not exceed 10 per cent of the assets of the pension plan and concurrently 10 per cent of the debt securities of one issuer. This restriction shall not apply to securities referred to in **Paragraph 3, Clause 1 of this Article**;
- 5) total amount of investments in securities referred to in **Paragraph 2, Clause 3, Sub-clause "c" of this Article** may not exceed 20 per cent of the assets of the pension plan;
- 6) total amount of investments in securities referred to in **Paragraph 2, Clause 1 of this Article** may not exceed 10 per cent of the assets of the pension plan;
- 7) deposits in one credit institution may not exceed 10 per cent of the assets of the pension plan. This restriction shall not apply to claims against a Custodian;

- 8) the investments in one open investment fund may not exceed 10 per cent of the assets of the pension plan assets and 30 per cent of net assets of such investment fund;
  - 9) the investments in financial instruments issued by companies that are a part of one group with pension fund may be made only through intermediation of a stock exchange (regulated market), and investments in such securities may not exceed 5 per cent of pension plan assets;
  - 10) the investments in investment funds managed by a company that is in one group with private pension fund may not exceed 15 per cent of the assets of the pension plan;
  - 11) the total amount of investments in securities or money market instruments issued by one company or one group of companies may not exceed 10 per cent of pension plan assets;
  - 12) deposits in one credit institution or in credit institutions contained in one group and investments in transferable financial instruments issued by the same credit institution or credit institutions contained in one group in total may not exceed 15 per cent of pension plan assets. This restriction shall not apply to claims against a Custodian;
  - 13) investments in equity securities, alternative investment funds and open-ended investment funds that may make investments in equity securities or other financial instruments of equivalent risk may not exceed 50 per cent of the total assets of the pension plan;
  - 14) investments in derivatives may be performed only for risk reduction purposes to ensure against the risk of fluctuations in the value of the specified pension plan assets, which may be caused by changes in the price of assets or exchange rate, and only then if pension fund has submitted to the **Financial Supervisory Authority** regulations in which is described in detail the management policy and the derivatives valuation methods;
  - 15) investments in alternative investment funds may not exceed 10 per cent of pension plan assets;
  - 16) when using pension plan assets in transactions with the sale of assets with repurchase, liabilities arising from such transactions may not exceed 50 per cent of pension plan assets. Such transactions may only be performed for ensuring the short-term liquidity of the pension plan for a period of time up to three months.
- (4) When making investments in derivatives, the following provisions shall be met:
- 1) it has been specified in the investment policy approved by the board of directors of the pension fund;

2) the board of directors of the pension fund has created a corresponding system for the preparation of reports, risk management and control, which ensures continuous, precise and objective evaluation of derivative financial instruments;

3) the relevant investments are made to secure against the risk of specific fluctuations in value of pension plan assets, which may occur upon changing of the price of the relevant asset or currency exchange rate, or to ensure an efficient management of the portfolio;

4) the derivative financial instruments are included in the official listing of stock exchanges (regulated markets) referred to in Paragraph 2, Clause 3 of this Article or the liabilities included in the financial instrument have been undertaken by a credit institution which is entitled to provide financial services in the Republic of Azerbaijan or OECD;

5) investments in derivative financial instruments issued by one issuer (the total sum of transactions with one partner of transactions) shall not exceed 5 per cent from the pension plan assets.

(5) Companies included in one group within the meaning of this Section are commercial companies the annual accounts of which are consolidated in accordance with international accounting standards.

(6) The open currency position of the pension plan shall not exceed:

- 1) in an individual foreign currency– 10 per cent of pension plan assets;
- 2) in total in all foreign currencies – 20 per cent of pension plan assets.

(7) The **Financial Supervisory Authority** shall determine the procedures for the calculation of the open position of foreign currency.

(8) Pension funds is prohibited to:

- 1) invest pension plan assets in real estate, except investments in alternative investment funds, which may make investments in real estate;
- 2) pension plan assets may not be used for taking loans and it is prohibited to issue loans from pension plan assets, as well as to issue guarantees from pension plan assets;

(9) The investment restrictions specified in this Law, which relate to investments in transferable debt securities of one issuer or in financial market instruments, as well as in investment certificates of one open investment fund, may be exceeded if these excesses have arisen due to fluctuations in the investment value or if it has not been possible to determine or calculate the amount or value of the transferable securities or financial market instruments, as well as the value or number of investment certificates or shares issued or in circulation at the time of performing the investment.

(10) The violations of the investment restrictions specified in this Law shall not revoke the validity of the relevant transaction, but pension funds has an obligation to reimburse all losses which have occurred to the participants of the pension plan and third persons due to such operations, except the cases specified in **Paragraph 6 of this Article**.

(11) Pension funds shall, immediately, but not later than on the following working day, notify the **Financial Supervisory Authority** in writing regarding violations of the investment restrictions, as well as regarding measures for the prevention of such violations, indicating the time period for the elimination of the violations.

(12) The board of directors of a pension fund has a duty:

1) in accordance with investment provisions of the relevant pension plan, to prepare and submit to the **Financial Supervisory Authority** information regarding the investment policy of the relevant pension plan;

2) regularly, not less frequently than once every three years, to evaluate the investment policy specified and to submit to the **Financial Supervisory Authority** a detailed description of the pension plan investment policy to be implemented in future;

3) to submit immediately (not later than within three days) information regarding changes in the pension scheme investment policy to the **Financial Supervisory Authority**.

(13) The principles for investment of the pension plan assets, the methods for determination of risks related to investments and the risk management system must be determined in the investment policy of the pension plan. The minimum information to be indicated regarding the investment policy shall be as follows:

1) the objectives and conditions of the investment policy;

2) strategic asset allocation (by asset classes, geographies, maturities, sectors, currencies);

3) tactical asset allocation (by asset classes, geographies, maturities, sectors, currencies);

4) the general policy for individual security;

5) quantitative restrictions of investments, compliance with them and control thereof;

6) the limit, upon reaching which holding of the specific type of assets is terminated or restricted;

7) whether it is intended to use the derivative financial instruments, to enter into purchase agreements with repurchase or reverse repurchase conditions;

8) if using of derivative financial instruments is intended – the general policy for the use of derivative financial instruments, the methods for assessment of derivative financial instruments and the risk management policy, as well as the economic impact of the use of derivative financial instrument on investment portfolio;

9) the division of liability in decision-making;

10) the methods for determination, control and management of risks;

11) the criteria, by which return on investments is assessed;

12) a description of the policy of voting in relation to investments, which allows participation in decision-making regarding investments, also the procedure for decision-making regarding the use of the voting rights in investments;

13) information regarding the Custodian and the Asset manager (if external asset manager is outsourced), as well as the methods for the assessment of activities thereof;

14) the policy for the prevention of the potential conflict of interests, in which the way of ensuring that the Asset manager invests the pension scheme assets only in the interests of the pension scheme participants will be ensured by the pension fund in case of a potential conflict of interests;

15) if the credit ratings provided by external credit rating bodies (rating agencies) are used for the assessment of investment credit risk – the fact that such credit ratings are not used mechanically and as the only means for the assessment of credit risk.

(14) The board of directors of the pension fund shall ensure the creation of a corresponding reporting and control system in order to ascertain that the asset management of the pension plan assets is done in accordance with the policy and procedures specified by the board of directors of the pension fund.

(15) The board of directors of a pension fund shall provide the pension plan participants with free access to information regarding the investment policy, as well as place the referred to information in the Internet home page of the relevant pension fund if such has been developed, or in the Internet home page of any shareholders of the pension fund if the pension fund does not have its own Internet home page.

(16) The pension fund shall, at least once a year, perform the stress test, in which the potential development scenarios shall be assessed and documented. The sensitivity tests and scenario analysis shall be used for the stress test. Sensitivity tests shall be performed in order to determine the impact of unfavourable changes of an individual factor on the pension plan investment portfolio, detecting the cause for such extraordinary, but potentially unfavourable events or changes.

(17) The board of directors of the pension fund shall approve the results of the stress test and take a decision on activities to be carried out in case of setting in of the events or changes referred to in the stress test. A stress test approved by the board of directors of the pension fund and a decision on activities to be performed shall be submitted to the **Financial Supervisory Authority**.

(18) The **Financial Supervisory Authority** has the right to determine additional requirements and the procedures, by which a stress test shall be carried out, specifying the potential factors and scenarios to be tested.

(19) In addition to that specified in **Paragraph 17 of this Article** the **Financial Supervisory Authority** has the right to request that the pension fund performs and submits an ad hoc stress test to the **Financial Supervisory Authority**.

## Article 22. Technical reserves

(1) A pension fund, which offers a defined contribution plan with guaranteed investment return or a defined benefit pension plan, or provides for the coverage of biometrical risks in the pension plan, according to such pension funds shall create technical reserves in sufficient amount in order to be able to fulfil the liabilities specified therein in full extent and to ensure the stability of the activities thereof.

(2) The board of directors of the private pension fund referred to in **Paragraph 1 of this Article** shall approve the procedures for the creation of technical reserves and shall be responsible for the conformity with the procedures. The private pension fund shall submit the procedures for the creation of technical reserves to the **Financial Supervisory Authority** within 10 days after approval of such procedures, as well as inform regarding any changes therein within a time period indicated in advance.

(3) Technical reserves shall be created in the same currency, in which the private pension fund has undertaken the liabilities according to the pension plan offered.

(4) Technical reserves must be continuously covered by the coverage of technical reserves in accordance with the requirements of **Article 21 of this Law**.

(5) The coverage of technical reserves and technical reserves must be co-ordinated according to the types of currencies. The **Financial Supervisory Authority** shall determine the permissible deviations for the co-ordination of the coverage of technical reserves and technical reserves according to the types of currencies.

(6) If in case of setting in of the potential biometrical risks provided for in the pension plan the sum of pay-out intended for one pension plan participant exceeds 0.5 per cent from the own funds of the private pension fund, the private pension fund shall re-insure such risk according to the requirements of the regulatory enactments regulating re-insurance activities.

(7) Technical reserves shall be calculated for each pension plan separately not less than once a year.

(8) The **Financial Supervisory Authority** shall issue regulatory provisions regarding methods for the calculation of technical reserves.

(9) If the **Financial Supervisory Authority** detects that the procedures for the creation of technical reserves developed by the private pension fund do not completely ensure the fulfilment of the liabilities specified in the pension plan and participating contracts, the **Financial Supervisory Authority** has the right to request application of a specific method for the calculation of technical reserves in order to ensure an appropriate protection of the rights of the pension plan participants and beneficiaries of the pension benefits, as well as the fulfilment of the liabilities specified in the pension plan and participating contracts.

(10) If technical reserves have not been covered by assets corresponding to the requirements of **Article 21 of this Law**, the private pension fund shall, without delay, inform the **Financial Supervisory Authority** thereof and, not later than within 10 days after informing of the **Financial Supervisory Authority**, submit a plan for improvement of the financial situation thereto. The measures planned by the pension

fund for the restoration of the coverage of technical reserves and the time periods for execution thereof shall be indicated in the plan. After co-ordination of the plan with the **Financial Supervisory Authority** the private pension fund shall provide the pension plan participants with a possibility of getting acquainted therewith.

(11) The pension fund, which offers a defined contribution plan with guaranteed investment rate, or provides for the coverage of biometrical risks in the pension plan or a defined benefit pension plan, shall append an actuarial assessment to the annual report, the amount and structure of which shall be determined by the **Financial Supervisory Authority**.

## Chapter V Other rules

### Article 23. Accounting, registration and verification of activities of pension fund

- (1) Pension fund shall submit an annual report to the **Financial Supervisory Authority** consisting of the balance sheet and profit and loss account.
- (2) The pension fund shall prepare reports in accordance with the regulatory provisions issued by the **Financial Supervisory Authority**.
- (3) The pension fund shall, not later than within 10 working days after approval of the annual report and not later than four months after the end of the accounting period, submit a copy of the annual report and of the report of a sworn auditor or a commercial company of sworn auditors to the **Financial Supervisory Authority**, together with an extract from the minutes of the meeting of shareholders regarding approval of the annual report. The pension fund shall submit the documents referred to in this Article in printed form or in electronic form.
- (4) Pension fund shall prepare an internal half-yearly interim report with balance sheet and profit and loss account as at 30 June and 31 December and submit it to the **Financial Supervisory Authority**.
- (5) The information in accordance with prescribed forms pursuant to Paragraph 1 and 4 shall be submitted to the **Financial Supervisory Authority** in duplicate not later than the end of the month following the relevant half-year.
- (6) The **Financial Supervisory Authority** may request any additional documents if necessary.
- (7) The **Financial Supervisory Authority** shall submit the necessary information to the Enterprise Register according to the **Law on State Registration of Legal entities in Azerbaijan**.
- (8) In addition to that specified in **Paragraph 3 of this Article** the pension fund itself shall ensure that the annual report is published together with the report of a sworn

auditor or a commercial company of sworn auditors not later than four months after the end of the accounting year. The referred annual report shall be identical to that examined by the sworn auditor or the commercial company of sworn auditors. The pension fund may make the relevant information public on the Internet home page thereof or also choose another corresponding information media or place for making the information public.

- (9) An independent auditor or a commercial company of independent auditors shall notify in writing the pension fund regarding the results of examination of the annual report. The report shall be prepared in accordance with the Law on Audit Services.
- (10) An independent auditor or a commercial company of independent auditors shall prepare a report to the management of the pension fund. In the report specific deficiencies shall be indicated, as well as specified issues related to the activities of the pension fund shall be considered.
- (11) For the carrying out of the supervision function the **Financial Supervisory Authority** is entitled to request that the pension fund prepares reports on activities of the pension fund and pension plans thereby in accordance with the regulatory provisions issued by the **Financial Supervisory Authority** regarding the procedures for the preparation and submission of such reports.
- (12) The **Financial Supervisory Authority** has a duty to perform an examination of the activities of the pension fund not less frequently than once every three years. The **Financial Supervisory Authority** has the right to authorise an independent auditor or another person for performance of this task.
- (13) The **Financial Supervisory Authority** is entitled to request information regarding the performed examination of the annual account from the independent auditor or the commercial company of independent auditors.

#### Article 24. Insolvency of Asset manager, custodian or employer

- (1) If the external asset manager or the custodian has been recognised insolvent and bankruptcy procedures have been initiated, or the external asset manager or custodian has been deprived of the relevant licence, a new external asset manager or custodian shall be appointed by a decision of the board of directors of the pension fund and the pension plan assets shall be transferred to the new external asset manager or custodian.
- (2) If an employer who makes contributions has been recognised insolvent and bankruptcy procedures have been initiated, the pension plan of employees and the relevant group participating contract shall be terminated unless the new employer takes over all rights and obligations of the previous employer. The pension plan participants may continue participation in such pension plan with the new employer or by himself on a voluntary basis.



- (3) If an employer who makes contributions has been recognised as insolvent and bankruptcy proceedings are initiated, a participant may request transfer of the accumulated pension capital to another pension plan.

#### Article 25. Reorganization and liquidation of pension fund

- (1) The **Financial Supervisory Authority** may take all adequate measures necessary to avoid or do away with abuses that endanger the interests of the pension plan participant.
- (2) Reorganisation or liquidation of a pension fund shall take place in accordance with the **Commercial Law**, conforming to the additional provisions referred to in this Article.
- (3) A pension fund shall be reorganised or liquidated only with the permission of the **Financial Supervisory Authority**.
- (4) In order to receive a permission for reorganisation of pension funds, the pension funds involved in reorganisation process shall submit the following documents to the **Financial Supervisory Authority** :
  - 1) an application regarding reorganisation of a pension fund, indicating therein the type of organisation and the documents appended to the application;
  - 2) the draft contract on reorganisation;
  - 3) an opinion of the auditor regarding draft contract on reorganisation;
  - 4) the reorganisation prospectus (prospectuses).
- (5) In addition to the information requested in regulatory enactments information regarding subsequent activities and procedures of pension schemes of the pension fund to be reorganised, which ensure that lawful interests of the relevant pension plan participants will not be infringed, shall be included.
- (6) The **Financial Supervisory Authority** shall be authorized to require the pension fund, the members of their board of directors and council and other managers and person controlling the pension fund to provide information about all business matters. The pension fund has to provide information or submit these documents currently.
- (7) In addition to the information requested in regulatory enactments information regarding subsequent activities and procedures of pension schemes of the pension fund to be reorganised, which ensure that lawful interests of the relevant pension plans participants.
- (8) If as a result of reorganisation of the pension fund participants of the council or board of directors of the pension fund, chief actuary, head of the

internal control service of the pension fund are changed, person responsible for asset management of pension plans, the relevant pension fund shall submit the documents referred to in **Article 9** of this Law to the **Financial Supervisory Authority**.

- (9) If the composition of shareholders changes as a result of reorganisation of the pension fund, the relevant pension funds shall submit the information and documents referred to in **Article 7, Paragraph 4, Clause 3** of this Law to the **Financial Supervisory Authority** regarding the new main shareholders.
- (10) If as a result of reorganisation of the pension fund new pension funds are created, the documents indicated in **Article 7** of this Law shall be submitted to the **Financial Supervisory Authority** about them.
- (11) Supervision shall also extend to the liquidation of a pension fund.
- (12) In case of liquidation of a pension fund, pension plan participants have the right to all accumulations for pension benefits in their individual accounts.
- (13) The pension benefits capital accumulated in the pension fund to be liquidated shall be transferred to another pension account in accordance with an order of the **Financial Supervisory Authority**.
- (14) Furthermore the **Financial Supervisory Authority** should be able to prohibit payments.

#### Article 26. State Supervision of pension funds

- (1) State supervision should possibly have a preventive effect and it is the duty of the supervisor to prevent the interests of the pension plan participants being impaired.
- (2) The **Financial Supervisory Authority** may take all adequate measures necessary to avoid or do away with abuses that endanger the interests of the pension plan participants.
- (3) The **Financial Supervisory Authority** has the right to perform thematic inspections of the activities of the pension fund and to request information and documents regarding activities thereof. The pension fund has a duty to submit to **Financial Supervisory Authority** all the information requested and to present all the documents, and it may not refuse to do so by excusing it as a commercial secret.
- (4) The **Financial Supervisory Authority** on the basis of the reports submitted and inspections and audits performed shall evaluate the stability of the financial situation of the pension fund and, if necessary, provide instructions in relation to

improvement of the situation. The pension fund shall fulfil such instructions within the specified period.

(5) In order to achieve the tasks provided for the **Financial Supervisory Authority** in this Law, the **Financial Supervisory Authority** is entitled to issue further regulatory regulations to pension funds and take decisions.

(6) A representative of the **Financial Supervisory Authority** is entitled to verify the activities and documents of the pension fund at the main office and branches thereof, and to participate without voting rights at the meetings of administrative authorities of the pension fund.

(7) The **Financial Supervisory Authority** has the right to propose the convening of a meeting of the board of directors and council of the pension fund or a meeting of shareholders and to specify the matters to be examined.

(8) The pension funds may take legal action against any formal measures of the **Financial Supervisory Authority**.

#### Article 27. Tax policy regarding to pension funds

- (1) The State shall determine special procedures of tax payment in relation to pension funds, activities thereof, as well as investment income and contributions in pension funds, and personal income tax relief and corporate income tax relief.
- (2) Tax reliefs and special payment procedures shall be applied only to such licensed pension funds the pension plans of which have been registered in conformity with requirements of this Law, and to such pension plan participants who participate in the registered pension plans.

#### Article 28. Payments of pension fund for financing of Financial Supervisory Authority activities

- (1) A pension fund shall pay up to XX,XX per cent from the contributions made by pension plan participants and the contributions made on the behalf of pension plan participants to the **Financial Supervisory Authority** for financing of activities thereof.
- (2) Payments referred to in Paragraph one of this Article shall be made every quarter until the thirtieth date of the month following the quarter into account of the **Financial Supervisory Authority**.
- (3) The **Financial Supervisory Authority** shall issue regulatory provisions regarding the procedures for the calculation of the payments referred to in Paragraph one of this Article and submission of reports.

- (4) Late fee shall be calculated for late transfer of the payments referred to in Paragraph one of this Article or transfer in incomplete amount, the amount of the late fee being 0,05 per cent from the unpaid sum for each late day.

#### Article 29. Services provided by Pension Funds for Funded Part of Labour Pensions

Pension funds shall be entitled to provide services for funded part of labour pensions in accordance with provisions of law on funded part of labour pensions only after the adoption and coming in force of the respective law.

#### Article 30. Informative Reference to European Union Directives

This Law contains legal norms arising from:

- 1) **Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community;**
- 2) **Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses;**
- 3) **Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision;**
- 4) **First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community;**
- 5) **Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies;**
- 6) **Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority);**

- 7) **Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings.**