

The Establishment, Activities, and Supervision of Funds for Occupational Retirement Benefits Law of 2012, is issued by publication in the Official Gazette of the Republic of Cyprus, in accordance with section 52 of the Constitution.

Number 208(I) of 2012

LAW PROVIDING FOR THE ESTABLISHMENT, ACTIVITIES, AND SUPERVISION OF FUNDS FOR OCCUPATIONAL RETIREMENT BENEFITS AND RELATED MATTERS

Preamble. Amongst others, for the purpose of harmonisation with the act of the European Community titled "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", as amended by Article 4 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010,

Official Gazette of the EU:
L.235,
23.9.2003, p.
10; L.331,
15.12.2010,
p.120

The House of Representatives votes as follows:

PART I – INTRODUCTORY PROVISIONS

Short title 1. This Law shall be referred to as the Establishment, Activities, and Supervision of Funds for Occupational Retirement Benefits Law of 2012.

Interpretation 2. (1)In this Law, unless the context otherwise requires –

"biometrical risks" means risks linked to death, disability and/or longevity;

"Administrative Committee" shall mean the committee that is responsible for the management of the Fund, in accordance with its rules of operation;

"International Accounting Standards" means International Accounting Standards (IAS), International Financial Reporting Standards (IFRS), and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, and future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB), as adopted by the European Union in accordance with the act of the European Community titled "Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards", as amended most recently with Regulation (EC) No 97/2008 of the European Parliament and of the Council of 11 March 2008;

Official Gazette of the EU,
L.243,
11.09.200, p.1,
L.97, 9.4.2008,

p.62

25 of 1968
23 of 1969
26 of 1970
34 of 1972
5 of 1973
85 of 1979
55 of 1980
65(l) of 1993
79(l) of 1996
26(l) of 1997
110(l) of 1999
165(l) of 2001
66(l) of 2002
72(l) of 2002
169(l) of 2002
18(l) of 2005

Official Gazette
of the EU:
L331,
15.12.2010,
p.48

44 of 1981
150 of 1986
23(l) of 1995
130(l) of 2002
75(l) of 2005

146(l) of 2006
81(l) of 2007

Cap. 113
9 of 1968
76 of 1977
17 of 1979
105 of 1985
198 of 1986
19 of 1990
46(l) of 1992
96(l) of 1992
41(l) of 1994
15(l) of 1995
21(l) of 1997
82(l) of 1999
149(l) of 1999
2(l) of 2000
135(l) of 2000

“beneficiary” means a person receiving retirement benefits;
“Industrial Disputes Court” shall have the meaning ascribed to it in the Annual Holidays with Pay Law, as it may be amended or replaced from time to time;

“EIOPA” means the European Insurance and Occupational Pensions Authority, which was established by the European Union act titled “Regulation (EU) No. No 1094/2010 of the European Parliament and of the Council of 29 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC”.

“Registered Fund” means a Fund registered under the Provident Funds Law, as it may be amended or replaced from time to time and/or the Establishment, Activities, and Supervision of Funds for Occupational Retirement Benefits Law, as it may be amended or replaced from time to time, provide that it has not been dissolved prior to the entry into force of this Law;

“Auditor” shall mean –

(a) an auditor according to the details provided for in the Companies Law,

151(l) of 2000
76(l) of 2001
70(l) of 2003
167(l) of 2003
92(l) of 2004
24(l) of 2005
129(l) of 2005
130(l) of 2005
98(l) of 2006
79(l) of 2007
71(l) of 2007
131(l) of 2007
186(l) of 2007
87(l) of 2008
41(l) of 2009
49(l) of 2009
99(l) of 2009
42(l) of 2010
60(l) of 2010
88(l) of 2010
53(l) of 2011
117(l) of 2011
145(l) of 2011
157(l) of 2011
198(l) of 2011
64(l) of 2012
98(l) of 2012

(b) The Auditor General of the Republic and/or the Audit Office of Cooperative Societies,

in relation to the Funds, the control of which falls under the competence of each of the above-mentioned;

“Undertaking” shall mean a natural or legal person that carries out economic or commercial activities, regardless of whether or not these activities are gainful and it shall include every undertaking governed by private or public law, over which a public authority may exercise, directly or indirectly, a dominant influence by virtue of their ownership of it, their financial participation in it or the rules that govern it; for the purposes of this definition, it is presumed that dominant influence is exerted when the public authority directly or indirectly-

- a) holds the major part of the subscribed capital of the undertaking, or
- b) controls a majority of the voting rights attaching to the shares in the undertaking, or
- c) is in a position to appoint at least half (50%) of the members of the administrative, management or supervisory body of the undertaking;

“Employer” includes the Government of the Republic;

“European Commission” means the Commission of the European Union;

“Registrar” shall mean the person appointed as the Registrar of Occupational Retirement Benefit Funds in accordance with section 4;

“Subsidiary undertaking” shall have the meaning ascribed to it in section 148 of the Companies Law;

“Operational rules” means the legislation, contract, agreement, trust deed or other document, as the case may be, under which the Fund is established and operates;

“Regulations” means the Regulations issued under this Law;

“Repealed laws” means the laws repealed under section 55;

“Member State” means a state that is member of the European Union and/or a contracting party to the Agreement on the European Economic Area signed in Oporto on 2 May 1992 and was adapted by the protocol, signed in Brussels on 17 May 1993, as this agreement may be further amended or replaced from time to time;

“home Member State” means the Member State in which a Fund has its registered office and its main administration or, if it does not have a registered office, its main administration;

“host Member State” means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members;

“accounts” means the complete set of financial statements, as defined in the International Accounting Standards;

“member” means a person, whose occupational activity entitles or will entitle him/her to retirement benefits in accordance with the provisions of a pension scheme;

“Holding company” has the meaning ascribed to the same term in section 148 of the Companies Law;

“Register” means a register in which every Fund is entered and which is maintained by the Registrar under the provisions of section 5;

“Employee” has the meaning ascribed to the same term by the Social Insurance Law, as it may be amended or replaced from time to time;

59(I) of 2010
114(I) of 2010
126(I) of 2010
2(I) of 2012
37(I) of 2012

Official Gazette
of the EU:
L345,
19.12.2002,
p.1, L.76,
19.3.2008,
p.44.

“Directive 2002/83/EC” means the European Community act titled “Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, as amended most recently by Directive 2008/19/EC of the European Parliament and of the Council of 11 March 2008;

“Directive 2003/41/EC” means the European Community act titled “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”, as amended by Article 4 of the Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010;

Official Gazette
of the EU:
L.145,
30.4.2004, p.1,
L.331,
15.12.2010,
p.120.

“Directive 2004/39/EC” means the act of the European Community titled “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC”, as amended most recently by Directive 2010/78/EC of the European Parliament and of the Council of 24 November 2010;

Official Gazette
of the EU,
L.114,
27.4.2006, p.1

“Directive 2006/31/EC” means the act of the European Community titled “Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines”;

Official Gazette
of the EU:
L177,
30.6.2006, p.1,
L.331,
15.12.2010,
p.120

“Directive 2006/48/EC” means the act of the European Community titled “Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)”, as amended most recently by Directive 2010/78/EE of the European Parliament and of the Council of 24 November 2010;

Official Gazette
of the EU:
L.302,
17.11.2009,
p.32; L.174,
1.7.2011, p.1

“Directive 2009/65/EC”, means the act of the European Community titled “Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)”, as amended most recently by Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011;

“directives” shall mean the regulatory directives issued by the Registrar and published in the Official Gazette of the Republic;

“Group” means the group to which the undertaking belongs, and which comprises of –

- a) the holding company,
- b) its subsidiaries,
- c) the entities, in which the holding company or its subsidiaries hold a participation, directly or by way of control, of at least 10% of the voting rights or 20% of the capital,
- d) The undertaking or undertakings, which, although not associated with the holding company with the links referred to in paragraphs (b) and (c),
 - i. have been placed along with the holding company under single management following an agreement concluded with the holding company or in accordance with the terms of their articles of association, or
 - ii. their administrative, management or supervisory bodies consist in their majority of the same persons holding office during the financial year and until the consolidated financial statements are drawn up;

“Board of the Funds for Occupational Retirement Benefits” or “the Board” means the Board established by section 46;

“Retirement benefits” means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death.

“Pension scheme” means a scheme in place pursuant to legislation, contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions;

“Fund for Occupational Retirement Provisions”, or “Fund”, means a Fund, irrespective of its legal form, operating on a funded basis, established in the Republic separately from any sponsoring undertaking or trade union for the purpose of providing retirement benefits in the context of an occupational activity, on the basis of legislation either an agreement or a contract agreed:

- a) individually or collectively between the employer(s) and the employee(s) or their respective representatives, or
- b) with self-employed persons, in compliance with the legislation applicable in the Republic,

and which carries out activities directly arising therefrom;

“Fund of the Member State” means a Fund based in a member state other than the Republic;

“Provident Fund” means a Fund providing retirement benefits paid as lump sum payments;

“Pension Fund” means a Fund providing a given level of pension benefits, paid as periodic payments or partially as periodic payments and partially as lump sum payments;

“Minister” shall mean the Minister of Labour and Social Insurance;

“sponsoring undertaking” means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which pays contributions into a Fund.

(2) In this Law, reference to an act of the European Union and/or the European Community means said act, as it may be amended or replaced from time to time.

Scope of application

3. (1) This Law applies to all Funds, with the exception of—
 - a) The institutions that apply social security schemes, which fall under —
 - i. The act of the European Community titled “Regulation (EC) No 883/2004 of the Council of 29 April 2004 on the application of social security schemes to employed persons, to self-employed persons, and to members of their families moving within the Community”, as amended most recently by Regulation (EU) no. 1231/10 of the European Parliament and of the Council of 24 November 2010 extending the application of Regulation (EC) No 883/2004 and Regulation (EC) no. 987/2009 to nationals of third countries, who are not already covered by these regulations solely on the ground of their nationality, and
 - ii. The act of the European Community titled “Regulation (EC) No. 987/2009 of the European Parliament and of the Council of 16 September 2009, on the determination of the process for the implementation of regulation (EC) no. 883/2004 on the coordination of social security schemes”:

Official Gazette of the EU:
L166,
30.4.2004,
L.284
30.10.2009,
L.344
29.12.2010,
p.1-3

Provided that this Law applies also to these institutions in respect of their non-compulsory occupational retirement provision business. In that case, the liabilities and the

corresponding assets shall be ring-fenced and it shall not be possible to transfer them to the compulsory pension schemes which are considered as social-security schemes or vice versa;

b) The institutions shall fall within the scope of application of any of the following laws:

35(I) of 2002
141(I) of 2003
165(I) of 2003
69(I) of 2004
70(I) of 2004
136(I) of 2004
152(I) of 2004
153(I) of 2004
240(I) of 2004
17(I) of 2005
26(I) of 2008
105(I) of 2009
50(I) of 2011

i. The Law on Insurance Services and other Related Issues, as it may be amended or replaced from time to time,

78(I) of 2012

ii. Of the Open-end Collective Investment in Transferable Securities (UCITS) and related matters Law, as it may be amended or replaced from time to time,

144(I) of 2007
106(I) of 2009

iii. Of the Investment Services and Activities and Regulated Markets Law, as it may be amended or replaced from time to time,

66(I) of 1997
74(I) of 1999
94(I) of 2000
119(I) of 2003
4(I) of 2004
151(I) of 2004
231(I) of 2004
235(I) of 2004
20(I) of 2005
80(I) of 2008
100(I) of 2009
123(I) of 2009
27(I) of 2011
104(I) of 2011
107(I) of 2012

iv. Of the Banking Law, as it may be amended or replaced from time to time, and

22 of 1985
68 of 1987
190 of 1989
8 of 1992
22(I) of 1992
140(I) of 1999
140(I) of 2000
171(I) of 2000

v. The Cooperative Societies Law, as it may be amended or replaced from time to time,

8(l) of 2001
123(l) of 2003
124(l) of 2003
144(l) of 2003
5(l) of 2004
170(l) of 2004
230(l) of 2004
23(l) of 2005
49(l) of 2005
76(l) of 205
29(l) of 2007
37(l) of 2007
177(l) of 2007
104(l) of 2009
124(l) of 2009
85(l) of 2010
118(l) of 2011
130(l) of 2012

- c) Pension schemes or Funds which operate on a pay-as-you-go basis;
- d) Funds, the memorandum of association of which provides that the employees of the sponsoring undertakings have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits:

Provided that said Funds shall inform the Registrar on the above-mentioned situation within the timeframe provisioned in section 6(1), by presenting their rules of operation so that this Law does not apply to them;

- e) companies using book-reserve schemes with a view to paying out retirement benefits to their employees:

Provided that said companies shall inform the Registrar of this situation within the timeframe provided in section 6(1) or within a three-month deadline from the constitution of the reserves, if said constitution is subsequent to the entry into force of this Law, so that this Law does not apply to them.

(2) In the event that –

- a) Provident Funds –
 - i. Have less than 100 members,
 - ii. Have overall assets of less than €4.000.000, the volume of which is revised by the Registrar every three (3) years, taking into consideration the general salary increases, and
 - iii. Do not provide benefits of defined volume, or

- b) Pension or Provident Funds –
 - i. That provide benefits of defined volume,
 - ii. Have less than one hundred members,
 - iii. Have technical provisions less than €4.000.000, the amount of which is revised by the Registrar every three (3) years, taking into consideration the general salary increases,

Said Funds are exempted from the obligation imposed by section 18 upon the members of the Administrative Committees, to have the same appropriate professional qualifications and experience, and from the obligation imposed by section 24 for a written statement of investment policy principles:

Provided that the Registrar may request any information and data relating to the investments of any Fund referred to in this paragraph.

(3) For the purposes of paragraph (2), in respect of each year, consideration is given to the number of members and the assets or the technical provisions of the Fund on 31st December of the preceding year.

[Paragraph 4 of section 3 is repealed under L.111(I) of 2014]

Provided that the Superintendent of Insurance, who is the person in charge for the supervision of insurance companies under provisions of the Law on Insurance Services and other Related Issues, shall ensure within the framework of his supervising work the strict separation of the works relating to the occupational retirement provisions.

PART II – REGISTRAR OF FUNDS FOR OCCUPATIONAL RETIREMENT BENEFITS

- Registrar
- 4. (1) The Minister shall appoint a public official working at the Ministry of Labour and Social Insurance as the Registrar of Funds for Occupational Retirement Benefits.
 - (2) The Registrar is responsible for the supervision of the Funds, with the purpose of securing their operation according to this Law and the Regulations, the protection of the rights of the Funds' members in relation to occupational retirement benefits and the promotion and safeguarding of the good management of the Funds.
 - (3) The Registrar exercises the powers and competencies conferred upon him by this Law and the Regulations.

PART III – ESTABLISHMENT, REGISTRATION AND LEGAL PERSONALITY OF
THE FUNDS

Register and
archive of the
Funds.

5. (1) For the purposes of this Law, the Registrar shall keep a register and an archive of the Funds, in which the data, the information, and the documents required by the Regulations are recorded and maintained.
- (2) In the event of cross-border activity according to section 39, the Registrar shall enter in the register the member states where the relevant Fund operates.
- (3) The Registrar shall inform the EIOPA of every entry he/ she makes pursuant to this section.

Application for
registration of
the Fund

6. (1) Within sixty (60) days from the establishment of the Fund, the Administrative Committee or the authorised representatives of the founders of the Fund shall submit to the Registrar an application for registration of the Fund.
- (2) The application for registration shall be submitted in the format that is approved by the Registrar and accompanied by the rules of operation of the Fund, signed by the applicants, and by a declaration, which refers to the name, the identity card number, and the address of each of the applicants.
- (3) Regardless of the provisions of section (2), the Registrar may ask of the applicants to furnish any documents, data or information he may deem necessary in order to examine the application.
- (4) In the event that a draft law or a draft regulatory administrative act provides for the establishment or the authorisation for the establishment of a Fund, the Registrar's views shall be obtained concerning the compatibility of the draft law or draft act with this Law and Regulations, prior to the approval of the draft law by the Council of Ministers or the issuance of the draft as a regulatory administrative act.

Registration of
the Fund

7. Once the Registrar is satisfied, that the legitimate conditions are met and that the rules of operation of the Fund comply with the provisions of this Law, he/she accepts the application, proceeds with the registration of the Fund in the register and issues a certificate of registration.

Legal
personality

8. (1) Except if a Fund has a legal personality under legislation, it shall gain legal personality upon its registration in the register, and it ceases to exist once the Fund is dissolved.
- (2) A valid certificate of registration constitutes proof of the registration of the Fund, the date of its registration and the compliance with all legal

conditions.

Rules of
operation of
the Fund

9. (1) Subject to the other provisions of this Law, every Fund shall be governed by the rules of its operation.

(2) The rules of operation of the Fund specify at least –

- a) The name and the registered office of the Fund,
- b) The conditions for admission of the members and the conditions under which they cease to be members,
- c) The rights and obligations of the members,
- d) The composition of the Administrative Commission of the Fund and the conditions for election or appointment or cessation of its members, its competencies and its duties, as well as its rules of operation,
- e) The conditions under which the assembly of the members may be convened, held, and reach decisions,
- f) The conditions under which the rules of operation of the Fund may be amended,
- g) The amount or the percentage of contributions by the members and/or the sponsoring undertaking,
- h) Keeping and auditing the accounts of the Fund, and
- i) The conditions and terms for the Fund's dissolution.

(3) Members of the Fund are prohibited from having more than one vote, under the rules of operation of the Fund, and any such additional vote shall be invalid.

Prohibition of
discrimination
on grounds of
gender

10. (1) Any direct or indirect discrimination on the grounds of gender in the Funds is prohibited and any provision of the rules of operation of any Fund containing such discrimination is invalid.

133(I) of 2002
40(I) of 209

(2) For the purposes of this section, the provisions of equal treatment between men and women in occupational social security schemes Law shall apply, as it may be amended or replaced from time to time.

Rejection of
application for
registration

11. When the Registrar rejects an application for registration of a Fund, he/she shall send to the applicants, within ten (10) days from the date of

his decision, a written notification of the fact, which includes the reasons for the decision and reference to the applicants' right to appeal against the decision before the Supreme Court.

Revocation of a certificate of registration

12. (1) The Registrar may revoke at any time the certificate of registration of a Fund, if it is proven that the Fund deliberately and despite the relevant warning of the Registrar breached any of the provisions of this Law or the rules of operation of the Fund, or that it ceased to exist.

(2) Before a certificate of registration of a Fund is revoked, the Registrar shall furnish the Fund with a written notice of at least one (1) month, which specifies the grounds for the intended revocation.

(3) A Fund, of which the certificate of registration is revoked by virtue of this section, shall not accept new members and shall not receive contributions in relation to the employment of the members once it is informed on the decision of the Registrar.

Registration of amendments of the Fund's rules of operation

13. Any amendment in the Fund's rules of operation may be applied retrospectively from its voting, but solely after it has been approved and entered in the register, following a written application of the Administrative Committee of the Fund, which is submitted to the Registrar within fifteen (15) days from such amendment.

Notice of changes in the Administrative Committee of the Fund.

14. Any change in the members of the Administrative Committee shall be communicated to the Registrar within ten (10) days from said change.

Consequence of failure to register, of rejection of registration application, etc.

15. (1) Regardless of any other law, any Fund that fails to submit application for registration within the deadline stipulated in this Law, and any Fund, the application for registration of which has been rejected, shall not accept new members and shall not receive contributions in relation to the employment of its members, once it is informed of the Registrar's decision:

Provided that with regard to a Fund that fails to submit an application, this paragraph applies after the lapse of a period of fifteen (15) days from the receipt of the Registrar's warning on the consequences of a non submission of application.

(2) The Fund referred to in paragraph (1), ceases to exercise any activity except for the activities the Registrar may deem necessary, as the case may be, in order to secure the rights of the members and of the beneficiaries.

(3) The provisions of this Law shall apply *mutatis mutandis* and for every

Fund that is referred to in paragraph (1), until its winding-up is decided.

(4) The timing of the winding-up of the Fund, to which the provisions of this section apply, shall be determined by the Registrar.

PART IV – FRAMEWORK OF THE OPERATION AND SUPERVISION OF FUNDS THAT HAVE THEIR REGISTERED OFFICES IN THE REPUBLIC

Activities of the Funds 16. Each Fund shall restrict its activities to those connected with the retirement benefits and to activities deriving therefrom.

Distinction between the sponsoring undertaking and the Funds 17. The sponsoring undertaking and the Fund are separate legal entities with separate legal personality so that, in the event of bankruptcy of the sponsoring undertaking, the assets of the Fund are secured to the interest of its members and its beneficiaries.

PART V – FUND MANAGEMENT, BENEFITS, AND COURT JURISDICTION

Administrative Committee 18. (1) Every Fund is managed by an Administrative Committee, which consists of at least three persons, at least one of which is a representative of the Fund members:

Provided that the Administrative Committee of a Provident Fund that is financed by contributions of the sponsoring undertaking and its employees, consists at least by one third of representatives of the Fund members and at least by one third of representatives of the sponsoring undertaking:

Provided further that the above reservation does not apply in the event that a collective agreement requires of the sponsoring undertaking to transfer the right of its representation in the Administrative Committee to the representatives of the Fund members.

(2) The members of the Administrative Committee must be persons of good repute, who either have the appropriate professional qualifications and experience themselves or are assisted by appointed consultants who have the required professional qualifications and experience. The Registrar may issue instructions defining the required professional qualifications depending on the volume and the nature of the Fund's activities.

(3) For the purposes of paragraph (2), a person of good repute is considered to be a person who respects the bounds of legality and code of conduct of the fund managers, as laid down in directives, and who –

a) has not been convicted of an offence concerning professional

conduct and/or in relation with fraud, misappropriation and/or money laundering;

- b) has not been convicted of false declarations concerning provision of information required under this Law; and
- c) is not bankrupt or being wound up and has not been the subject of proceedings concerning these matters.

(4) The professional qualifications and experience under this section shall be proven by certificates issued by approved educational and professional bodies, as the case may be, which demonstrate the acquisition of knowledge and qualifications that are relevant to the subject of the work of the Administrative Committee.

(5) The Administrative Committee submits to the Registrar, in a form designated by the latter's decision, a declaration by each of its members that none of the barriers provisioned in paragraph (3) apply in its case. Said declaration is submitted together with the disclosure of the names of the Committee members to the Registrar in accordance with the details provisioned for in this Law.

(6) A member of the Administrative Committee shall not hold office as at the day he/she ceases to meet the requirements in order to be considered a person of good repute, in the sense of paragraph (3). In such case, the Administrative Committee shall communicate this fact to the Registrar and commence the procedure for filling the post that has fallen vacant as soon as possible and according to the Fund's rules of operation.

Competency of
the
Administrative
Committee

19. (1) The Administrative Committee of every Fund shall be in charge for its affairs and represents it in judicial and extrajudicial cases.

(2) The extent of the powers of the Administrative Committee is defined by the rules of operation of the Fund, while this definition shall apply against third parties. In case of doubt, its powers extend to every relevant act.

(3) A transaction that is made by the Administrative Committee of a Fund, within its powers, shall bind said Fund.

(4) The Fund shall be responsible for the acts or omissions of the bodies that represent it, provided that the act or omission took place during the execution of the duties assigned to said bodies and it entails obligation of compensation. Moreover, the person responsible shall be fully liable as well, jointly and severally with the Fund.

Other rules of operation of the Fund

20. (1) The Administrative Committee of every Fund applies the established rules of operation of the pension schemes it manages and informs sufficiently its members about these regulations.

(2) Where the sponsoring undertaking guarantees the payment of the retirement benefits, it is committed to regular financing.

(3) The members are sufficiently informed of the conditions of the pension scheme, in particular concerning:

- a) the rights and obligations of the parties involved in the pension scheme;
- b) the financial, technical, and other risks associated with the pension scheme, and
- c) the nature and distribution of those risks.

(4) (a) Where it is necessary to protect the assets or the interests of its members and beneficiaries, the Fund may submit application to the Registrar concerning the approval of the conferral of its management, in whole or in part, to persons, who shall act on its behalf.

(b) The Registrar may require on his/her own initiative the conferral, in whole or in part, of the Fund management to persons acting on its behalf, when it is necessary to protect the assets or the interests of its members and beneficiaries.

(5) In the case of a cross-border activity, as referred to section 39, the conditions of operation of every Fund shall be subject to a prior authorization by the Registrar. When giving such authorization under this paragraph, the Registrar shall immediately inform EIOPA.

Bookkeeping

21. The Administrative Committee of every Fund shall keep or ensure that the following are kept:

- a) Books of minutes, as provisioned in its rules of operation or specified in the directives, where the minutes and the decisions of the Administrative Committee and every general assembly of the members are recorded,
- b) A register of the members of the Fund, and a register of the undertakings sponsoring in any manner, and which shall contain such details, as specified in the Regulations,
- c) Regular accounts, which shall demonstrate a clear picture of the transactions and trades, as well as evidence of the Fund's collections and payments, as specified in the Regulations,

d) Any other accounts and reports specified in the directives.

Annual
accounts and
annual reports

22. (1) Within seven (7) months from the closure of each financial year, the Administrative Committee of every Fund shall draw up accounts and an annual report for said year. Where the Fund manages several pension schemes, the Administrative Committee shall prepare separate annual accounts and an annual report for each scheme.

(2) The annual accounts and the annual reports referred to in paragraph (1), shall give a true and fair view of the Fund's assets, liabilities, income and expenses, and of the financial position of the Fund and they shall be drawn up in accordance with the International Accounting Standards.

The annual accounts and information in the reports shall be consistent, comprehensive, fairly presented, and duly approved by an auditor appointed by the general assembly of the Fund members:

Provided that it is prohibited for the sponsoring undertaking or its employee or a member or an employee of the Fund to be appointed as the Fund's auditor.

(3) The auditor may inspect the books, the documents, and the accounts of the Fund and to require of any member of the Administrative Committee or another official of the Fund to provide information or clarifications that he/ she considers necessary for the accomplishment of his/her tasks.

(4) The auditor shall prepare and submit his/her report within a reasonable timeframe to the Administrative Committee, which publishes it together with the Fund accounts, in the manner specified by the Registrar's directives.

(5) The accounts of the Fund shall be signed by at least two (2) members of the Administrative Committee, at least one (1) member of which represents the members of the Fund.

Information to
be given to the
members and
beneficiaries of
the Fund

23. (1) Members and beneficiaries of every Fund and, where applicable, their representatives, shall receive the information set out in the Regulations.

(2) The Administrative Committee must convene a general assembly of the members at least once a year, pursuant to the Fund's rules of operation, where it must present its annual report, the annual accounts, and the balance sheet of the Fund, together with the auditor's report.

Statement of
investment
policy

24. (1) Each Fund draws up and reviews at least once every three years, a written Statement of its investment policy principles:

principles

Provided that the statement shall be revised immediately after any significant change in the investment policy.

(2) The statement referred to in paragraph (1), shall contain at least, such matters as the investment risk measurement methods, the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities.

Information to be provided to the Registrar and other obligations of the Fund

25. (1) The Registrar may require information or any relevant document from a Fund, concerning all the matters that relate to the Fund's activity:

Provided that, said information may be requested not only by the Fund and the Administrative Committee, but also by persons who have been entrusted with the management of the Fund, as well as by any person who undertook the task of controlling the Fund.

(2) The Registrar shall supervise the relationships between the Fund and other companies or between Funds, when Funds transfer functions to those other companies or Funds (outsourcing), influencing the financial situation of the Fund or being in a material way relevant for effective supervision.

Other documents to be submitted to the Registrar

26. (1) The Fund shall submit to the Registrar –

- a) the statement of investment policy principles it draws up in accordance with section 24; with regard to a fund that is registered for the first time under this Law, the statement shall be submitted within ninety (90) days from the registration of the Fund, unless the Registrar decides otherwise;
- b) within seven (7) months from the closure of every financial year, the annual accounts and the annual report it draws up pursuant to paragraph (1) of section 22, including the auditor's report and any statements and information concerning the activities of the Fund, which the Registrar determines by his/her decision;
- c) within seven (7) months from the closure of every financial year, the actuarial valuations prepared pursuant to section 33(3) and (4).

(2) In order to exercise his/her competencies, the Registrar may require of the Fund any documents he/she considers necessary for the application of the provisions of this Law, including –

- a) actuarial valuations, methods and assumptions;

- b) asset-liability studies;
- c) evidence of consistency with the investment-policy principles;
- d) evidence that contributions have been paid in accordance to the rules of operation of the Fund or based on the recovery program;
- e) internal interim reports.

Obligation of disclosure of omissions

27. When any member of the Administrative Committee, the director and any other person relating to the management of the Fund, reasonably believes that a breach or failure to comply with any obligation or duty provisioned by this Law or the Fund's rules of operation is of essential significance for the exercise of the responsibilities of the Registrar, must disclose such breach or omission to the Registrar.

Obligation and due date for the payment of contributions.

28. (1) Every sponsoring undertaking pays to the Fund –

- a) Every amount received or withheld by it as a member's contribution to said Fund;
- b) The contribution payable by it for the period for which it received or withheld a member's contribution.

(2) In the case of a Fund that operates for self-employed persons, the member shall pay the contribution specified by the Fund's rules of operation.

(3) The time and method of payment of contributions to the Fund shall be determined with Regulations.

(4) The Administrative Committee of each Fund must take all steps and measures, including judicial ones, in order to collect any late contribution payments.

(5) When the sponsoring undertaking omits or delays the payment of contributions to the Fund, the Administrative Committee is obliged within two (2) months from the expiry of the deadline for the payment of contributions to notify the Registrar in writing, informing him/her of the period for which the contributions are owed and their estimated amount.

(6) The sponsoring undertaking or the self-employed person, as the case may be, is charged with an additional contribution calculated on the amount of the delayed contributions, with interest rate equal to the statutory interest from the expiry of the deadline for the payment of the contributions:

Provided that the Fund's rules of operation may provide for a higher interest rate.

(7) In the event of a continuing or recurrent failure or refusal of the sponsoring undertaking to pay the contributions it owes pursuant to the rules of operation of the relevant Fund, the Registrar may order such undertaking to discontinue withholding contributions from the members' remuneration, having first inform the Administrative Committee on his/her intention. Regulations provide for the circumstances under which the members may pay their personal contributions directly to the Fund.

Benefits from Funds

29. (1) Subject to the other provisions of this Law, the benefits paid by each Fund are determined by its rules of operation.

(2) Benefits from the Fund may be paid only to a member and the member's legal heirs –

- a) In the case of retirement that takes place once the member exceeds the age limit specified in the operational rules,
- b) In the event that the member becomes incapable of carrying out his/her work,
- c) In the event of the death of the member,
- d) In the event that the member's employment is terminated, or
- e) In the event that the Fund is dissolved:

Provided that, in the case of a member of a Fund, which operates for employees of several sponsoring undertakings, regardless of whether or not these pursue the same financial activity, termination of the employment of such member does not constitute entitlement to the benefit under paragraph (d), prior to the lapse of six (6) months and provided that the member has not been employed by one of the other undertakings in the meantime.

(3) Reduction of accumulated entitlements from the Fund is not permitted, except in the case of voluntary termination of the member's employment prior to the completion of four (4) years of continuous employment at the sponsoring undertaking.

Provided that, with regard to a Provident fund, reduction of the accumulated entitlements that arise from the personal contributions of the member is prohibited.

(4) The method of calculation of the amount of benefit paid by the Provident Fund to a member or his/her legal heirs is defined by

Regulations.

Prohibition to
assign a benefit

30. (1) Subject to paragraph (3), any assignment or charge of a benefit by a Fund, as well as any agreement on its assignment or charge is invalid and in the event that the person entitled to the benefit goes bankrupt, said benefit does not reach the bankruptcy administrator or any other person acting on behalf of the creditors of the person who went bankrupt.

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11 of 1965
161 of 1989
288 of 1989
51(l) of 1999
134(l) of 1999
58(l) of 2003
66(l) of 2004
138(l) of 2006

(2) Subject to paragraph (3), benefit by the Fund shall not be liable to seizure under the Civil Procedure Law.

(3) Provisions of paragraphs (1) and (2) do not apply in the event that a member of the Provident Fund concludes a loan with the Fund to which he/she is a member.

Conditions for
the period
within which
members of
the Provident
Fund may
make claims.

31. Regardless of the provisions of section 29(2), Regulations shall determine the conditions under which a claim of a member of a Provident Fund or the beneficiaries referred to in said section is time-barred, as well as how to spend the amount that, in the absence of this section, would have been paid to the member or to said beneficiaries.

Jurisdiction of
the Industrial
Disputes
Tribunal
concerning the
Funds

32. (1) Subject to Article 146 of the Constitution, any dispute that rises because of the application of the provisions of this Law between a member or a beneficiary and a Fund, falls under exclusive competence of the Industrial Disputes Court.

(2) The Industrial Disputes Court has jurisdiction to address any dispute under the provisions of paragraph (3), regardless of whether the facts or the circumstances of the dispute constitute an offence under this or any other Law.

(3) The Industrial Disputes Court has the power, at the absolute discretion of the Court's President, to re-address any case or revise any judgement it reached in any dispute at any time, if the President considers this proper and fair.

PART VI – CAPITAL RESERVES, INVESTMENTS, MANAGERS, CUSTODIANS
AND CROSS-BORDER ACTIVITIES

Technical
provisions of

33. (1) All Funds establish at all times in respect of the total range of their pension schemes an adequate amount of liabilities corresponding to the

the Fund

financial commitments which arise out of their portfolio of existing pension contracts, in accordance with the rules of operation of each scheme.

(2) A Fund providing cover against biometric risks or that guarantees either an investment performance or a given level of benefits, establishes sufficient technical provisions in respect of the total range of these schemes.

(3) The calculation of said technical provisions shall take place every year, with valuation date the closure of the financial year.

Provided that a calculation is allowed once every three years if the Fund provides members and the Registrar with a certification or a report with valuation date the closure of the financial year. The certification or the report shall reflect the adjusted development of the technical provisions and changes in risks covered.

(4) The calculation of the technical provisions shall be executed and certified by an actuary or, if not by an actuary, by an auditor or another specialist in this field, who shall be approved as qualified by the Registrar, but at all times on the basis of actuarial methods recognised within the Republic, according to the following principles:

- a) the minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for benefits and for contributions in accordance with the pension arrangements of the Fund. It must be sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to reflect the commitments which arise out of members' accrued pension rights. The economic and actuarial assumptions chosen for the valuation of the liabilities shall also be chosen prudently taking account, if applicable, of an appropriate margin for adverse deviation;
- b) the maximum rates of interest used shall be chosen prudently and determined in accordance with any relevant legislative rules of the Republic. These prudent rates of interest shall be determined by taking into account:
 - i. the yield on the corresponding assets held by the Fund and the future investment returns and/or
 - ii. the market yields of high-quality or government bonds;
- c) the biometric tables used for the calculation of technical provisions shall be based on prudent principles, having regard to

the main characteristics of the group of members and the pension schemes, in particular the expected changes in the relevant risks;

- d) the method and basis of calculation of technical provisions shall in general remain constant from one financial year to another. However, discontinuities may be justified by a change of legal, demographic or economic circumstances underlying the assumptions.

(5) The Registrar may, depending on the financial developments affecting the operation of a Fund, impose by decision additional and more detailed requirements for the calculation of technical provisions, with a view to ensuring that the interests of members and beneficiaries are adequately protected.

Funding of the Fund's technical provisions

34. (1) The Fund must have at all times sufficient and appropriate assets to cover the technical provisions in respect of the total range of pension schemes operated.

(2)

- a) In the event that the Registrar finds that a Fund has insufficient assets, he/she may, under the provisions of this section, require the Fund to adopt a recovery plan in order to ensure that the requirements of paragraph 1 are met within a reasonable timeframe.
- b) In the case of paragraph (a) –
 - i. The Fund shall set up a concrete and realisable plan to re- establish the required amount of assets to cover fully the technical provisions in due time.
 - ii. The plan shall be submitted to the Registrar for approval; and
 - iii. The Fund shall make the approved plan available to the members or, where applicable, to their representatives.
- c) in drawing up the plan, account shall be taken of the specific situation of the Fund, in particular the asset/liability structure, risk profile, liquidity plan, the age profile of the members entitled to receive retirement benefits, start-up schemes and schemes changing from non-funding or partial funding to full funding;

(3) In the event of termination of a Fund during the period referred to in section (2) (a), the Fund –

- a) shall inform the Registrar immediately; and

- b) shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the Registrar and a general outline of the procedure shall be made available to members or, where applicable, to their representatives in accordance with the principle of confidentiality;

(4)

- a) In the event of cross-border activity as referred to in section 39, the technical provisions of the Fund shall at all times be fully funded in respect of the total range of pension schemes operated.
- b) If the conditions of paragraph (a) are not met, the Registrar shall intervene in accordance with section 40.
- c) To comply with the requirement of paragraph (a), the Registrar may require ring-fencing of the assets and liabilities.

Regulatory own funds

35. (1) Funds operating pension schemes, where the Fund itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits, shall hold on a permanent basis additional assets above the technical provisions to serve as a buffer.

(2) The amount of the additional assets in accordance with paragraph (1) shall reflect the type of risk and asset base in respect of the total range of schemes operated.

(3) The assets referred to in paragraph (2) shall be free of all foreseeable liabilities and serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

(4) The minimum amount of additional assets or additional fixed assets shall be calculated in accordance with the provisions laid down for this purpose in the Insurance Services and other Related Issues Law, as it may be amended or replaced from time to time.

Investment rules of the Fund

36. (1) Every Fund must invest in accordance with the “prudent person” rule and in particular in accordance with the following rules:

- a) the assets shall be invested in the best interests of members and beneficiaries. In the case of a potential conflict of interest, the Fund, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries;

- b) the assets shall be invested in such a manner as to ensure the security, quality, liquidity, and profitability of the portfolio as a whole; assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits;
- c) the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;
- d)
 - i. Investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management,
 - ii. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the Fund's assets,
 - iii. The Fund shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;
- e)
 - i. the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole,
 - ii. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the Fund to excessive risk concentration;
- f) Investment in the sponsoring undertaking shall be no more than 5% of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10 % of the portfolio.

Provided that, when the Fund is sponsored by a number of undertakings, investment in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification of the assets;
- g) Requirements provisioned for in paragraphs (e) and (f) do not apply to investments in government bonds.

(2) The Fund is prohibited from borrowing or acting as a guarantor on

behalf of third parties.

Provided that some borrowing operations are allowed, when said operations are carried out prudently and only for liquidity purposes and on a temporary basis.

(3) With the exception of the securities for borrowing operations carried out in accordance with paragraph (2), the Fund shall keep its investments free from any mortgage, encumbrance, charge, or lien right.

(4) The Fund may invest in the categories of assets it chooses.

(5) Subject to section 24, the investment decisions of a Fund are not subject to prior approval or systematic notification, unless this is required by the Fund's rules of operation.

(6)

- a) A Fund may invest up to 70 % of the assets covering the technical provisions or of the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets and deciding on the relative weight of these securities in their investment portfolio:

Provided it is prudentially justified, the Registrar may apply a lower limit to a Fund, which provides retirement products with a long-term interest rate guarantee, bears the investment risk and itself provides for the guarantee.

- b) A Fund may invest up to 30% of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed.
- c) A Fund may invest in risk capital markets.

(7)

- a) The Fund shall not grant a loan of any form to a sponsoring undertaking and any such loan shall be invalid.
- b) The operational rules of the Provident Fund may provide for the grant of a loan to a member for the purposes and under the terms and conditions laid down by Regulations.

(8) In accordance with the provisions of paragraphs (1) to (7), the Registrar may issue directives in order to require more detailed rules on the matters laid down in paragraph (6), including quantitative rules,

provided they are prudentially justified, to reflect the total range of pension schemes operated by the Fund.

(9) The Registrar may issue directives in order to reduce any ratio provided for in paragraph (6) concerning the Funds referred to in section 3(2).

Other investment rules in the case of cross-border activity of the Fund

37. (1) In the event of cross-border activity as referred in section 39, the Registrar, acting as the competent authority of the host Member State, may require of a Fund of a member state to comply with the rules set out in subsection 2:

Provided that these rules shall apply only to the part of the assets of the Fund that corresponds to the activities carried out in the Republic.

(2)

- a) Fund of a member state, either it shall not invest more than 30% of this part of assets in shares, other securities treated as shares and debt securities which are not admitted to trading on a regulated market, or it shall invest at least 70 % of this part of assets in shares, other securities treated as shares, and debt securities which are admitted to trading on a regulated market;
- b) Fund of a member state shall not invest more than 5% of this part of assets in shares and other securities treated as shares, bonds, debt securities, and other money and capital-market instruments issued by the same undertaking and more than 10% of this part of assets in shares and other securities treated as shares, bonds, debt securities and other money and capital market instruments issued by undertakings belonging to a single group;
- c) Fund of a member state shall not invest more than 30% of this part of assets in investment products denominated in currencies other than those in which the liabilities are expressed.

(3) The rules of paragraph (2) apply only where the same rules apply to the Funds that are based in the Republic.

(4) To comply with the requirements of paragraphs (1) to (3), the Registrar may require ring-fencing of the assets.

Management of investments and custody

38. (1) Every Fund may appoint, for the management of its investment portfolio, investment managers established in another Member State and duly authorised for this activity, in accordance with the legislation of the home member state, which is harmonised with Directives

2004/39/EC, 2006/48/EC, 2009/65/EC and 2002/83/EC.

(2)

- a) For the custody of their assets, every Fund is allowed to appoint custodians established in another Member State and duly authorised in accordance with the legislation of the home member state which is harmonised with Directives 2004/36/EC or 2006/48/EC, or who are accepted as a custodian for the purposes of the legislation of the home member state that is harmonised with Directive 2009/65/EC.
- b) When he deems it necessary to protect the Fund's assets, the Registrar may make the appointment of a custodian compulsory.

(3) The Registrar may prohibit, according to the provisions of section 40, the free disposal of assets held by a depositary or custodian located within the Republic at the request of the Fund's home Member State.

Cross-border
activities

39. (1)

- a) Without prejudice to the applicable social and labour legislation on the organisation of pension schemes, including compulsory membership and the outcomes of collective bargaining agreements, undertakings located within the Republic are allowed to sponsor Fund of a member state.
- b) Every Fund is entitled to accept sponsorship by undertakings located within the territories of other Member States.

(2)

- a) A Fund wishing to accept sponsorship from a sponsoring undertaking located within the territory of another Member State shall be subject to a prior authorisation by the Registrar, as referred to in section 20(5).
- b) Where the Fund intends to accept sponsoring by an undertaking located in the territory of another Member State, it provides the following information to the Registrar when effecting a relevant notification of the intent:
 - i. The host member state;
 - ii. The name of the sponsoring undertaking;
 - iii. The main characteristics of the pension scheme to be operated by the Fund for the sponsoring undertaking.

(3)

- a) Where the Registrar is notified under paragraph 2, and unless he/she has reason to doubt that the administrative structure or

the financial situation of the Fund or the good reputation and professional qualifications or experience of the Fund's administrators are compatible with the operations proposed in the host Member State, the Registrar shall within three months of receiving all the information referred to in paragraph (2) communicate that information to the competent authorities of the host Member State and inform the Fund accordingly.

- b) If the Registrar has reason to doubt that the administrative structure or the financial situation of the Fund or the good reputation and professional qualifications or experience of the Fund's administrators are compatible with the operations proposed in the host Member State, he shall not communicate the information provided in paragraph (2) to the competent authorities of the host member state.
- c) Fund that is affected by the decision taken under paragraph (b) has the right to contest it on the basis of Article 146 of the Constitution.

(4)

- a) When the host member state is the Republic, the Registrar shall inform the competent authorities of the home member state, before the Fund starts operating a pension scheme for a sponsoring undertaking established in the Republic and within two months of receiving the notice provided in article 20, paragraph 3 of Directive 2003/41/EC, if appropriate, of the requirements of social and labour law relevant to the field of occupational pensions under which the pension scheme sponsored by an undertaking in the Republic must be operated and any rules that are to be applied in accordance with section 37 and paragraph (6) of this section.
- b) The Registrar shall communicate the information he/she receives from the competent authority of the host member state to the Fund, according to article 20, paragraph 5 of Directive 2003/41/EC.

(5) On receiving the communication referred to in paragraph 4, or if no communication is received from the Registrar on expiry of the period provided for the transfer of the notice, the Fund may start to operate the pension scheme sponsored by an undertaking in the host Member State in accordance with the host Member State's requirements of social and labour law relevant to the field of occupational pensions, and any rules that are to be applied in accordance with section 37(6) of this section.

(6) A Fund sponsored by an undertaking located in another Member State shall be subject, in respect of the corresponding members, to any information requirements imposed by the competent authorities of the host Member State on Funds located in that Member State, in accordance with the legislation that is harmonised with Article 11 of the Directive 2003/41/EC.

(7) When the host Member State is the Republic, the Registrar shall inform the competent authorities of the Fund's home Member State of any significant change in the Republic's requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the pension scheme insofar as it concerns the operation of the pension scheme sponsored by an undertaking in the Republic and in any rules that have to be applied in accordance with section 37 and paragraph (6) of this section.

(8)

- a) Every Fund of a member state shall be subject to ongoing supervision by the Registrar as to the compliance of its activities with the Republic's requirements of labour and social law relevant to the field of occupational pension schemes referred to in paragraph 4 and with the information requirements referred to in paragraph 6.
- b) Should the supervision referred to in paragraph (a) bring irregularities to light, the Registrar shall inform the competent authorities of the home Member State immediately and, in coordination with it, take the necessary measures to ensure that the Fund complies to the provisions of the social and labour law of the Republic.

(9) If, despite the measures taken by the competent authorities of the home Member State or because appropriate measures are lacking in the home Member State, the Fund persists in breaching the applicable provisions of the Republic's requirements of social and labour law relevant to the field of occupational pension schemes, the Registrar may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the Fund from operating in the Republic for the sponsoring undertaking.

(10) The Registrar shall report to EIOPA in accordance with article 20, paragraph 11 of Directive 2003/41/EC.

PART VII – PROCEDURES FOLLOWED BY THE FUNDS AND ADMINISTRATIVE POWERS OF THE REGISTRAR

Intervention powers and duties of the Registrar

40. (1) Every Fund is obliged to maintain healthy administrative and accounting procedures, as well as appropriate internal control mechanisms, which shall be laid down by the rules of operation of the Fund.

(2) The Registrar may –

- a) impose administrative fine, which shall not exceed five thousand one hundred and twenty five Euro (€5.125), either against the members of the Administrative Committee or against the sponsoring undertaking, in order to prevent or remedy any irregularities prejudicial to the interests of members and beneficiaries;
- b) restrict or prohibit the free disposal of the Fund's assets, particularly when –
 - i. the Fund has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions, and/or
 - ii. the Fund has failed to hold the regulatory own funds.

(3) In order to safeguard the interests of members and beneficiaries, the Registrar may transfer the legal powers held by the Administrative Committee of a Fund located in the Republic wholly or partly to a special representative who is fit to exercise these powers.

(4)

- a) The competent authorities may prohibit or restrict the activities of a Fund in particular if:
 - i. the Fund fails to protect adequately the interests of members and beneficiaries
 - ii. the Fund no longer fulfils the conditions of operation;
 - iii. the Fund fails seriously in its obligations under the rules to which it is subject; and/or
 - iv. in the case of cross-border activity, the Fund does not respect the requirements of social and labour law of the host Member State relevant to the field of occupational pensions.
- b) Any decision to prohibit the activities of a Fund shall contain detailed reasons and be notified to the Fund in question. It shall also be notified to EIOPA.

(5) The administrative enforceable acts issued in respect of a Fund or an Administrative Committee or a sponsoring undertaking in application of the provisions of this Law or Regulations or directives, are subject to the right to apply to the Supreme Court under Article 146 of the Constitution.

(6) Where the Registrar deems it appropriate, he/she shall carry out on-the-spot-checks at the facilities of the Fund and, if appropriate, inspects the competences transferred to third-persons in order to establish whether the relevant works are exercised pursuant to the prudential rules.

Investigation of
the affairs of
the Fund

41. (1) The Registrar may carry out investigation on the affairs of any Fund, upon request on behalf of –
- a) the majority of the members of the Administrative Committee or the members that represent the sponsoring undertaking or the members of the Administrative Committee that represent the Fund members, or
 - b) at least one third of the members of the Fund,

supported by facts and evidence that satisfy the Registrar that there is reasonable cause to carry out an investigation.

(2) The Registrar may, on his/her own initiative to carry out an inspection or investigation concerning the works and affairs of any Fund, at any given time, in order to establish whether the provisions of the Fund's rules of operation or of this Law or the Regulations or directives are met.

Site inspection

42. (1) In order to exercise his competencies, the Registrar may enter any building, with the exception of residences, and inspect any books or documents he/she considers reasonably necessary for the investigation and to do anything else he/she considers necessary for the implementation of this Law.

(2) Every member and official of the Fund, or any other person, who has information or documents or books, shall present to the Registrar every book or other document and shall provide every piece of information or assistance in relation to the investigation, pursuant to everything stipulated in this Law.

(3) The Registrar may, and must if called upon to do so by the Minister, submit to the latter a report concerning the investigation carried out.

(4) The Minister may hand over a copy of the report referred to in paragraph (3) to the Administrative Committee or the members of the Fund or the persons who requested the investigation.

Inspectors

43. (1) The Registrar may delegate in writing to any inspector, who is appointed by virtue of section 69 of the Social Insurance Law, as it may be amended or replaced from time to time, any power and any tasks this Law or the Regulations or the Directives grant or confer upon the Registrar.

In the event of such delegation, the Registrar shall retain the authority to exercise a power and perform a task delegated in such a manner since and during said delegation.

(2) The Registrar may amend and revoke a delegation made under paragraph (1) with a written notice to the respective inspector.

(3) In the event that under this section, both the Registrar and the inspector simultaneously exercise the same powers or perform the same task, the inspector shall take any appropriate measures so that he/she does not exercise the power or perform the task for the same actual facts as the Registrar, unless the latter allows this and in accordance to any instructions of the latter.

(4) In the event that under this section, an inspector exercises a power or performs a task assigned or conferred upon the Registrar under this Law or Regulations or directives, this Law and Regulations and directives shall apply as if they had assigned explicitly said powers to the person exercising them and had given explicitly this task to the person performing it.

(5) Every inspector is supplied with a certificate of his/her appointment, which he/she must demonstrate, if requested, when asking to enter any facilities or any premises for the purposes of this Law, the Regulations and directives.

PART VIII – PENAL PROVISIONS

Offences and penalties

44. (1) Any person, who –

- a) Impedes or hinders the Registrar or the inspector or any other official duly authorised by the Registrar, from exercising their powers under this Law, the Regulations or the directives,
- b) Refuses or fails to respond to any relevant question or to provide any information or to present any documents at any time he is requested to do so by virtue of this Law, the Regulations or the directives, and/or
- c) Impedes or attempts to impede any person from appearing

before or being questioned by the Registrar or the inspector or any other authorised official in relation with an investigation,

Shall be guilty of a criminal offence and be subject, if convicted, to imprisonment for a period that does not exceed two (2) years or to a monetary penalty that does not exceed five thousand five hundred euro (€5.500) or both penalties.

(2) Any person who knowingly submits or provides any account, balance sheet, book, statement or other document provisioned by this Law, the Regulations and/or the directives, which is untrue in terms of an essential component thereof, shall be guilty of a criminal offence and, if convicted, shall be subject to imprisonment for a period that does not exceed three (3) years or to a monetary penalty that does not exceed eight thousand five hundred euro (€8.500) or both penalties.

(3) Any person who breaches or fails to comply with any provision of this Law or the Regulations and/or the directives, for which no other criminal offence is provisioned, shall be guilty of a criminal offence and, if convicted, shall be subject to imprisonment for a period that does not exceed one (1) year or to a monetary penalty that does not exceed two thousand five hundred euro (€2.500) or both penalties.

(4) In the event of a conviction of a person, who was found guilty of a criminal offence for infringement or failure to comply with this Law, the Regulations and/or the directives, the Court may order such person –

- a) To comply with the provisions of this Law, the Regulations and/or directives in relation to which the offence has been committed,
- b) To pay to the Fund the amount that he failed or neglected to pay under the provisions of this Law, the Regulations, the directives and/or the rules of operation of the Fund.

Where it is established that the offence committed by a legal person in breach of this Law, the Regulations and/or the directives, has been committed with the consent or complicity or negligence of a manager, director, secretary or other official of the legal person or of any person who acts under such capacity, both he/she and the legal person shall be guilty of such offence and shall be subject, if convicted, to imprisonment for a period that does not exceed three (3) years or to a monetary penalty that does not exceed eight thousand five hundred euro (€8.500) or both penalties.

(6) Contributions which the sponsoring undertaking or the self-employed person must pay to the Fund, under paragraph (4), shall be collected as a

monetary penalty and paid to the relevant Fund.

(7) Any person who does not comply with the Court order issued under paragraph (4), shall be guilty of a criminal offence and, if convicted, shall be subject to imprisonment for a period that does not exceed three (3) years or to a monetary penalty that does not exceed eight thousand five hundred euro (€8.500) or both penalties.

Criminal
proceedings

45. Subject to any instructions given by the Attorney General of the Republic –

- a) Any criminal prosecution of an offence that is provisioned by this Law shall be brought by the Registrar,
- b) Any inspector or other official authorised by the Registrar may, with the consent of the Attorney General of the Republic, even if he/she is not registered as a lawyer, bring the action, appear, be present before the Court and act in any legal proceeding, which commences by virtue of the provisions of this Law, for any offence that undergoes summary trial.

PART IX – COUNCIL OF THE FUNDS FOR OCCUPATIONAL RETIREMENT BENEFITS

Council of the
Funds for
Occupational
Retirement
Benefits

46. (1) A Council of the Funds for Occupational Retirement Benefits is hereby established, hereinafter referred to as the “Council”, and comprising of –

- a) The Registrar, as the President,
- b) The Permanent Secretary of the Ministry of Finance or his/her representative,
- c) Two (2) representatives of employers’ organisations, and
- d) Three (3) representatives of trade union organisations.

(2) The Council studies every matter that relates to –

- a) The implementation or amendment of this Law or the Regulations and the policy in the field of Funds for Occupational Retirement Benefits and it submits relevant recommendations to the Minister, and

- b) Issuance of directives

(3) In the event that the Council discusses a subject that affects a significant number of persons, who –

- a) Are members of Funds and who are not represented in the Council through a representative of their trade union organisation, or

- b) Constitute sponsoring undertakings and are members of employers' organisations, who are not represented in the Council through a representative of their organisation,

The Council must invite the representatives of said persons to its meeting and listen to their views on the matter.

(4) The members of the Council referred to in paragraphs (c) and (d) of section (1) shall be appointed by the Minister for a period that does not exceed two years; however, they may be re-appointed following expiration of their office:

Provided that the Minister may revoke on reasonable grounds at any given time the appointment of any of the Council members referred to above.

(5) The Council may issue regulations that govern its operation, including the possibility of establishing Technical Committees.

(6) The Council may take decisions, even if there is a vacancy amongst its members.

PART X – COOPERATION WITHIN THE FRAMEWORK OF THE EUROPEAN UNION

Cooperation between members states, EIOPA and the European Commission

47. (1) The Registrar shall have regular exchanges of information with the competent authorities of the other members states, with a view to developing best practices in this sphere of occupational retirement provisions and closer cooperation, and by so doing, preventing distortions of competition and creating the conditions required for unproblematic cross-border membership.

(2) The Registrar shall collaborate closely with the European Commission, with a view to facilitating supervision of the operations of the Funds.

(3) The Registrar shall inform the European Commission and EIOPA on any major difficulty to which the application of the provisions of this Law harmonising it with Directive 2003/41/EC give rise and shall examine such difficulties with them as quickly as possible in order to find an appropriate solution.

(4) Following request of the competent authorities of the host member state, the Registrar may decide on the ring-fencing of the Fund's assets and liabilities, as provided for in paragraph (4) of section 34 and section 37.

(5) As the competent authority of the Republic, the Registrar shall act pursuant to Article 21, paragraph 2A of the Directive 2003/41/EC.

PART XI – DISSOLUTION, LIQUIDATION AND BANKRUPTCY OF THE FUND

Dissolution and liquidation of the Fund

48. (1) Unless the members agree otherwise, every Provident Fund terminating its operation in accordance with the provisions of this Law, shall be automatically in liquidation and until completion and for the purposes of liquidation it shall be deemed to be existing:

Provided that liquidation is obligatory in the event that the Fund refuses to submit a registration application despite the Registrar's warning, as required under the reservation of section 15(1).

(2) Pension Fund, the operation of which is terminated, shall be dissolved solely following approval of the Registrar and provided that the Registrar finds that dissolution would be in the general interest of the members.

(3) Unless otherwise provided by the rules of operation of the Fund, liquidation shall be effected by the Administrative Committee. In the event that an Administrative Committee does not exist, the liquidator shall be appointed by the Registrar.

(4) The liquidator shall serve as the Fund's administrator, while his powers are restricted to the requirements of the liquidation.

(5) The liquidator shall be responsible for compensation of every infringement of his/her obligations.

(6) The priority in which the Fund's assets are disposed of in order to satisfy its pension liabilities and the other relevant matters shall be regulated by the Regulations.

(7) A Fund shall be subject to mandatory liquidation if it is established that it is unable to pay its debts applying mutatis mutandis the provisions of section 212 of the Companies Law.

Priority of contributions in the event of bankruptcy or dissolution

49. The debts, which –

Cap. 5
49 of 1985
197 of 1986
156(I) of 1999

a) in accordance with section 39 of the Bankruptcy Law, when distributing the property or the assets of a bankrupt person, they shall be paid in priority to the other debts, or

b) in accordance with section 300 of the Companies Law, where a company is being liquidated, they shall be paid in priority to the other debts,

include the amounts owed by the sponsoring undertaking or the self-employed person, as the case may be, with regard to any contribution or obligation for contribution to a Fund, which arose prior to the following dates:

(aa) in the case of paragraph (a), prior to the issuance of the decision on the appointment of an insolvency administrator, and

(bb) in the case of paragraph (b), prior to the date on which the liquidation of the company commenced.

PART XII – FINAL PROVISIONS

Issuance of
regulations

50. (1) Without prejudice to the other provisions of this Law, which give the power to issue Regulations, the Council of Ministers may issue Regulations concerning the settlement of any other matter, which, under this Law, may require or be eligible to be specified.

(2) Where under this Law the authorisation is granted for the issuance of Regulations, the Council of Ministers may, through these Regulations authorise the Registrar for the issuance of directives in order to settle matters provisioned for by the Regulations.

Issuance of
directives

51. Subject to the provisions of this Law, and in order to attain his/her objective, the Registrar may issue directives subject to the acts of the European Union and/or the former European Community.

Registered
Funds

52. (1) Every registered Fund shall be considered to have been registered under the provision of this Law and it shall be exempt from the scope of application of section 6.

(2) Each application submitted under the repealed laws, the examination of which is pending at the time when this Law enters into force, shall be considered to have been submitted and examined under this Law.

(3) Any reference to the Provident Fund Registrar or to the Competent Authority, in rules of operation of a registered Fund, shall be considered a reference to the Registrar.

(4) The obligations and the rights of any person, deriving from the rules

of operation of a registered Fund for periods before the entry into force of this Law, shall be governed by the Repealed Laws.

(5) Any document, evidence or information the Administrative Committee of a registered Fund must submit to the Provident Fund Registrar or to the Competent Authority, as the case may be, under the Repealed Laws for a financial year that closed before the entry into force of this Law, shall be submitted to the Registrar.

Non-application of opposing provisions

53. Subject to the provisions of the Social Insurance Law, as it may be amended or replaced from time to time, the provisions of this Law are considered to be specific to the subject each of them regulates and any other provision from any other legislation opposing a provision of this Law shall not apply.

54. None of the provisions of this Law affects the validity of any action that took place before its entry into force and which concerns the operation or the management of a Fund.

Repeal of laws

55. The following are repealed –

44 of 1981
150 of 1986
23(I) of 1995
130(I) of 2002
75(I) of 2005

a) The Provident Funds Laws of 1981 until 2005, and

146(I) of 2006
81(I) of 2007

b) The Establishment, Activities and Supervision of the Funds for Occupational Retirement Provision of 2006 and 2007.

Maintenance of the validity of the directives Chapter 1 11 of 1989

56. Without prejudice to the generality of section 11 of the Interpretation Law, the directives issued by the Competent Authority under the Establishment, Activities and Supervision of the Funds for Occupational Retirement Provision of 2006 and 2007 shall continue to be valid, independently of the provisions of section 55 and are considered directives issued under this Law.