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ACT
of August 28, 1997
on organisation and operation of pension funds¹⁾
(consolidated text)

Chapter 1
General Provisions

Article 1. This Act defines the principles of establishment and operation of Pension Funds, hereinafter referred to as "Funds".

Article 2. 1. A Fund is a legal person.
2. The scope of activities of a Fund is the collection and investment of financial resources intended for payment of cash benefits to Members who have attained pension age.
Jurisprudence

Article 3. 1. A Fund's governing body is a Pension Fund Company, hereinafter referred to as a "Fund Company", established in accordance with the provisions of the Act.
2. A Fund Company establishes a Fund, manages it and represents it in relations with third parties as its governing body.
3. A Fund Company represents its Fund In accordance with the provisions of its statute defining the principles of its representation.
Jurisprudence

Article 4. The registered office of Fund Company is the registered office of its Fund.
Jurisprudence

Article 5. Members of a Fund are not liable for the Fund's obligations.
Jurisprudence

Article 6. 1. The contributions made to a Fund, the rights acquired for or in relation thereto and benefits arising from those rights constitute the assets of a Fund.
2. The value of Fund's net assets is determined by deducting the Fund's liabilities from its assets.
Jurisprudence

Article 7. This Act does not conflict with other Acts which provide for the payment of cash benefits following the attainment of pension age.

Article 8. In this Act the following expressions have the following meanings:
1) Affiliated Entity – shall mean in relation to an entity a dominant, associated or dependent unit as defined in the Accounting Act of September 29, 1994 (Dz. U. [Journal of Laws] of 2002, No. 76, item 694 as amended¹⁾) or any unit dependent on a unit dominant in relation to such entity.

1a) Dominant Unit – shall mean a dominant unit as defined in accountancy regulations.

2) Fund Member – shall mean a natural person who has obtained membership in the Fund in accordance with the provisions of the Act.

3) Transfer Withdrawal – shall mean a transfer of amounts standing to the account of a Member from one Fund to another, or a transfer of those amounts between Accounts of the same Fund, regardless of the Account's balance.

4) Pension Insurance Company – shall mean a joint stock company conducting insurance activities that consist in offering and paying life-time annuities to Members of Open Funds who have attained pension age, out of the funds accumulated in those funds, on the terms specified in separate regulations.

5) Open Fund – shall mean an Open Pension Fund established and managed by a General Fund Company.

6) Occupational Fund – shall mean an Occupational Pension Fund established and managed by an Occupational Fund Company.

7) Fund Company – shall mean a joint-stock company which is the governing body of a Fund.

8) General Fund Company – shall mean a General Pension Fund Company which is the governing body of an Open Fund.

9) Occupational Fund Company – shall mean an Occupational Pension Fund Company which is the governing body of an Occupational Fund.

Chapter 2

Pension Funds

Article 9. 1. A Fund may be established as an Open Fund or an Occupational Fund.

2. A Fund may only be established by a Fund Company.

Article 10. 1. The registered name of every Open Fund shall contain the words „Open Pension Fund” and the registered name of every Occupational Fund shall contain the words “Occupational Pension Fund”.

2. Only a Fund established in accordance with this Act may use in its registered name, in the description of its activities or in advertising the words “Pension Fund”.

Article 11. The duration of Fund is unlimited.

Article 12. The establishment of Fund requires:

- 1) a statute granted by a Fund Company to a Fund;
- 2) an agreement concluded between a Fund Company and a depositary on keeping the Fund's assets;
- 3) a licence for the establishment of a Fund granted to a Fund Company;
- 4) a Fund being entered in the register of Funds.

Article 13. 1. The statute of a Fund shall be adopted by the General Meeting of Shareholders of the Fund Company.

2. The statute of a Fund shall specify:

- 1) the name of the Fund;
- 2) the registered name, registered office and the address of the Fund Company;
- 3) the amount of the share capital of the Fund Company, a list of its shareholders and the number of shares held by them;
- 4) the manner of representation of the Fund by the Fund Company;
- 5) the registered name, registered office and address of the depositary;

- 6) the types, maximum amount, manner and method of calculation and covering of the costs that burden the Fund, except for the costs referred to in Article 136a, including the costs referred to in Article 182a;
 - 6a) the amount of fee referred to in Article 134.1;
 - 7) the manner of announcing amendments to the statute;
 - 8) other information required by the Act.
3. Apart from the information referred to in para. 2, the statute of Open Fund shall specify:
- 1) a national daily newspaper in which the Fund is to publish its notices;
 - 2) the dates on which the Fund publishes its information prospectus.
4. Apart from the information referred to in para. 2, the statute of an Occupational Fund shall specify:
- 1) the dates, form and procedure for making payments of the amounts accumulated at Member's Accounts,
 - 2) the principles by which the Fund will conduct its investment activities, together with the information on whether the Fund will manage the assets on its own or whether it will entrust the management of the assets to a third party.
5. The President of the Council of Ministers may issue a regulation specifying additional information which must be included in the statute of a Fund, if the interests of Fund Members require such information.
- Court rulings
Jurisprudence

Article 14. An application by a Fund Company for the issue of a licence for establishing a Fund shall be accompanied by:

- 1) the statute of a Fund;
- 2) an agreement with a depositary;
- 3) a current extract from the Register of Entrepreneurs;
- 4) personal details of the persons employed by the Fund Company, or persons whom the Fund Company intends to employ, and who have significant influence on the Fund's financial decisions;
- 5) a list of persons designated by the depositary to perform duties specified in the agreement;
- 6) information on the qualifications and professional experience of the persons referred to in paras. 4 and 5 together with a specification as to which of those persons are investment advisors.

Article 15. 1. The Commission of Insurance and Pension Fund Supervision, acting on the grounds of separate regulations, hereinafter referred to as the „Supervision Authority”, shall issue a license for the establishment of Fund within 3 months after the date when the application was submitted. The issue of a licence is equivalent to an approval of the statute of a Fund.

2. The Supervision Authority shall refuse the license if;

- 1) the application and documents attached thereto do not meet the requirements set forth in this Act;
- 2) the statute of the Fund does not adequately secure the interests of the Fund's Members,
- 3) the persons referred to in Article 14, paragraphs 4-5 do not provide any guarantee of the proper performance of entrusted obligations.

Article 16. 1. After obtaining the licence for the establishment of a Fund, the Fund Company shall promptly apply to the registry court for the Fund to be entered in the Register of Funds.

2. The above application shall be accompanied by:

- 1) the licence for the establishment of the Fund,

- 2) the statute of the Fund,
 - 3) the Articles of Association of the Fund Company establishing the Fund and its current extract from the Register of Entrepreneurs,
 - 4) a list of the members of the Management Board of the Fund Company.
3. The examination of the application by the registry court shall be carried out within 14 days from the date of its submission.
4. The registry court shall refuse to enter the Fund in the Register of Funds if the conditions specified in the Act have not been complied with.
5. A Fund, following its registration in the Register of Funds, shall without delay provide the Supervision Authority with an appropriate extract from the Register of Funds.

Article 17. Entry to the Register of Funds shall include:

- 1) the name of the Fund,
- 2) the registered name, registered office and address of the Fund Company, the manner of representation of the Fund Company as well as its registration number in the Register of Entrepreneurs and the name of the court keeping the Register,
- 3) the full names of the members of the Management Board of the Fund Company as well as a list of authorised representatives, if such representatives have been appointed.
- 4) the registered name, registered office and address of the depositary.

Article 18. A licence for the establishment of a Fund shall expire if, within 2 months following the date of the licence's delivery, the Fund Company fails to submit an application for entering the Fund in the Register of Funds.

Article 19. 1. Before a Fund is entered in the Register of Funds, the Fund Company shall conduct the legal transactions aimed at the establishment of that Fund in its own name and on its own account.

2. Upon being entered in the Register of Funds, the Fund enters into the rights and obligations of the Fund Company on account of the agreement with a depositary referred to in Article 14 pt. 2.

Article 20. 1. A Fund shall acquire legal personality upon being entered in the Register of Funds.

2. Upon entering the Fund in the Register of Funds, the Company shall become the governing body of that Fund.

Article 21. 1. The Register of Funds shall be held by the *Voivodship Court*⁽¹⁾ in Warsaw, in this Act referred to as the "registry court".

2. The Register of Funds shall be available for inspection by third parties.

3. The Minister of Justice shall issue a regulation defining the manner of keeping the Register of Funds, its form and the detailed procedure to be used for registration in the Register of Funds.

Secondary legislation

Article 22. 1. Any amendment to the statute of a Fund requires the Supervision Authority's consent. The application for such consent should be supplemented with a resolution of the General Meeting of Shareholders concerning the amendment of statute, and in the case of Occupational Fund – also a resolution of the Supervisory Board.

2. The Supervision Authority shall refuse to give its approval if a relevant amendment is contrary to law or the interests of Fund Members.

3. A decision regarding any amendment to the statute of an Open Fund is made by the General Fund Company in the form of a resolution adopted by the General Meeting of Shareholders.

4. A decision on amending the statute of an Occupational Fund is made by an Occupational Fund Company in the form of a resolution adopted by the Supervisory Board. The resolution of the Supervisory Board shall be subject to the approval of the General Meeting of Shareholders.

court rulings

Article 23. 1. An Open Fund shall publish notices of any amendments to its statute in a national daily newspaper designated for the publication of notices of that Fund no later than within 2 months from the date of receipt of the consent for the amendment of the statute.

2. An amendment to the statute shall become effective on the date indicated in the notice of the amendment, but no earlier than 5 months after the date of the publication of notice of such an amendment.

3. The Supervision Authority may allow the period of 5 months referred to in para. 2 to be shortened if this does not adversely affect the interests of Fund Members or if their interests require such shortening.

4. A Fund shall notify the Supervision Authority of the publication of notices of an amendment to its statute along with their dates and shall apply to the registry court for registration of the amendment, enclosing the approval of the amendment issued by the Supervision Authority, the resolution amending the statute and the consolidated text of the statute, along with information on the notices published and their dates.

4a. If an Open Fund fails to publish the notice of amendment to the statute in accordance with para. 1, the Supervisory Authority states that the approval of the amendment expired.

5. The registry court shall record in the register the information on the amendment to the statute and the date when that amendment becomes effective. The provision of Article 16 para. 3 shall apply accordingly.

Article 24. 1. Any amendment to the statute of an Occupational Fund requires the shareholders of the Occupational Fund Company to be notified of the amendment in writing. The amendment shall become effective on the date specified in the notification, but no earlier than following the lapse of 1 month from the date of the last notification being delivered.

2. Any amendment to the statute which affects the financial situation of Members of an Occupational Fund through an increase in the Fund's financial burden or through the deterioration of the terms on which Members allocate the amounts standing to their accounts, shall become effective as specified in the *Act on the Occupational Pension Schemes of August 22, 1997 (Dz. U. [Journal of Laws] of 2001, No. 60, item 623 and of 2002, No. 25, item 253 and No. 141, item 1178)*⁽²⁾

3. The provisions of Article 23, paragraphs 3 to 5 shall apply accordingly, save that the application for registration of an amendment to a statute shall be accompanied by a resolution of the General Meeting of Shareholders approving the resolution amending the statute.

Article 25. 1. In the event of changes in the data referred to in Article 17 para. 3, a Fund shall apply without delay for such changes to be entered in the Register of Funds, attaching the current extract from the Register of Entrepreneurs of a Fund Company,

2. The entry of changes relating to the management of a Fund being taken over by another Fund Company may be effected only following the submission of the permission of the Supervision Authority for taking over the management of that Fund.

3. The provisions of para. 2 apply accordingly to the merger of Fund Companies.

Article 26. 1. The accounting of Funds and the dates for the preparation, revision and submission for publication of financial reports are governed by the provisions of the Accounting Act.

2. The annual financial reports of each Fund shall be approved by a Company in the form of a resolution of the General Meeting of Shareholders.

3. An Occupational Fund Company can entrust the performance of obligations with respect to keeping the accounting books of an Occupational Fund, in full or in part, to other entities authorised under separate regulations.

Chapter 3

Pension Fund Companies

Article 27. 1 Each Fund Company shall conduct its activities only in form of a joint stock company.

2. Each Fund Company shall operate either as a General Open Fund Company or an Occupational Fund Company.

Article 28. 1. The registered name of every General Open Fund Company shall contain the words "General Open Pension Fund Company" and the registered name of every Occupational Fund Company shall contain the words "Occupational Pension Fund Company".

2. Only Fund Companies established in accordance with the Act are entitled to use in their registered names the words indicated in para. 1 above.

Jurisprudence

Article 29. 1. The object of the Fund Companies' business is limited exclusively to establishing and managing the Funds and to representing them before third parties. Only a Fund Company is authorised to conduct such business.

2. Subject to Article 229, a Company may only establish and manage one Fund, except for cases where the management of more than one Fund is a result of a takeover of the management of another Fund or a result of a merger of Fund Companies.

3. A General Open Fund Company shall manage a Fund for a fee.

4. An Occupational Fund Company may not be a profit-making company. Shareholders of an Occupational Fund Company shall not have the right to share in the annual profit.

5. A General Open Fund Company is obligated to employ at least one investment advisor for management of the Open Fund's assets.

Jurisprudence

Article 30. 1. The share capital of a Fund Company may not be raised by public subscription.

2. The shares of a Fund Company shall only be registered shares and may not be converted into bearer shares.

3. A Fund Company may not issue preferential shares.

4. The Articles of Association of a Fund Company shall treat all shareholders in an equal manner and shall not award any additional rights or privileges to certain shareholders or limit the rights of some shareholders or impose additional responsibilities on them.

5. If a trade union, employers' association, chamber of commerce or professional self-government organization, whose activities are regulated by statutory regulations, is a shareholder of a Fund Company, the restrictions specified in paras. 3-4 do not apply to such a shareholder.

Article 31.⁽³⁾ The minimum share capital of a General Open Fund Company may not be lower than the PLN equivalent of EUR 5,000,000, calculated in accordance with the mid-exchange rate of foreign currencies published by the National Bank of Poland as of the day of adoption of the Articles of Association of the Fund Company.

Article 32. 1 The share capital of Fund Companies may be paid up only by cash contributions.

2. The share capital of a General Open Fund Company must be paid up in total prior to the registration of that Company.

3. The share capital of a General Open Fund Company may neither come from loans or credits nor may it be encumbered in any manner.

Article 33. 1. A General Open Fund Company is under an obligation to maintain its equity at a level not lower than half of the minimum share capital specified in Article 31.

2 A General Open Fund Company shall notify the Supervision Authority without delay of any reduction in its equity below the level specified in para. 1.

3. The Supervision Authority issues the demand that General Open Fund Company increases the equity up to the required level, setting a time limit to do so, not shorter than 3 months and not longer than 12 months.

4. If a General Open Fund Company fails to bring the equity to the level specified in para. 1 and within a period specified in the demand referred to in para. 3, the Supervision Authority can cancel the licence for the establishment of the Fund Company.

Jurisprudence

Article 34. (repealed).

Article 35. 1. A founder of an Occupational Fund Company may be a natural person, legal person or organisational unit without legal identity having their place of residence or seat in the territory of the Republic of Poland.

2. (repealed).

Article 36. Whenever this Act refers to founders of a Fund Company it shall also mean shareholders of that Fund Company.

Article 37. 1 The same entity may not be a shareholder of more than one General Open Fund Company.

2. Affiliated Entities may only be shareholders of the same General Open Fund Company.

3. In the case of a merger of two or more entities where before the merger each entity is the shareholder of a separate General Open Fund Company and in the case where the entities which were shareholders of separate General Fund Companies have become Affiliated Entities, the Supervision Authority may agree to waive the restrictions set forth in para. 1 and 2 for a period of up to 6 months so as to enable an entity operating as a result of a merger or the entities which have become Affiliated Entities, to adapt their activities to the requirements of the Act.

Article 38. 1. Each acquisition or taking up of shares of a Fund Company requires the prior consent of the Supervision Authority, subject to para. 4. Any legal transaction in breach of this requirement shall be invalid.

2. The application for the consent should be made by the entity intending to acquire or take up the shares and submitted through the Fund Company. The application should be supplemented with:

- 1) in the case when the entity intending to acquire or take up the shares is a shareholder of the Fund Company:
 - a) written statement that the financial means that are to be used to pay up the share capital do not derive from loans or credits and are not encumbered in any manner,
 - b) documents presenting the financial condition of the entity in the last 5 years prior to the application date, including documents that confirm that the entity is not in arrears with taxes or social security contributions that are obligatorily collected by Social Security Institution [Zakład Ubezpieczeń Społecznych];

- 2) in the case when the entity intending to acquire or take up the shares is not a shareholder of the Fund Company:
 - a) written statement that the financial means that are to be used to pay up the share capital do not derive from loans or credits and are not encumbered in any manner,
 - b) documents confirming the entity's legal status and documents showing its organisation,
 - c) written statement of the entity concerning the capital ties with the Fund Company's shareholders,
 - d) documents presenting the financial condition of the entity in the last 5 years prior to the application date, including documents that confirm that the entity is not in arrears with taxes or social security contributions that are obligatorily collected by Zakład Ubezpieczeń Społecznych [Social Security Institution].

2a. In case of an entity who intends to take up the shares, the application referred to in para. 2 should be supplemented with the confirmation of payment of the contribution to share capital.

3. The Supervision Authority shall give its consent to the acquisition or taking up of shares if the applicant fulfils the conditions set out in this Act for the founders of a Fund Company.

4. If the entity who takes up the shares is already a shareholder of the Fund Company, such entity shall notify the Supervision Authority of taking up the shares within 14 days from the date thereof. However, taking up shares in number that results in exceeding 20%, 25%, 33%, 50%, 66%, 75% or 80% votes respectively at the General Meeting of Shareholders shall require the consent of the Supervision Authority.

5. The provisions of para. 1-4 above shall apply accordingly to the acquisition of rights incorporated in the shares of a Fund Company.

Article 38a. 1. Shareholder of a General Open Fund Company is obligated to notify the General Open Fund Company immediately of any unit dominant with respect to the shareholder. Promptly after obtaining the information from shareholder of General Open Fund Company, the General Open Fund Company shall notify the Supervision Authority of any unit dominant with respect to the shareholder of that General Open Fund Company.

2. The Supervision Authority can demand that the General Open Fund Company submit, within the prescribed time limit not shorter than 30 days:

- 1) documents confirming the dominant unit's legal status and documents showing its organisation,
- 2) documents presenting the financial condition of the dominant unit in the last 5 years prior to the date of notification referred to in para. 1, including documents that confirm that the entity is not in arrears with taxes or social security contributions that are obligatorily collected by Zakład Ubezpieczeń Społecznych [Social Security Institution].

3. In the case when the dominant unit does not guarantee that the Open Fund Company will handle matters in a manner ensuring proper protection of interests of Open Fund members or when it results from the documents presenting the financial condition of the dominant unit in the last 5 years that the unit is in arrears with taxes or social security contributions that are obligatorily collected by Zakład Ubezpieczeń Społecznych [Social Security Institution], the Supervision Authority can, by way of administrative decision, specify the terms for remedying the situation. The Supervision Authority suspends that shareholder's right of vote at the General Meeting of Shareholders of Fund Company from exercise until the situation is remedied.

4. If the suspension of right of vote from exercise, as referred to in para. 3., causes that all shareholders of a General Open Fund Company cannot exercise the right of vote at the General Meeting of Shareholders of Fund Company for longer than 3 months, the Supervision Authority can withdraw the permission for establishment of Fund Company.

Article 39. 1 The governing bodies of a Fund Company are:

- 1) the Management Board;
- 2) the Supervisory Board;
- 3) the General Meeting of Shareholders.

1a. Management Board of a Fund Company shall consist of not less than three persons.

2. A Company may also set up a Board of Auditors. The provisions of Articles 43, 44, 59.1, 148.3, 150.1.b, 158.1.5.a, 204.1.2, 206 and 209⁽⁴⁾, concerning the Supervisory Board shall apply accordingly to a Board of Auditors.

Article 40. 1. The members of the Management Board of a General Open Fund Company shall be appointed and dismissed by the General Meeting of Shareholders unless provided otherwise in the Articles of Association.

2. The members of the Management Board of an Occupational Fund Company shall be appointed and dismissed by the Supervisory Board.

3. The members of the first Management Board of an Occupational Fund Company shall be appointed by the founders for a period of one year.

Article 41. 1. A member of the Management Board of a Company shall be a person who meets all the following requirements jointly:

- 1) has full legal capacity;
- 2) has not been validly convicted for offences against property, documents credibility, economic trading, trading in money and securities, a fiscal offence or an offence referred to in Chapter 22;
- 3) has a university degree;
- 4) has professional work experience of at least 7 years,
- 5) guarantees the due performance of his functions as a member of the Management Board.

1a. At least two persons in Management Board of a Fund Company, including the President of Management Board, must have the command of Polish language. In case of foreign citizens, the knowledge of Polish language should be confirmed with the state examination in Polish for foreigners applying for the official certification of language skills, referred to in the Polish Language Act of October 7, 1999 (Dz. U. [Journal of Laws, No. 90, item 999 as amended ³⁾).

2. At least one-third of the members of the Management Board shall have a university degree in economics or law or shall be enrolled on the list of investment advisors in the meaning of provisions of the Act on Public Trading of Securities.

3. The requirement specified in para. 1.4 shall be met by at least two-thirds of the members of the Management Board.

4. (repealed)

5. If requirements defined in paras. 1a, 2 or 3 are not fulfilled in connection with dismissal of a member of the Management Board or revocation of the approval referred to in Article 59.3 and 59.4, the Fund Company shall have a period of 6 months to adjust its activities to the requirements defined in the Act.

Article 41a. 1. Members of Management Board of a Fund Company are obligated to submit declarations on their financial standing. The declaration on financial standing pertains both to separate property and conjugal property. Such declaration should contain information about:

- 1) possessed financial resources, real estate, participation in civil partnerships or commercial partnerships, shares in commercial companies, and data concerning business activities conducted as well as functions held in commercial companies,
- 2) revenues earned from employment or other profit-making activities or actions, with indication of sums gained from each source,
- 3) movable property of unit value equalling in PLN to over EUR 3,000,

4) financial liabilities of value equalling in PLN to over EUR 3,000, including credits and loans as well as the terms on which those were granted.

2. The declaration on financial standing shall be submitted to the Supervision Authority in two copies before taking the function in Management Board and subsequently by May 31 each year, describing the standing as on December 31 of the previous year, with a copy of annual tax return (PIT) attached.

3. The Supervision Authority transfers one copy of the declaration on financial standing to the tax office competent for the place of residence of a member of Management Board.

4. The analysis of data contained in the declarations on financial standing is made by the Supervision Authority and by the competent tax offices. The entity which carries out the analysis of data contained in the declaration is authorised to compare the contents of analysed declaration with the declarations submitted earlier and with the attached copy of annual tax return (PIT). The competent tax offices immediately deliver the results of analysis to the Supervision Authority.

5. Information contained in the declaration on financial stating constitute a public service secret unless the person who submitted the declaration granted his/her written consent to the disclosure thereof. The declarations are kept for 6 years.

6. If a member of Management Board fails to submit the declaration on financial standing on time, the Supervision Authority can impose on such member a fine in the amount of up to PLN 10,000.

7. The minister competent for the financial institutions' matters shall specify, by way of a regulation, a specimen declaration on financial standing, including in particular information referred to in para. 1.

Secondary legislation

Article 42. 1. A member of the Management Board of a General Open Fund Company may not be a member of the Management Board or the Supervisory Board of:

- 1) an entity that is a shareholder of the Fund Company in question;
- 2) any other General Open Fund Company;
- 3) the depositary that holds the assets of an Open Fund or an Investment Fund;
- 4) a National Investment Fund or an entity managing the assets of a National Investment Fund;
- 4a) an insurance company;
- 4b) a bank;
- 5) an investment fund company or an entity which is a shareholder of an investment fund company;
- 6) an entity involved in brokerage, within the meaning of the provisions of the Act on Public Trading of Securities, or in any other activities relating to public trading of securities, and;
- 7) an Affiliated Entity with respect to any entity referred to in pts. 1-6.

2. The prohibition referred to in para. 1 also applies to persons who are in a relationship of employment, mandate or other legal relationship of a similar nature with entities listed in that paragraph.

Article 43. The members of the first Supervisory Board of a Fund Company shall be appointed for a period of two years.

Article 44. 1. A member of the Supervisory Board of a Fund Company shall be a person who complies with the requirements specified in Article 41 para. 1 pts 1-2 and who guarantees the due performance of his functions as a member of the Supervisory Board.

2. At least half of the members of the Supervisory Board of a Fund Company shall have a university degree in law or economics, save that in the case of an Occupational Fund Company this requirement shall be met by at least half of the members of the Supervisory Board appointed in a manner other than the one specified in Article 45 para. 1.

3. At least half of the members of the Supervisory Board of a Fund Company shall be appointed from among persons who are not shareholders of the relevant Fund Company, Affiliated Entities of such shareholders, members of managing or supervisory bodies of such shareholders, members of managing or supervisory bodies of entities affiliated with a shareholder of the Fund Company as well as are not in a relationship of employment, mandate or other legal relationship of a similar nature with the shareholder or an entity affiliated with the shareholder.

4. The provisions of paras. 2 and 3 shall apply, subject to Article 41.5.

Article 45. 1. At least half of the members of the Supervisory Board of an Occupational Fund Company shall be elected by those Members of that Occupational Fund to whose accounts contributions were made during the last 12 months preceding the election date.

2. The number of members of the Supervisory Board of an Occupational Fund Company shall be specified in the Articles of Association of that Fund Company, and the procedure for their appointment shall be defined by the by-laws adopted by the Supervisory Board.

3. The by-laws referred to in para. 2 above shall in particular specify whether the election is to be performed by members or their representatives, as well as determine the principles relating to dismissing persons who were appointed as members of the Supervisory Board before the expiry of the term of office of the Supervisory Board. The by-laws may not make the validity of the election dependent on the number of persons participating in the election.

4. If the by-laws provide for an election through Members' representatives, the same by-laws shall also specify the procedure for electing and dismissing representatives and the duration of their term of office.

5. The first election of the Supervisory Board members appointed by Occupational Fund Members shall be carried out no later than 3 months after the date when the relevant Fund receives the first contribution. Until then the Supervisory Board shall consist of no less than 5 members elected by the founders of the relevant Occupational Fund Company.

6. Where members of a Supervisory Board appointed by Occupational Fund Members are not elected within the period specified in para. 5 above, this shall not present an obstacle to the adoption of valid resolutions by the Supervisory Board.

7. If the mandate of a person elected by Members of an Occupational Fund expires before the expiry of the term of office of the Supervisory Board, the Board shall without delay call a by-election.

Article 46. Provisions of Article 385 §§ 3, 5 and 6 of the Polish Commercial Companies and Partnerships Code shall only apply to those members of a Supervisory Board of a Fund Company who are appointed in a manner other than that defined in Article 45 para. 1.

Article 47. No person performing any functions in the management or supervisory bodies of the entities referred to in Article 42 para. 1 pts. 1-7, or remaining with those entities in a relationship of employment or mandate, or any other legal relationship of similar nature, shall be an employee of a General Open Fund Company making decision on the manner of investment of an Open Fund's assets.

Article 47a. The provisions of Article 41a shall apply accordingly to the employees of General Open Fund Companies referred to in Article 47.

Article 48. 1. Each Fund Company shall be liable to Fund Members for damages resulting from non-performance or improper performance of its obligations relating to the management of the relevant Fund and its representation, unless the non-performance or improper performance of those obligations is due to circumstances for which the Fund Company is not liable and which it could not have prevented despite exercising the highest degree of diligence.

2. A Fund shall not be liable for damages resulting from the non-performance or improper performance of the obligations, as referred to in para. 1 above.

3. Where a General Open Fund Company is not liable for damage under para. 1, such damage shall be repaired using the Guarantee Fund, unless damage is due solely to the harmed party's fault. The provisions of Article 180 shall apply accordingly.

4. The provisions of para. 3 above shall also apply upon bankruptcy of a General Open Fund Company, where damage for which that Fund Company is liable may not be repaired using its bankruptcy estate. The order of covering losses using bankruptcy estate as specified in Article 177 para. 2 shall be followed.

5. Entrusting a third party with the performance of certain obligations of a Fund Company does not restrict the liability of that Fund Company.
Jurisprudence

Article 48a. Entrusting the performance of some obligations to a third party by a Fund or a Fund Company does not exclude the liability of the Fund Company specified in Articles 62, 197, 198 and 204.

Article 49. 1. The following persons are under an obligation to treat as professional secrets information relating to the activities of a Fund:

- 1) the members of the statutory bodies of the Fund Company;
- 2) any persons remaining in a relationship of employment with the Fund Company;
- 3) any persons remaining in a mandate relationship or in a similar legal relationship with the Fund Company or the Fund;
- 4) any employees of any entities remaining in the relationship referred to in pt. 3 with the Fund Company or Fund.

2. A professional secret within the meaning of para. 1 is any information relating to Fund's investments, Register of Fund's Members, dispositions of Members in the case of death and declarations referred to in Article 83, the disclosure of which could affect the interests of the Fund's Members or the interest of participants in the public trading of securities.

3. The provisions of para. 1 do not apply where information being subject to professional secret is disclosed to a prosecutor in connection with a suspicion that an offence was committed, or where it is disclosed upon request of a court or prosecutor or other relevant state authorities in connection with proceedings pending, relating to the activities of a Fund, a Fund Company or a depositary, including the request of the Supervision Authority in connection with its supervision over the activities of Funds.

Article 50. 1. A Fund Company may not:

- 1) acquire or take up any shares or other securities, participation units of investment funds and participation titles issued by joint-investment institutions having their registered offices abroad, as well as participate in companies that are not legal persons;
- 2) (repealed)
- 3) grant any loans and provide any guarantees or sureties, except for the loans from the company's social fund;
- 4) contract any loans or credits, including the issue of bonds, with a total value of resulting liabilities of a Fund Company is in excess of 20% of the value of its equity.

2. The provisions of para. 1.1 do not apply to:

- 1) securities issued by the State Treasury or National Bank of Poland;
- 2) shares
 - a) in a company that keeps the Register of the Members of the Fund managed by a given Fund Company;

- b) in a company clearing the transactions made on capital market in the amount not causing the occurrence of domination relationship within the meaning of the provisions on public trading of securities,
- c) in a company conducting canvassing activities referred to in Article 93.1.4 for the benefit of the Fund managed by a given Fund Company;
- 3) (repealed)
- 4) securities issued on the basis of the cheque law.

Article 51. 1. A Company shall keep, in the form of an archive, all documents and other carriers of data of the Fund it manages.

2. In the event of the liquidation of a Fund in accordance with Article 71 para. 1, the documents and other data carriers referred to in para. 1 shall be kept by the liquidator of the Fund, and in the event of the liquidation of an Occupational Fund in accordance with Article 75, the documents and other data carriers referred to in para. 1 shall be kept by the depositary. The above obligation shall survive fifty years after the completion of the liquidation of the Fund.

3. Notwithstanding the obligations referred to in para. 2, a depositary shall keep in the form of an archive all the documents and other carriers of data related to the performance by the depositary of its tasks for fifty years after the completion of the liquidation of the Fund.

4. In the event of bankruptcy or liquidation of a depositary, the provisions of Article 476 § 3 of the Polish Commercial Companies and Partnerships Code shall apply to the keeping of documents and other carriers of data relating to the management of the relevant Fund or the performance of a depositary's tasks. The competent court shall promptly provide the Supervision Authority with the name of the entity designated to keep those documents and other data carriers.

Article 52. The provisions of the Polish Commercial Companies and Partnerships Code shall apply to any matters relating to Fund Companies which are left unregulated in this Act.

Chapter 4

Conditions of Commencement of Activities by Pension Fund Companies

Article 53. A licence of the Supervision Authority is required for the establishment of a Fund Company.

Article 54. 1. A licence is granted on the request of the founders of the Fund Company. An application for a licence must contain:

- 1) the Articles of Association of the Fund Company;
- 2) the written consent of the founders to the establishment of the Company and the wording of the Articles of Association, as well as to taking up shares;
- 3) organisational by-laws of the Company specifying in particular the manner of preventing disclosure of the information which, if used, could adversely affect the interests of the Fund Members or the interest of participants in the public trading of securities;
- 4) the list of founders along with information as to whether they are Affiliated Entities and as to the nature of connections between them as well as documents confirming their legal status and the origin of financial resources allocated to pay up the Fund Company's share capital;
- 5) the list of members of the statutory bodies of the Fund Company (exclusive of the persons referred to in Article 45) along with their statements that they agree to hold functions in statutory bodies of the Fund Company and fulfil all requirements set out in the Act, as well as personal data of those members, a description of their qualifications and their prior professional activities;

- 6) a certificate stating that members of the statutory bodies of the Company have no criminal record with regard to the provisions of Article 41 para. 1 pt 2;
- 7) documents presenting the financial standing of all the shareholders of the Company for the last 5 years preceding the date of submission of the application, including documents confirming that they have no arrears in taxes and contributions obligatorily collected by Social Security Institution;
- 8) an organisational and financial plan for the Fund Company's activities for the next three years.

2. Together with an application for a licence to establish a General Open Fund Company, its founders may submit an application to the Supervision Authority for the promise of a grant of a licence for the establishment of an Open Fund. The latter application must include:

- 1) the draft statute of the Fund;
- 2) a draft agreement with a depository;
- 3) personal details of persons whom the General Open Fund Company intends to employ after the establishment of the Open Fund and who will have a significant influence on the Fund's financial decisions;
- 4) list of persons to be appointed by the depository to perform the duties specified in the draft agreement;
- 5) information on qualifications and professional experience of the persons referred to in pts. 3-4, along with a specification as to which of them are investment advisors.

Court rulings

Article 55. 1. The Supervision Authority shall decide whether to grant a licence within 3 months after the date of the submission of an application.

2. The issuing of a licence by the Supervision Authority is equivalent to its approval of the Articles of Association of a Fund Company.

Article 56. 1. If an application for a promise of a licence for the establishment of an Open Fund was submitted by founders together with their application for a licence for the establishment of a General Open Fund Company, and there is no reason to refuse the grant of a promise, the Supervision Authority shall issue a promise together with a licence for the establishment of a General Pension Fund Company.

2. The Supervision Authority shall specify in the promise its period of validity, which must be at least 6 months.

3. During the validity period of the promise the Supervision Authority shall not refuse to grant a licence for the establishment of an Open Fund, unless there are changes in the information provided in the enclosed documents referred to in Article 14, in relation to the documents referred to in Article 54 para. 1 pt 1 and para. 2.

4. The grant of a promise for the licence for the establishment of an Open Fund may be refused for reasons specified in Article 15 para. 2.

Article 57. The Supervision Authority shall refuse to issue a licence for a Company if:

- 1) the application and the attached documents do not comply with the conditions set out under appropriate legislation;
- 2) the Articles of Association of the Fund Company include provisions which may threaten the safety of the Fund's Assets or otherwise affect the interests of the Members of the Fund;
- 3) the organisational and financial plan of the Fund Company's activities within the next 3 years submitted by the founders fails to protect the interests of the Members of the Fund in a proper manner;
- 4) the founders of the Fund Company and the members of statutory bodies of the Fund Company do not guarantee that the matters of the Company will be

- conducted in a manner which secures the due protection of the interests of Members;
- 5) the documents which present the financial standing of the shareholders of Fund Company for the last 5 years show that any of the shareholders is in arrears with taxes or contributions obligatorily collected by Social Security Institution;
 - 6) the share capital of the Fund Company is financed by a loan, is subject to a credit agreement or is encumbered in any other way.

Court rulings

Article 58. 1. Any amendment to the Articles of Association of a Fund Company, any change regarding its depositary, as well as any amendment to the agreement with the depositary requires the Supervision Authority's approval. The application for amendment of the Articles of Association of a Fund Company should be supplemented with the resolution of the General Meeting of Shareholders and in case of increase of share capital of the Fund Company – with the confirmation of payment for the increased share capital. The application for consent to amendment of the agreement with depositary should be supplemented with the agreement by virtue of which the agreement with depositary is amended.

2. The Supervision Authority shall refuse its consent when the amendment of Articles of Association of the Fund Company, the change regarding the depositary or the amendment of agreement with depositary is against law or interests of the Fund's members.

3. The permission for amendment of Articles of Association of the Fund Company is equivalent to the permission for amendment of the Fund's statute in the extent defined in Article 13.2.5.

4. Change of the list of persons referred to in Article 14.5 shall require notifying the Supervision Authority by the depositary. The Supervision Authority may, within 14 days, refuse its consent to the change of that list for the reasons specified in Article 15.2.3.

5. Lack of refusal of the consent to change of the list within the time limit prescribed in para. 4 is equivalent to the acceptance of change of the list.

6. If there is no refusal of consent referred to in para. 5, depositary shall notify the Fund of the change of list forthwith.

Article 59. 1. The appointment of the members of the Management Board and Supervisory Board shall also require approval by the Supervision Authority, unless they performed the same functions during the preceding term of office of those bodies.

2. The provisions of para. 1 do not apply to members of the Supervisory Board of an Occupational Fund Company appointed by Members of the relevant Occupational Fund.

3. The Supervision Authority shall withdraw its approval referred to in para. 1 with respect to the persons who ceased to meet the requirements specified in:

1) Article 41.1.2 or 41.1.2 – in case of members of Management Board of Fund Company,

2) Article 44.1 – in case of members of Supervisory Board of Fund Company.

4. The Supervision Authority shall withdrawal its approval for members of Management Board of Fund Company also when it states that those members ceased to guarantee the proper performance of a function of a member of Management Board or when those members refuse to submit the declaration on financial standing referred to in Article 41a or when in spite of a written demand of the Supervision Authority they fail to submit the said declaration within 30 days from the receipt of demand.

5. The provisions of paras. 3 and 4 shall apply also to members of Management Board and Supervisory Board of the first term of office.

Jurisprudence

Article 60. A Fund Company is under an obligation to promptly notify the Supervision Authority of any change of the details included in annex to the application for licence for the establishment of a Fund referred to in Article 54 para. 1 pt. 3.

Chapter 5

Takeover of the Management of a Pension Fund, merger of Pension Fund Companies and Liquidation of a Pension Fund

Article 61. If the bankruptcy of a Fund Company is declared or the liquidation of a Fund Company has been commenced, the Supervision Authority shall issue a decision to withdraw the licence for the establishment of a Fund Company.

Article 62. 1. The Supervision Authority may issue a decision to withdraw a licence for establishment of a Fund Company if it states that the Fund or the Fund Company grossly or persistently violates the provision of the Act, the Fund's statute or the Fund Company's Articles of Association or conducts its activities in a manner presenting a gross threat to the interests of Members of the Fund.

2. Prior to withdrawing a licence, the Supervision Authority may notify the Fund Company of the irregularities stated in the operation of the Fund or the Fund Company, the occurrence of which conditions the decision on withdrawal of the licence. In the notification, the Supervision Authority sets the time limit in which the Fund Company is to bring its activities or activities of the Fund to an appropriate standard. If the irregularities stated by the Supervision Authority are particularly serious, in addition to the withdrawal of a licence, the Supervision Authority may impose on a Fund Company a penalty of up to PLN 500,000.

3. The provisions of Article 204b.1 and 204b.2 shall apply to the notification accordingly.

4. If the time limit set in the notification expires and the activities of the Fund Company or the Company are not brought to an appropriate standard, the Supervision Authority may withdraw the licence for establishment of Fund Company.

5. If the Supervision Authority decides not to issue the notification referred to in para. 2, it may, when withdrawing the licence for establishment of Fund Company, impose on Fund Company a fine in the amount up to PLN 500,000 if the stated irregularities that were the basis for withdrawal of the licence were particularly serious.

Court rulings

Article 63. In a decision to withdraw a licence the Supervision Authority shall specify the date when the decision becomes effective.

Article 64. 1. As from the date when a decision on the withdrawal of a licence for establishment of a Fund Company becomes effective, the Fund shall be represented and managed by the depositary. Within that period the Fund shall neither admit new Members nor take part in the drawing organised by the Social Security Institution.

2. The depositary, upon consent of the Supervision Authority, may entrust the management of the Fund's assets to an authorised entity in extent referred to in Article 30.2.4 of the Act on Public Trading of Securities of August 21, 1997 (Dz. U. [Journal of Laws] of 2002, No. 49, item 447 as amended⁴⁾) if such entrusting is in compliance with the interests of the Fund's members.

3. Entrusting the management of Fund's assets shall require the permission of the Supervision Authority. The Supervision Authority grants the permission if it is in compliance with the interests of the Fund's members and when the external entity guarantees proper management of the Fund's assets. With respect to management of the Fund's assets, the provisions of Articles 204.1.3.2-9, 204a.1, 204a.2.3, 204a.3-8 and 204b. apply to an external entity accordingly.

4. The Supervision Authority can revoke the permission referred to in para. 3 when the external entity violates legal regulations or interest of the Fund's members or ceased to guarantee the proper management of the Fund's assets.

5. When within 3 months from the day on which the decision on revocation of the permission entered into force the management of Open Fund is not taken over by another General Open Fund Company in accordance with Article 66.3, the management of that fund

is taken over by this General Open Fund Company managing an Open Fund which achieved the highest rate of return for the last 36 months as referred to in Article 172.

6. In the case when the highest rate of return was achieved by more than one Open Fund, the management of the Fund is taken over by the General Open Fund Company that manages the Open Fund with the lowest net assets' value among those Open Funds as of the end of the month preceding the month in which the decision on revocation of the permission entered into force.

7. The General Open Fund Company referred to in para. 5 or 6 can submit to the Supervision Authority a written statement concerning the refusal to take over the management of an Open Fund, within 7 days from the end of the 3-month period referred to in para. 5.

8. The Supervision Authority immediately notifies those General Open Fund Companies which achieved a rate of return for the last 36 months above weighted average rate of return referred to in Article 173 in writing about submission of the statement referred to in para. 7. The General Open Fund Company can submit to the Supervision Authority, within 7 days from delivery of notification by the Supervision Authority, a written declaration of intent to take over the management of Open Fund. If such declaration is made by more than one General Open Fund Company, the management is taken over by this General Open Fund Company that manages Open Fund with the highest rate of return. The provision of para. 6 shall apply accordingly.

9. If none of General Open Fund Companies submit the declaration referred to in para. 8, the management of Open Fund is taken over by this General Open Fund Company that manages the Open Fund with the net assets of the highest value at the end of the month preceding the month in which the decision on withdrawal of licence for establishment of a General Open Fund Company entered into force.

10. The management shall be taken over on the terms specified in the decision of the Supervision Authority.

Article 65. If an appeal is lodged in the Administrative Court against a decision to withdraw a licence issued by the Supervision Authority for reasons other than the reasons specified in Article 61, the appeal should be examined within 2 months after the date when it was submitted.

Article 66. 1. A General Open Fund Company which intends to discontinue its existing scope of business may, on the basis of an agreement concluded with another General Open Fund Company, hand over to the latter the management of its Open Fund.

1a. The agreement referred to in para. 1 shall become effective when the amendment of the statute of the Open Fund, the management of which is being taken over, enters into force in the extent specified in Article 13.2.2-4.

1b. Within one month from the day on which the amendment of statute of the Open Fund the management of which is being taken over, enters into force in the extent specified in Article 13.2.2-4 the liquidation of the General Open Fund Company which desires to discontinue its existing scope of business should start.

2. A General Open Fund Company taking over the management of an Open Fund shall enter into rights and obligations of the General Open Fund Company that managed that Fund before. The provisions of any agreement granting exemptions from certain obligations shall not be effective in respect of third parties.

3. Except for the case specified in para. 1, taking over of management of a Fund by a General Open Fund Company shall only take place if the Supervision Authority has withdrawn the licence for establishment of the General Open Fund Company managing the Fund which is taken over, subject to Article 67.

4. The management of an Open Fund may only be taken over by a General Open Fund Company which manages the same type of Fund.

5. The Supervision Authority states the expiry of decision permitting the establishment of the General Open Fund Company when its liquidation does not start within the time limit referred to in para. 1b.

Article 67. 1. A Fund Company may merge with another Fund Company.
2. The provisions of Article 66 para. 4 shall apply accordingly.

Article 68. 1. A takeover of Fund management in situations referred to in Article 66 and the merger of Fund Companies shall require the approval of the Supervision Authority.

2. Application for approval shall be submitted by a Fund Company taking over the management of a Fund and in the case of the merger of Fund Companies - by each of the merging Fund Companies, subject to para. 4.

3. The applicant should enclose the following to the application for approval:

- 1) in case of taking over the management of a Fund:
 - a) agreement on management take-over,
 - b) resolutions of the relevant bodies of the Fund Companies being parties to the agreement on management take-over, if the obligation to adopt such resolutions results from the Articles of Association of those Fund Companies,
 - c) resolution concerning the amendment of statute of the Fund, the management of which is being taken over
 - d) organisational and financial plan for the Fund Company which takes over the management of the Fund, made for the period of 3 years,
 - e) documents presenting the financial standing of the shareholders of the Fund Company which takes over management of the Fund for the last 5 years preceding the date of submission of the application, including documents confirming that they have no arrears in taxes and contributions obligatorily collected by Social Security Institution,
 - f) declaration of origin of financial resources allocated to take over of the Fund's management;
- 2) in case of merger of Fund Companies:
 - a) resolutions of the General Meeting of Shareholders on merger,
 - b) agreement on the merger of Fund Companies,
 - c) modified organisational and financial plan,
 - d) modified organisational by-laws,
 - e) information on capital ties between the shareholders,
 - f) draft statute of the Fund and the Articles of Association of the Fund Company after the merger,
 - g) documents presenting the financial standing of the shareholders of the acquiring Fund Company for the last 5 years preceding the date of submission of the application, including documents confirming that they have no arrears in taxes and contributions obligatorily collected by Social Security Institution,
 - h) declaration of origin of financial resources allocated to additional contributions to the shares of acquiring Fund Company, provided for in the resolutions on the merger of Fund Companies.

4. In case of merger of Fund Companies in the manner described in Article 492 § 1.2 of the Polish Commercial Companies and Partnerships Code, the application shall be submitted by the shareholders of merging companies. The provision of Article 54.1 applies accordingly. The licence for establishment of Fund Company is issued by the Supervision Authority together with the approval of merger of Fund Companies.

5. The approval of the takeover of the management of a Fund or the merger of Fund Companies is equivalent to the approval of a change in the statute of the target Fund within the scope specified in Article 13 para. 2 pts. 2-4. The Supervision Authority can permit *ex officio* to shorten the time in which that amendment enters into force.

6. If the merger of Fund Companies involves the need to increase share capital of the Fund Company acquiring other Fund Company as a result of the merger, the acquiring Fund

Company, together with the application for approval for the merger of Fund Companies, submits the application for permission for amendment of Articles of Association of Fund Company and statute of the Fund in the scope resulting from the increase of share capital. The permission for amendment of Articles of Association of Fund Company and statute of the Fund is issued by the Supervision Authority together with the approval of the merger of Fund Companies.

7. The approval by the Supervision Authority shall define specific requirements for the takeover of a Fund or merger of Fund Companies and indicate the date of commencement and completion of the Fund's liquidation.

8. The Supervision Authority shall refuse the approval, when:

- 1) the application and the documents enclosed thereto do not meet the requirements specified in the Act,
- 2) from the documents enclosed to the application or from other information it results that the Fund Company which takes over management of a Fund or any of the merging Fund Companies in the last 5 years preceding the date of submission of application was in arrears in taxes and contributions obligatorily collected by Social Security Institution,
- 3) additional contributions to the shares of the acquiring Fund Company, provided for in the resolutions on the merger of Fund Companies, derive from a loan or credit or are encumbered in any other way,
- 4) the financial means allocated to take over of management of a Fund derive from a loan or credit or are encumbered in any other way,
- 5) hitherto activities of the applicants do not guarantee that the activities of the Fund or the Fund Company will be carried out in a manner compliant with the interest of the Fund's members,
- 6) issuing the approval is against the interest of members of Pension Funds or other public good.

Jurisprudence

Article 69. 1 The approval by the Supervision Authority of a takeover of management of a Fund or a merger of Fund Companies is the basis for liquidation of the Fund, the management of which has been taken over by another Fund Company or which was managed by a Pension Company taken over as a result of a merger, or – if a merger of Fund Companies was made in the manner described in Article 492 § 1.2 of the Polish Commercial Companies and Partnerships Code – which was indicated in an application for permit to effect a merger pursuant to para. 5.

2. (repealed)

3. The Supervision Authority shall forthwith notify the Registry Court of its approval and shall provide the Registry Court with a copy of the approval. The court shall *ex officio* enter the date when the liquidation is to commence and the name of the liquidator in the Register of Funds.

4. The liquidator of a Fund shall be the Fund Company which has taken over the management of that Fund.

5. If a merger of Fund Companies is conducted in a manner described in Article 492 § 1.2 of the Polish Commercial Companies and Partnerships Code, the application for the approval of that merger shall specify the Fund which is to be liquidated.

6. Starting from the date of takeover of management of the Fund by another Fund Company, the Fund being subject to liquidation may not conclude contracts with new members nor participate in the drawing organised by the Social Security Institution.

Jurisprudence

Article 70. 1. An Open Fund shall forthwith publish in a national daily newspaper designated for the Fund's announcements and on a publicly available Web site a notice specifying the content of the Supervision Authority's approval of the takeover of the management of that Fund or merger of the General Open Fund Companies together with information on the rights of Members vested in them in connection with the liquidation of the

Fund.

2. The Open Fund being subject to liquidation and the Open Fund to which the assets of liquidated Fund are transferred are under obligation, on the basis of a notification made by a Member that he/she has concluded an agreement with another Open Fund, which notification shall be made within 2 months after the date of the notice mentioned in para. 1, to make Transfer Withdrawal of the amounts standing to that Member's account to that Fund. In such case, the General Open Fund Company must not charge the fee referred to in Article 199.2.

3. In the case of an Occupational Fund, the shareholders of the Occupational Fund Company managing that Fund shall promptly be provided with the information referred to in para. 1, in a manner specified in the Fund's statute.

4. A Fund shall forthwith notify the Supervision Authority of the content of the notice referred to in para. 1, or the information referred to in para. 3.

5. If an Open Fund fails to perform the obligation referred to in para. 1, the Supervision Authority will make an announcement at the expense of the liquidator.

Article 71. 1. The liquidation of a Fund is executed by way of transferring its assets to a Fund managed by the Fund Company which has taken over the management of that Fund, or which has taken over the Company managing that Fund as a result of a merger or – if the merger of Fund Companies is effected in the manner described in Article 492 § 1.2 of the Polish Commercial Companies and Partnerships Code – to a Fund which is not subject to liquidation as a result of the merger of Fund Companies, subject to para. 3.

2. The transfer of assets is effected on the date specified in the approval of the takeover of the management of the Fund or of the merger of Fund Companies, but no later than 6 months after the date when the Supervision Authority issues such approval. The date specified in the approval is the date of completion of the liquidation of the Fund in the meaning of Article 68 para. 7.

3. After notifying the Supervision Authority in accordance with Article 70 para. 4, the Fund which is being liquidated is under an obligation to forthwith terminate its agreement with the depositary keeping its assets and is entitled to terminate agreements with any other entities acting on its behalf or change the terms of such agreement in a manner ensuring compliance with the provisions of the statute of the acquiring Fund, with effect from the date of completion of the liquidation. Any provisions of such agreements which restrict or exclude the possibility of the agreement being terminated in the above mentioned manner are considered invalid.

4. In the period referred to in para. 2, the Fund being subject to liquidation and the acquiring Fund are under obligation to complete all actions necessary to merge the Register of Members of the Fund being subject to liquidation with the Register of Members of the acquiring Fund as of the day of completion of liquidation.

5. On the day of completion of liquidation of a Fund:

- 1) the transfer of its assets to the acquiring Fund is considered complete,
- 2) the acquiring Fund converts the accounting units existing in the target Fund into the accounting units existing in the acquiring Fund,
- 3) members of target Fund become members of the acquiring Fund on the terms specified in the statute of acquiring Fund,
- 4) the acquiring Fund enters into all rights and obligations of the target Fund.

6. The Social Security Institution makes the changes in the Central Register of Open Pension Funds' Members in the scope resulting from para. 5.3 as of the date of completion of liquidation.

7. The assets of the target Fund are given out to the depositary keeping the assets of the acquiring Fund with observance of the rules set forth in Article 163.

8. If the register of members of the target Fund was kept by a third party, the documents and all other carriers of data relating to that register are given out to the acquiring Fund or to the entity keeping its register of members in a manner ensuring continuous performance of obligations related to the keeping of a register of fund members and within the time limit agreed by both parties without unnecessary delay.

Article 72. Immediately after completion of the fund's liquidation, the liquidator presents to the Supervision Authority a detailed report on the actions referred to in Article 71.3, 71.4, 71.5.2, 71.7 and 71.8 as well as submits the application to the registry court for deletion of that fund from the Register of Funds.

Article 73. Liquidation of Occupational Fund, the management of which was not taken over by another Occupational Fund, takes place with observance of provisions of Articles 74 to 78.

Article 74. 1. The liquidation of an Occupational Fund is carried out on the basis of the decision of the Supervision Authority to liquidate that Fund.

2. The decision issued by the Supervision Authority shall specify the commencement and completion dates of the liquidation of the Fund.

3. The provisions of Article 69 para. 3 and Article 70 pars. 3-4 shall apply accordingly.

4. The liquidator of an Occupational Fund is its depositary, unless the Supervision Authority appoints another liquidator.

Article 75. The liquidation of a Fund consists in disposing of its assets, recovering debts owed to the Fund, satisfying the liabilities of its creditors and allocating the amounts standing to the accounts of its Members according to their instructions.

Article 76. 1. In case of liquidation of an Occupational Fund, the amounts standing to the accounts of its Members may be allocated in one of the manners specified below:

1) transferred to another Occupational Fund in the form of a Transfer Withdrawal, provided that the Member meets the requirements for membership of that Fund;

2) transferred to a life insurance company on the terms specified in the Act on Occupational Pension Schemes,

3) transferred to an open investment fund or specialised open investment fund on the terms defined in the Act on Occupational Pension Schemes,

4) paid to the Member in the form of a single lump sum payment.

2. The above amounts shall be allocated in the manner specified in para. 1 pt. 4 if the Member does not give any instructions as to the manner of using his/her assets.

3. Assets that are not distributed in accordance with para. 1 are placed in court deposit.

Article 77. The liquidator shall forthwith notify the Supervision Authority of the completion of the actions referred to in Article 75. At the same time, the liquidator shall submit to the Registry Court an application to delete the liquidated Fund from the Register of Funds.

Article 78. The Council of Ministers shall issue a Regulation defining the specific procedure for liquidating Occupational Funds in the case referred to in Article 73, and in particular the procedure and deadline for submitting instructions by Members in respect of the amounts standing to their Accounts

Secondary legislation

Chapter 6

(repealed)

Article 79. (repealed)

Article 80. (repealed)

Chapter 7

Membership of a Pension Fund

Article 81. 1. A person becomes a Member of an Open Fund, subject to paras. 5 and 6, upon the conclusion of a contract with that Fund, if:

- 1) on the day of conclusion of the first contract with an Open Fund the person accessing the Fund is or was, in the period of 12 months prior to the conclusion of the contract, subject to pension insurance within the meaning of the provisions on the social security system,
- 2) the Social Security Institution makes the relevant entry or change in the Central Register of Open Pension Funds' Members referred to in the provisions on the social security system.

2. An Open Fund may not refuse to conclude a contract unless the person applying for membership of the Fund does not meet eligibility requirements specified in the provisions on the social security system.

3. The contract in regard of which any of the conditions named in para.1 was not met does not bear legal consequences, subject to para. 4. The Social Security Institution is under obligation to notify the Open Fund within 30 working days whether the person who concluded the contract meets the conditions specified in para. 1.

4. If a person who concluded with an Open Fund a contract, which is later declared ineffective in spite of existence of factual and legal grounds for meeting the conditions specified in para. 1 on the day of conclusion of the contract, subsequently obtains membership of an Open Fund, the Social Security Institution is under obligation to transfer to such Fund the contributions due for the period in which that person was subject to pension insurance.

5. An individual may be a member of only one Open Fund. In case of change of the Fund, the membership of the new Fund is obtained as of the date of registration of changes in the Central Register of Pension Funds' Members.

6. A membership of an Open Fund can be also obtained:

- 1) as a result of the drawing conducted by the Social Security Institution on the terms provided in the provisions on the social security system, as of the day of making entry in the register referred to in para. 1.2,
- 2) as a result of opening an account with an Open Fund on the basis of Article 128.1.

7. The Social Security Institution is obligated to notify the person drawn and the Open Fund, the member of which that person became, about the results of the drawing.

8. Together with the notification, a member of an Open Fund shall receive the data of the Open Fund that are subject to recording in the Register of Funds, while the Open Fund shall receive the basic personal data of the member of Open Fund, referred to in Article 89.3, save that the Open Fund receives those data in electronic form.

9. After having obtained the basic personal data of the member, in accordance with para. 8, the Open Fund shall immediately confirm to the member in writing the terms of membership, at the same time notifying the member of his/her right specified in Article 82.1 and of the consequences of non-exercise of that right as specified in Article 132.1 as well as calls upon that member to comply immediately with the obligation specified in Article 83.1, at the same time informing the member about the consequences of failure to comply with that obligation or improper compliance as specified in Article 83.3 and 83.4.

Court rulings

Jurisprudence

Article 82. 1. When concluding a contract with an Open Fund a person applying for admission to the Fund is under obligation to give full name of the natural person or persons in favour of whom the payment of unused assets is to be made after that person's death in accordance with Article 131.

1a. The right referred to in para. 1 is also vested in a member of an Open Fund.

2. If a Member nominates more than one person entitled to receive the amounts standing to the Member's account after his/her death and does not specify the share that

each person has in the above mentioned amounts, each person shall be deemed to be entitled to receive an equal proportion of those amounts.

3. A Member of an Open Fund may at any time change his/her previous instructions, nominating other natural persons as entitled to receive the amounts standing to his/her account after his/her death instead of the persons referred to in para. 1, or otherwise specify the proportion of the amounts standing to his/her account to which each of the nominated persons is entitled, or to cancel his/her previous instruction without indicating any other persons.

4. The nomination of a person entitled to receive amounts standing to a Member's account after his/her death becomes ineffective if the nominated person dies before the death of the Member. In such case the proportion which was allocated for the deceased person shall be distributed in equal proportions among other nominated persons unless the Member gives other instructions in respect of that proportion.

5. The Fund is under obligation to inform the person accessing the Open Fund about the consequences of not giving the instruction referred to in para. 1.

Jurisprudence

Article 83. 1. When concluding a contract with an Open Fund, a person applying for admission to the Fund is in addition under obligation to submit a written declaration regarding the property relations between that person and his/her spouse. If there is no statutory joint property of spouses between the spouses, appropriate documents must be submitted specifying the manner in which the property relations are regulated. The above obligation applies as well to a Member of an Open Fund who got married after concluding a contract with the Fund.

2. A Member of an Open Fund is under obligation to notify the Fund in writing of each change in relation to the information presented in the declaration referred to in para. 1 if such change affects the amounts standing to the Member's account. The notification must be accompanied by a document confirming the change.

3. In the event of a failure to meet the obligation referred to in second sentence of para. 1 or in para. 2 it is assumed respectively that there is a statutory joint property relation between the spouses or that the conjugal property relations are regulated in accordance with the contents of the contract made with the Open Fund or with the last notification made by the member of an Open Fund in accordance with para. 2.

4. An Open Fund is not liable for damages that may occur as a result of failure to comply with the obligation referred in para. 1 or para. 2 or as a result of improper compliance with that obligation.

Article 84. If a Member of an Open Fund joins another Open Fund, he/she is under obligation to notify the Fund, the membership of which he/she held until then, that he/she has concluded a contract with another Fund. The contract with the former Fund is terminated as of the day of recording the change in the Central Register of Open Pension Funds' Members.

Article 84a. 1. Persons born between 1949 and 1953 who conclude a contract with an Open Fund are under obligation to make a written statement that they become acquainted with the Articles 24, 26, 46 to 50, 53, 183, 184 and 185 of the Act on Pensions and Annuity Benefits from the Social Security Fund of December 17, 1998 (Dz. U. [Journal of Laws] of 2004, No. 39, item 353 as amended⁵⁾) and confirm it with their own signature.

2. A person who conducts canvassing activities for an Open Fund in regard of the person specified in para. 1 is under obligation to inform that person about consequences resulting from provisions referred to in para. 1 and in particular about the fact that as a result of that person's accession to an Open Fund the pension from the Social Security Fund can be significantly lower or it could not be awarded at the age lower than that specified in Article 24 of the Act referred to in para. 1.

Jurisprudence

Article 85. The Council of Ministers shall issue a Regulation specifying:

- 1) the manner and the course of concluding a contract on the basis of which a person becomes a Member of an Open Fund,
- 2) the manner of and dates for submitting a declaration regarding conjugal property relations of a Member of an Open Fund, and notifying an Open Fund of any change in relation to the information presented in the declaration which relates to the amounts standing to a Member's account.
- 3) the manner by which a Member of an Open Fund notifies the Fund of the fact that he/she is joining another Open Fund,
- 4) the manner and dates on which an Open Fund notifies the Social Security Institution of conclusion of the contract with a Fund's member and the scope of data which such notification shall include,
- 5) the specimen of notification referred to in Article 84,
- 6) detailed rules for an Open Fund's withdrawal of notification of conclusion of the contract with a new member as well as for deletion of the entry in the Central Register of Open Pension Funds' Members by the Social Security Institution,
- 7) detailed manner of determination and settlement of unduly received contribution referred to in Article 100a, which is subject to return.

Secondary legislation

Article 86. 1. A natural person is eligible for membership of an Occupational Fund if he/she satisfies the requirements set out in the Act on Occupational Pension Schemes for participants of Occupational Pension Schemes.

2. A natural person who no longer satisfies the requirements referred to in para. 1 shall maintain his/her status as a Member of an Occupational Fund.

Article 87. A person becomes a Member of an Occupational Fund upon concluding an occupational pension contract, on terms specified in the Act on Occupational Pension Schemes.

Article 88. A Member may give up his/her membership in an Occupational Fund by way of termination of the occupational pension contract, on terms specified in the Act on Occupational Pension Schemes.

Article 89. 1. A Fund shall keep a register of its Members containing their basic personal details, information on contributions made to the Fund and received Transfer Withdrawals, conversion of those contributions and Transfer Withdrawals into accounting units and information on the current status of the amounts standing to Members' accounts, and in the case of occupational pension funds, shall also keep information on the current status of shares standing to quantitative accounts.

2. Basic personal information on Fund Members referred to in para. 1 shall include:

- 1) name and surname,
- 2) date and place of birth,
- 3) personal PESEL number in the Universal Electronic Population Register and tax identification number NIP and in case when a fund member was not assigned PESEL number and NIP number or one of them – in place of the missing number a number of ID Card or passport,
- 4) residential address.

3. The keeping of the Register of a Fund's Members may be entrusted to a third party.

4. The Council of Ministers shall issue a Regulation specifying detailed principles for keeping the Register of the Members of a Fund, including the detailed scope of information to be contained in the register and the principles for copying and keeping copies of the data included in the register in the event that the register is lost.

Secondary legislation

Article 90. 1. A social insurance court having an jurisdiction in the area where a Member of a Fund has his/her residential address decides on any matters relating to claims arising under legal relationships between Members of Open Funds and those Funds or their bodies.

2. The provisions of the Civil Procedure Code regarding the procedure in cases relating to the labour and social insurance law, except for Article 460 § 1, Article 461 § 1 and 2, Article 463 § 1¹ and 3, Article 467 § 4, Article 476 § 1-2 and 4-5, Article 477¹ § 1¹-2, Article 477², Article 477⁶, Article 477⁹-477^{14a}, apply to the matters referred to in para. 1

Article 91. A common court having an jurisdiction in the area where a Member of a Fund has his/her residential address decides on any matters relating to claims arising under legal relationships between Members of Occupational Funds and those Funds or their bodies.

Chapter 8

Canvassing Activities of Open Pension Funds

Article 92. 1. Additional financial benefits on account of membership of an Open Fund may not be offered in canvassing activities conducted by Open Funds for the purpose of persuading any person to join the Fund or remain its Member.

2. The provision of para. 1 shall apply accordingly to activities other than those defined in this provision, if within the framework of those activities additional financial benefits are offered in exchange for joining a specific Open Fund or remaining its Member.

3. Canvassing activities within the meaning of para. 1 mean any income-earning activities aimed at persuading a given person to join an Open Fund or to remain a Member of such Fund. Canvassing activities also include concluding contracts on behalf of an Open Fund, on the basis of which one becomes a Member of that Fund, as well as acting as an intermediary in concluding such contracts.

Article 93. The canvassing activities for the benefit of an Open Fund in the scope resulting from Article 92.3 can be conducted by the Open Fund or, as commissioned by such Fund, the following entities only:

- 1) domestic banks, in the meaning of the Banking Law Act of August 29, 1997 (Dz. U. [Journal of Laws] of 2002, No. 72, item 665, as amended⁶⁾)
- 2) insurance companies,
- 3) brokerage houses within the meaning of the regulations governing the public trading of securities,
- 4) insurance agents,
- 5) entities involved in brokerage in the meaning of the regulations governing the insurance activities,
- 6) "Poczta Polska" - a state-owned utility enterprise,
- 7) (repealed).

2. An entity which carries out activities associated with preparation and broadcast of advertisements, in the framework of its business activities and as commissioned by the entities referred to in para. 1, does not conduct canvassing activities within the meaning of Article 92.3.

3. Canvassing activities may be conducted only by natural persons entered in the register of persons entitled to conduct canvassing activities for Open Funds, kept by the Supervision Authority.

4. If an Open Fund is conducting canvassing activities without the participation of the entities referred to in para. 1, canvassing operations for the benefit of such Fund may only be performed by natural persons employed by under the contract of employment, agency

contract, contract of mandate or another legal relationship of similar nature between a natural person and a General Open Fund Company being a body of that Fund.

5. (repealed)

6. A natural person entered in the register referred to in para. 3 above may perform canvassing activities for one Open Fund only. In the event of expiry or termination of the contract for canvassing activities for the benefit of an Open Fund, the commencement of canvassing activities for another Fund may take place after 6 months.

6a. The restriction referred to in para. 6 shall not apply when the cessation of canvassing activities for the benefit of an Open Fund was caused by expiry of the contract or its termination at the incentive of the Open Fund or entities referred to in para. 1.

7. A General Open Fund Company, as a body of an Open Fund, is responsible under Article 62 and 204 for irregularities occurring in canvassing activities and during canvassing activities regardless whether the fund's canvassing activities are conducted by the Fund directly or through intermediation of the entities referred to in para. 1.1-6.

Jurisprudence

Article 93a. The canvassing activities for the benefit of an Open Fund may not be carried out with exploitation of superiority relation resulting from employment relationship or another legal relationship of similar nature, on which the work dependency or other dependency of similar nature is based.

Article 94. 1. Any natural person who:

- 1) has not had a final court sentence passed against him/her for a wilful offence against property, document credibility, life and health, justice system, protection of information, economic trading, trading in money or securities, for a fiscal offence or an offence referred to in Chapter 22,
 - 2) has full legal capacity,
 - 3) gives the guarantee of proper performance of canvassing activities,
 - 4) has educational background at least at the secondary school level,
- may be entered in the register referred to in Article 93 para. 3.

2. The Supervision Authority shall make an entry in the register on the basis of an application by an Open Fund. A refusal of registration is made in the form of an administrative decision. The entry is made or the decision on refusal of registration issued within 1 month from the application date.

3. A register of individuals authorised to conduct canvassing activities for Open Funds includes the following information:

- 1) number of entry in the register,
- 2) basic personal information on persons entered in the register, including:
 - a) name and surname,
 - b) date and place of birth,
 - c) names of parents,
 - d) personal PESEL number in the Universal Electronic Population Register or passport number or number of another document confirming identity in case of persons who do not hold Polish citizenship,
 - e) residential address,
- 3) name of entity on whose behalf the person entered in the register is conducting canvassing activity,
- 4) name of Open Fund for which the person entered in the register is conducting canvassing activity.

4. The Supervision Authority shall issue an administrative decision to cancel an individual from the register at the request of an entity on whose behalf such individual is performing canvassing activities, or it shall issue such a decision *ex officio* if a person:

- 1) no longer satisfies the requirements necessary for obtaining an entry in the register,

- 2) conducts canvassing activities in violation of existing laws.
5. A person deleted from the registry on the grounds of para. 4.2 may not be re-entered into the register for 24 months from the date of deletion.
6. The Supervision Authority invalidates, by way of administrative decision, an entry in the register when, after having made the entry, it obtains information that on the day of making the entry no grounds existed that condition the entry as specified in para. 1. The contracts of membership of an Open Fund concluded by the person carrying out canvassing activities with respect to whom the Supervision Authority invalidated the entry in register are legally effective.
7. The Open Fund, for the benefit of which a person conducts canvassing activities in violation of laws, shall report the fact of violation of legal regulations by the person conducting canvassing activities to the Supervision Authority immediately after taking notice thereof.
8. An Open Fund on the behalf of which a person conducts canvassing activities shall notify the Supervision Authority if such person stops to conduct canvassing activity on its behalf within 14 days from the date of expiry or termination of contract for canvassing activities made with that person or from that on which the Fund took notice of expiry or termination of such contract. When making the report, the Open Fund indicates the date of expiry or termination of contract for canvassing activities and specifies whether the termination or expiry of the contract took place at the incentive of the Fund or the entities referred to in Article 93.1. The Open Fund shall immediately notify the person conducting canvassing activities of the date and contents of the report on cessation of canvassing activities by that person. On the basis of such report, the Supervision Authority shall make a relevant annotation in the register referred to in Article 93.3.
9. When a person entered in the register begins to conduct canvassing activity on behalf of an Open Fund other than that the Fund he/she conducted canvassing activities for until then, such new Open Fund shall immediately notify the Supervision Authority of the fact. A notification shall be made before the canvassing activity is commenced. The commencement of activities can take place after the relevant changes in the register entry are made.
10. On the basis of the report referred to in para. 9, the Supervision Authority makes the relevant changes in the register and deletes the annotation referred to in para. 8 or refuses to make such changes by way of administrative decision. Incompliance of the report with the Act, in particular failure to cease canvassing activities for the former Open Fund or entity, constitutes grounds for issuing a decision refusing the changes in register.
11. In the case when a person entered into the register resumes canvassing activities for the benefit of the same Open Fund and on behalf of the same entity, the said Fund shall immediately apply for deletion of annotation concerning the cessation of canvassing activities, indicating the date on which the canvassing activities were resumed. The Supervision Authority deletes the relevant annotation concerning the cessation on the basis of the application. A person entered into the register can commence the conduct of canvassing activities for the benefit of the same Open Fund and on behalf of the same entity on the day indicated in the application.
12. The Open Fund, on the behalf of which the canvassing activities are conducted, is required to report to the Supervision Authority any changes subject to registration in the register within 30 days from the date it becomes aware of such changes and in case of change of data referred to in para. 3.3 – immediately. A refusal to amend the register is made in the form of an administrative decision.

Chapter 9

Accounts and Conversion of Contributions

Article 95. Contributions shall be paid to accounts operated by Open Funds in the amounts and on the terms specified in separate acts, or to accounts operated by Occupational Funds in the amounts and with the frequency specified in the pension plan referred to in the Act on Occupational Pension Schemes.

Article 96. 1. Contributions to an Occupational Fund are made in the name of employees who are Members of that Fund.

2. An employer who is a shareholder of an Occupational Fund Company pays the contributions referred to in para. 1 on behalf of its employees.

3. A contribution to an Occupational Fund may also be paid in the form of a Transfer Withdrawal, as referred to in the Act on Occupational Pension Schemes.

Article 97. 1. Payments into Open Funds and Occupational Funds may be made in the form of securities on terms defined in separate acts.

2. Payments into Occupational Funds may be made in the form of shares referred to in Article 101 on terms specified in Chapter 10.

Article 98. When a Member joins a Fund, appropriate accounts shall be opened for him/her to which contributions and Transfer Withdrawals shall be paid.

Article 99. 1. The contributions paid to a Fund as well as Transfer Withdrawals received shall be converted into Accounting Units

2. (repealed)

3. The total value of accounting units of a Fund is always equal to the total value of that Fund's net assets converted into such units.

4. Contributions and Transfer Withdrawals received may be converted into fractions of accounting units, and the value of assets standing to a Member's account may be expressed in such fractions.

5. The value of the net assets of a Fund and the value of an accounting unit shall be determined in accordance with the valuation principles applicable to the assets and liabilities of Funds.

6. The Council of Ministers shall issue a Regulation defining detailed principles for evaluating assets and liabilities of Funds.

Secondary legislation

Article 100. 1. The contributions and Transfer Withdrawals received by a Fund shall be converted into accounting units on a date determined in accordance with para. 2, hereinafter referred to as the "Conversion Date", according to the value of the accounting units on that date.

1a. Value of an accounting unit on the Conversion Date is determined by dividing the value of the Fund's net assets as of the day of conversion by the number of accounting units recorded on that day on the accounts kept by the Fund.

2. In case of Occupational Funds, a Conversion Date shall be the last working day of a month, unless the Fund specifies in its statute additional Conversion Dates. In case of Open Funds, the Conversion Date is every working day.

3. On the first Conversion Date following the payment of the first contribution to the Fund, the value of an accounting unit shall be PLN 10.00.

4. Until contributions and Transfer Withdrawals are converted they shall be kept on a separate cash account of the Fund. Interest on that account shall constitute the Fund's revenue.

5. Conversion of the securities referred to in Article 97 para. 1 into accounting units shall be made in accordance with the principles defined in separate acts.

6. (repealed)

Article 100a. 1. An Open Fund is under obligation to return to the Social Security Institution any contribution received unduly.

1a. The sum of the contribution referred to in para. 1 is determined in the amount of the nominal value of the contribution transferred by the Social Security Institution plus the nominal value of interest for delay, subject to paras. 1b – 10.

1b. An Open Fund redeems the accounting units corresponding to the amount referred to in para. 1a decreased by the equivalent of charges collected by the Fund Company managing that Fund.

2. If the return of undue contribution takes place as a result of invalidation of contract with Open Fund or change of incorrect entry in the Central Register of Open Pension Funds' Members, made by the Social Security Institution *ex officio*, then in order to determine the amount of contribution referred to in para. 1 the Open Fund redeems the accounting units acquired for the unduly collected contribution subject to paras. 3 - 10.

3. The Open Fund returns the sum referred to in para. 2 plus the nominal value of the charges collected by the Fund Company managing the Fund, subject to para. 4.

4. If the transfer of undue contribution to Open Fund took place for the reasons on the part of the Fund Company managing the Fund, the amount referred to in para. 3 may not be lower than the nominal value, regardless of the received contribution increased by interest specified in the provisions on social security system.

5. The amount constituting the equivalent of charges referred to in para. 3 and the difference between the undue contribution, as increased by interest specified in the provisions of social security system, and the amount referred to in para. 3 shall be financed by the Fund Company managing the Open Fund, subject to paras. 6 and 7.

6. If the transfer of undue contribution to an Open Fund took place for the reasons on the part of the Social Security Institution and the Fund made the Transfer Withdrawal in accordance with Article 119, 126 or 131, the Fund Company managing the Fund and the Fund Company managing the Fund to which the transfer withdrawal was made finance the equivalent of the charges they collected, referred to in para. 3.

7. If the return of undue contribution is made as a result of invalidity of the contract with Open Fund and the Fund made the Transfer Withdrawal in accordance with Article 119, 126 or 131, the Fund Company managing the Fund finances the equivalent of difference between the sum determined in accordance with para. 4, till the day of Transfer Withdrawal, and the sum transferred in the framework of Transfer Withdrawal.

8. If the person for whom the undue contribution was transferred is a member of another Open Fund, the sum determined in accordance with paras. 3 and 4 is transferred by the Social Security Institution to that Fund, subject to para. 9.

9. The sum referred to in para. 8 cannot be lower than the nominal value of due contribution increased by interest specified in the provisions on social security system.

10. Interest referred to in para. 4 is charged for the period from debiting the bank account of the Social Security Institution with the amount of undue contribution until the day of its return.

11. The return of undue contribution is made by deduction from contributions transferred by the Social Security Institution to the Open Fund.

12. If the Social Security Institution transferred the contribution referred to in para. 1 together with interest for delay, the provisions of para. 1 to 11 concerning the contribution apply accordingly to such interest.

Chapter 10

Quantitative Accounts

Article 101. 1. Shares acquired by Members of an Occupational Fund free of charge or on preferential terms as a result of privatisation of their employer shall be deposited on quantitative accounts maintained by Occupational Funds on the terms specified in the Act on Occupational Pension Schemes.

2. An Occupational Fund may outsource running quantitative accounts to an entity authorised to run securities accounts.

3. A quantitative account may not contain shares of more than one issuer.

4. Shares deposited on quantitative accounts are described in quantitative terms.

5 Members of an Occupational Fund may neither dispose of shares deposited on quantitative accounts nor of the right to the dividend from those shares.

6. A Member of an Occupational Fund may dispose of subscription right with respect to the shares of new issue, subject to Article 105.

Article 102. 1. An Occupational Fund shall liquidate Members' quantitative accounts and shall transfer shares deposited on those accounts to the assets of the Fund on the basis of a timetable of liquidation of quantitative accounts determined by the Occupational Fund Company by way of a resolution of its Supervisory Board. The Supervision Authority shall be notified of the timetable no later than 3 months before the commencement of the liquidation of those accounts.

2. The timetable referred to in para. 1 shall specify:

- 1) the dates of transfer of shares to the assets of the Fund,
- 2) the principles for determining the number of shares deposited by individual Members on quantitative accounts which are to be transferred to the Fund's assets, including shares deposited by persons who join the Fund after the timetable is published,
- 3) the number of shares deposited on quantitative accounts by individual Members, which are to be transferred to the assets of the Fund on particular dates,

3. Dates for transfer of shares to the assets of the Fund for persons joining an Occupational Fund after the publication of the timetable shall be determined on an individual basis.

4. The transfer of shares to the assets of the Fund may be effected only on Conversion Dates.

5. On the date of transfer of shares, accounting units having a value corresponding to the value of shares transferred from Members' quantitative accounts are credited to Members' accounts less the amount of taxes due. The value of shares is determined on the basis of the principles of valuation of the assets of a Fund.

6. The liquidation of quantitative accounts on which shares of a particular issuer have been deposited commences no later than 3 years after the date when the first share of that issuer was deposited on a quantitative account and lasts no longer than 10 years from the date of transfer of the first shares from a quantitative account to the Fund's assets.

7. If it is stated that the implementation of the timetable may be, or is, in breach of appropriate regulations or may affect or affects the interests of Members of an Occupational Fund, the Supervision Authority may suspend the implementation of the timetable and demand that the Occupational Fund rectify the stated irregularities.

8. The transfer of shares of public companies deposited on quantitative accounts to the assets of the Fund takes place outside the regulated market in the meaning of the Act on Public Trading of Securities of August 21, 1997 and Article 38, pars. 3 and 4, of the Act on Commercialisation and Privatisation of State-Owned Enterprises⁽⁵⁾ of August 30, 1996 (Dz. U. [Journal of Laws] of 2002, No. 171, item 1397 as amended⁷⁾) does not apply to transfer of such shares.

Article 103. 1. If a Member requests a payment, a Transfer Withdrawal to another Fund or refund of monies standing to his/her account in an Occupational Fund, the quantitative account of that Member shall be immediately liquidated and the shares which have not yet been transferred to the Fund's assets shall be released to that Member, subject to para. 2.

2. If an Occupational Fund pays the amounts standing to a Member's account in the form of instalments, the account of that Member shall be liquidated upon the payment of the last instalment, and the shares deposited on that account shall be released to that Member.

3. Upon the death of a Member holding a quantitative amount, or upon dissolution of an account through divorce or invalidation of marriage, the shares standing to his/her quantitative account shall be released to the entitled person. The provisions of Articles 130 and 133 shall apply accordingly.

4. The provisions of para. 3 shall apply accordingly where the conjugal property of

spouses ceases while the spouses are still married or where the statutory joint property between a Fund Member and his/her spouse is excluded or limited on the basis of an agreement.

Article 104. The dividend on shares deposited on a quantitative account and the sale price obtained by an Occupational Fund for the sale of the subscription rights in respect of new issue shares on behalf of a Member shall be transferred to that Member's account maintained in accounting units.

Article 105. The Council of Ministers shall issue a Regulation specifying the detailed principles by which an Occupational Fund on behalf of its Members conducts transactions on the sale of Members' subscription rights deriving from shares deposited on quantitative accounts, the principles for settling accounts in respect of such transactions, as well as the detailed principles and procedure in accordance with which those rights shall be exercised by Members of the Fund.

Secondary legislation

Article 106. 1. If the total number of shares of the same issuer deposited on all quantitative accounts in one Occupational Fund is in excess of 1 % of the total number of shares issued by that issuer, the rights relating to the ownership of those shares, except for property rights, shall be exercised by a representative of the Members of the Fund who have such shares on their quantitative accounts, hereinafter referred to as the "Representative".

2. The Representative shall be appointed for 3 years in secret voting by the Members of the Fund holding shares of a given issuer on their quantitative accounts.

3. The procedure for the election of the Representative shall be defined in by-laws adopted by the Supervisory Board of an Occupational Fund Company. The by-laws shall specify in particular whether Members themselves or their appointed representatives are to participate in the election, and shall define the principles relating to the dismissal of a representative before the expiry of his/her term. The by-laws may not make the validity of the appointment of a representative dependent on the number of persons participating in the election.

3. The provisions of Article 45 para. 4 shall apply accordingly.

Chapter 11

Payment of Fund Accumulated on the Account

Article 107. 1. A Member of a Fund may not dispose of the amounts standing to his/her account.

2. The provision of para. 1 does not apply to instructions by a Fund Member given in the event that he/she should die.

Article 108. The amounts standing to the account of a Member of an Open Fund are not subject to execution.

Article 109. The amounts standing to the account of a Member of an Occupational Fund shall be subject to execution on the terms specified in the Act on Occupational Pension Schemes.

Article 110. The conditions under which a Member of an Open Fund becomes entitled to be paid the amounts standing to his/her account and the principles relating to such payment are defined in separate acts.

Article 111. 1. After a Member of an Open Fund attains his/her pension age, the payment of the amounts standing to his/her account in an Open Fund shall be effected by transferring those amounts to a pension insurance company indicated by the Member, from which the Member purchases an annuity.

2. The Council of Ministers shall issue a Regulation defining the detailed principles and procedure by which Members of an Open Fund submit instructions in respect of the transfer of the amounts standing to their accounts to pension insurance companies in connection with the purchase of an annuity, and the principles and procedure for transferring those amounts to pension insurance companies.

Article 111a. 1. The funds accumulated on the account of a Member of an Open Pension Fund are transferred by that Fund, through the Social Security Institution, to the state budget in the event when the competent pension authority notifies of determination of the right of a member of an Open Pension Fund to the pension calculated on the basis of Article 15 or the right to rise in such pension under Article 14 of:

1) Act on Pension Performances for Professional Military and Their Families of December 10, 1993 (Dz. U. [Journal of Laws] of 2004, No. 8, item 66 and No. 121, item 1264), or

2) Act on Pension Performances for the officers of Police, Internal Security Agency, Intelligence Agency, Boarder Guards, Government Security Bureau, State Firefighting Force and Prison Guards and Their Families (Dz. U. [Journal of Laws] of 2004, No. 8, item 67 and No. 121, item 1264).

2. In the event referred to in para. 1, an Open Pension Fund may not collect charge.

3. The minister competent for social protection shall specify, by way of a Regulation, the dates and procedure for returns in the events referred to in para. 1, taking into account the rules of co-operation of the Open Pension Funds, pension authorities and the Social Security Institution when making settlements.

Secondary legislation

Article 112. The manner of using the amounts standing to an account in an Open Fund in the event of a Member becomes entitled to receive a disability pension under social insurance is defined in separate acts.

Article 113. The conditions for a Member of an Occupational Fund becoming entitled to payment, Transfer Withdrawal or refund of the amounts standing to his/her account are specified in the Act on Occupational Pension Schemes.

Article 114. 1. An Occupational Fund is under obligation to ensure that its Members have the possibility to receive the full amount of the assets standing to their accounts in the form of a single lump sum payment.

2. A payment may be also effected in instalments, in accordance with the procedure and principles specified in the statute of the Fund.

3. The payment of the amounts standing to a Member's account in either of the above forms shall be made at the written request of the Member.

Article 115. A single lump sum payment is made not later than 3 months after the date when Occupational Fund receives a written request from the Member.

Article 116. If the payment is effected in instalments, the first instalment shall be paid no later than 1 month after the date when Occupational Fund receives from the Member his/her request, unless Member requests that the payment be made on later date.

Article 117. A Member who receives the payment of the amounts standing to his/her account in instalments may at the time request that the amounts remaining on his/her

account be paid in the form of a single lump sum payment. The lump sum payment shall be made in accordance with principles specified in Article 115.

Article 118. If a Member of an Occupational Fund does not request the Fund to pay the amounts standing to his/her account by the time such Member attains the age of 70, the fund shall pay those amounts in the same form of a single lump sum payment within 3 months after the date when such Member turns 70.

Article 119. 1. If a Member of an Open Fund joins another Open Fund, the first Fund shall make a Transfer Withdrawal to the new Fund on the basis of being notified by that Member of the conclusion of the contract with that Fund. The Open Fund to which the Transfer Withdrawal is made is under obligation to accept such payment.

2. The Transfer Withdrawal is made on the condition that the member of the Open Fund pays from his/her own financial means the fee to the General Open Fund Company managing a given Open Fund, save that such fee can be collected only when less than 24 months passed between the last day of the month in which the membership of the Fund was obtained in accordance with Article 81.1 or 81.6 and the date of the nearest Transfer Withdrawal to another Fund.

3. The Council of Ministers shall issue a Regulation specifying the manner of calculation, collection and the amount of the fee referred to in para. 2, taking into account the length of membership time in an Open Fund, save that this amount may not be higher than 20% of the minimum remuneration specified in separate regulations.

Secondary legislation
Court rulings

Article 120. Transfer Withdrawals between Occupational Funds shall be effected in accordance with principles defined in the Act on Occupational Pension Schemes.

Article 121. No Transfer Withdrawals are permitted from an account in an Open Fund to an account in an Occupational Fund or from an Occupational Fund to an account in an Open Fund.

Article 122. 1. Transfer Withdrawals between Open Funds shall be made on the last working day of February, May, August and November.

2. The amount of Transfer Withdrawal is determined on the fifth working day preceding that payment.

Article 123. 1. The settlement of accounts in respect of Transfer Withdrawals effected between Open Funds shall be made by the National Depository of Securities Joint Stock Company, hereinafter to as the "National Depository".

2. The General Open Fund Company which is a body of the Open Fund to which the Transfer Withdrawal was made shall pay the charges to the Social Security Institution on account of reimbursement for costs of activities associated with accession of a member to that Open Fund and to the National Depository on account of reimbursement of costs for activities associated with clearing of Transfer Withdrawals.

2a. The charge which a General Open Fund Company makes to the entities referred to in para. 2 amounts to:

1) in case of the Social Security Institution – 1% of the minimum remuneration specified in separate regulations for each registered contract of membership of a person accessing a new Fund,

2) in case of National Depository – 1% of the minimum remuneration specified in separate regulations for each Transfer Withdrawal cleared.

3. (repealed).

Article 123a. The Council of Ministers shall specify, by way of Regulation, the dates

and procedure for making Transfer Withdrawals in cases referred to in Articles 70.2 and 119 as well as in the provisions of Chapters 12 and 13. The Regulation shall in particular specify the rules of co-operation between the National Depository and the Social Security Institution as well as between Open Pension Funds and the Social Security Institution when clearing the Transfer Withdrawals. It shall also specify the manner of disposal of interest on account of keeping the means transferred by Open Funds in the framework of clearance of that payment on an account.

Secondary legislation

Article 124. The National Depository shall prepare by-laws, subject to approval by the Supervision Authority, specifying the detailed procedure for clearing in respect of Transfer Withdrawals between Open Funds. The by-laws shall also specify the amount of charges due to the National Depository to be made by Open Funds in connection to the clearing of Transfer Withdrawals.

Article 125. A Transfer Withdrawal does not exclude the responsibility of a Fund Company that is a body of the Fund making such Transfer Withdrawal towards an ex Member of such Fund or another person to whom the transfers has been made.

Chapter 12

Division of Assets in the Event of Divorce or Invalidation of Marriage

Article 126. Where the marriage of a Member of an Open Fund is dissolved by divorce or declared void, the amounts standing to the account of that Member which are due to his/her ex-spouse as result of the division of joint property of spouses shall be transferred in the form of a Transfer Withdrawal to the account of the ex-spouse in an Open Fund.

Article 127. The above Transfer Withdrawal shall be made by the Fund within the time limit referred to in Article 122, after the Fund is presented with a confirmation that the amounts standing to the account of the Member are due to his/her ex-spouse.

Article 128. 1. If the ex-spouse does not have an account in an Open Fund and does not specify an account in any Open Fund within 2 months after the date of presentation of the document referred to in Article 127, the Open Fund of which the other ex-spouse is a Member shall be obliged to open an account in the name of the ex-spouse entitled to receive the above mentioned amounts and shall transfer to that account in the form of Transfer Withdrawal the amounts standing to his/her ex-spouse's account which are due to him/her. Upon the opening of an account the entitled ex-spouse becomes a Member of the Fund. The Fund shall immediately confirm the terms of membership of the entitled ex-spouse in writing.

2. In the case described in para. 1, the Open Fund shall request the ex-spouse entitled to receive the above mentioned amounts to immediately fulfil the obligation referred to in Article 82 para. 1.

Art 129. The provisions of Articles 126-128 shall apply accordingly where the joint property of spouses ceases during the marriage of a Member of an Open Fund, or where the statutory joint property of spouses between a Member of such Fund and his/her spouse is excluded or limited on the basis of an agreement.

Article 129a. 1. Persons for whom the Open Fund opened an account on the basis of Article 128 are entitled to one lump sum payment of all amounts standing to their account within 14 days from submission of the request, in the event when:

1) the request is supplemented with a decision on award of pension, pension performance, farmers' pension or remuneration for a retired member of forces,

2) such person did not acquire the right to pension, provided that he/she attained 60 years of age (women) or 65 years of age (men),

3) the request is made by a person born before January 1, 1969, if the amounts standing to the account of such a person in the sum determined on the day of request are not higher than the amount constituting:

a) 50% of average remuneration referred to in Article 20.3 of the Act on Pensions and Annual Benefits from the Social Security Fund – if the account was opened before January 1, 2002,

b) 150% of average remuneration referred to in Article 20.3 of the Act on Pensions and Annual Benefits from the Social Security Fund – if the account was opened after January 1, 2002.

2. The persons who are entitled to early retirement on the basis of separate regulations and for whom an Open Fun opened an account under Article 128 shall not lose their right to early retirement.

3. For the insured referred to in Article 111.3 and 11.6 of the Act on Social Security System of October 13, 1998 (Dz. U. [Journal of Laws] No. 137, item 887 as amended⁸⁾), who became members of an Open Pension Fund under Article 128, the Social Security Institution shall not transfer the part of contribution referred to in Article 22.3 of the Act on Social Security System to the account in an Open Pension Fund.

4. If the Social Security Institution transferred the part of contribution referred to in Article 22.3 of the Act on Social Security System to the account in an Open Pension Fund for the insured referred to in para. 3, such contribution is subject to return on terms set for the undue contribution transferred to an Open Pension Fund.

5. The provision of para. 1 shall not apply to the persons born after December 31, 1968, who on the day of opening of the account were paying the contribution for social security.

Article 130. 1. If the marriage is dissolved by divorce or declared void, the payment of the amounts standing to the account of a Member of an Occupational Fund which were part of conjugal property shall be made directly in favour of the Member's ex-spouse no later than 3 months after the date when the Fund is presented with a confirmation that those amounts are due to the ex-spouse.

2. The provisions of para. 1 shall apply accordingly where the conjugal property ceases during the marriage of a Member of an Occupational Fund, or where the statutory joint property of spouses between a Member of such Fund and his/her spouse is excluded or limited on the basis of an agreement.

Chapter 13

Distribution of Assets Upon the Death of a Fund Member

Art 131. 1. If at the time of death a Member of an Open Fund was married the Fund shall make a Transfer Withdrawal of half of the amounts standing to the account of the deceased Member to the account of the deceased Member's spouse, to the extent that those amounts constituted a conjugal property.

2. The Transfer Withdrawal shall be made within the time limit referred to in Article 122, after the date when the widowed spouse presents copies of the death certificate and the marriage certificate, and a written declaration stating whether, until the death of the Member, there were any changes in the information referred to in Art 83 para. 1, or the notification referred to in Article 83 para. 2, and if there were such changes, a confirmation of their occurrence.

3. If the spouse of the deceased Member does not have an account in an Open Fund, the provisions of Article 128 shall apply accordingly.

4. If the deceased failed to meet the obligation specified in second sentence of Article 83.1 or in Article 83.2, the spouse shall confirm in writing that since the death of the Member of the Fund there were no changes in the property relations between the spouses as determined in accordance with Article 83.3, and if there were – present appropriate evidence of such changes.

5. An Open Fund is not liable for the consequences of failure to comply or improper compliance with the obligation referred to in para. 2 or 3.
Jurisprudence

Article 132. 1. The amounts standing to the account of the deceased Member which are not used in accordance with Article 131 shall be transferred to the persons nominated by the deceased Member in accordance with Article 82 para. 1 or 1a, and if such persons have not been nominated, the amounts form a part of the inheritance.

2. (repealed)

3. The Open Fund shall pay amounts due to the person nominated by the deceased Member within 3 months after the date when the Fund is presented with an official document confirming the identity of the entitled person, save that the payment of the amounts due to widowed spouse may be made at his/her request to an account in an Open Fund. In the latter case, the provisions of Article 128 shall apply accordingly to the Transfer Withdrawal of the amounts due to the widowed spouse.

4. A payment made directly to the person nominated by deceased Member shall be effected either in the form of a single lump sum payment or in the form of instalments payable for period of no more than 2 years, in accordance with written instructions of the person entitled to receive the above payment.

4a. The provisions of paras. 3 and 4 shall apply accordingly to the heirs, who are additionally obligated to present the Fund with a legal confirmation of acquisition of inheritance.

5. The principles for effecting payments in instalments are specified in the statute of Open Fund.

Article 133. 1. In the event of the death of a Member of an Occupational Fund, the amounts standing to his/her account shall be paid to a person indicated by that Member as the person entitled to receive benefits upon the Member's death. If no disposition is made in the case of death, the amounts standing to the account shall form a part of inheritance.

2. The payment of amounts referred to in para. 1 shall be made directly to the persons entitled to receive those amounts, within 1 month after the date when the Fund is presented with a confirmation that those persons are entitled to receive the above amounts.

Chapter 14

Financing of Pension Fund's Activities

Article 134. 1. An Open Fund may charge fees only in the following manner:

- 1) ⁽⁶⁾by deducting a specific percentage from the contributions paid, subject to the provision that such deduction shall be made before contributions are converted into accounting units;
- 1) ⁽⁷⁾ *by deducting a specific percentage from the contributions paid, not larger than 3.5%, subject to the provision that such deduction shall be made before contributions are converted into accounting units;*
- 2) (repealed)
- 3) (repealed)

2. The amounts representing the equivalent of fees referred to in para. 1 shall be allocated immediately by an Open Fund to the General Open Fund Company.

Court rulings

Article 135. An Open Fund shall use a uniform method for calculating and charging the fees referred to in Article 134 para. 1 in relation to all Members.

Article 136. 1. Any costs related to the performance of transaction in relation to acquisition or alienation of Fund's assets, which constitute the equivalent of fees incurred in

favour of third parties whose intermediation the Fund is obligated to use on the basis of separate regulations, and any costs related to keeping those assets which constitute the equivalent of the fees of the depositary, shall be covered by the Fund directly from the assets.

2. An Occupational Fund may use its assets directly to cover also the costs of management of the Fund by the Occupational Fund Company in the amount not higher than 0.05% of the value of managed net assets per month. This charge is calculated for each day of valuation of the Fund's net assets and is payable on the last working day of each month.

2a. An Open Fund may use its assets directly to cover also costs of management of the Fund by the Fund Company at the rate determined in the statute but not exceeding the amounts calculated in accordance with the following scale:

Net assets (in PLN million)		Monthly charge for the management of an Open Fund based on the net assets is:
Over	Up to	
	8,000	0.045 % of the value of net assets per month
8,000	20,000	PLN 3.6 million + 0.04 % of surplus over PLN 8,000 million of the value of net assets per month
20,000	35,000	PLN 8.4 million + 0.032 % of surplus over PLN 20.000 million of the value of net assets per month
35,000	65,000	PLN 13.2 million + 0.023 % of surplus over PLN 35.000 million of the value of net assets per month
65,000		PLN 20.1 million + 0.015 % of surplus over PLN 65.000 million of the value of net assets per month

The amount in question shall be determined for each date of valuation of the net assets of the fund and shall be payable on the last working day of each month.

2b. An Open Fund can finance from its assets the costs resulting from opening of bonus account referred to in Article 182a.

3. When evaluating the managed net assets of the Fund as referred to in paras. 2 and 2a, the value of deposits referred to in Article 141 para. 1 pt. 8 and deposits in the participation titles issued by joint investment institutions having their registered offices abroad referred to in Article 143 para. 1 shall not be taken into account.

Court rulings

Article 136a. 1. The costs associated with keeping the assets and with realisation and clearing of transaction of acquisition or alienation of the Fund's assets which constitute the equivalent of fees incurred in favour of clearing institutions whose intermediation the Fund is obligated to use on the basis of separate regulations and which form a part of the depositary's remuneration shall be covered by the Fund from the assets in accordance with the currently applicable table of commissions and fees of a given clearing institution.

2. The costs referred to in para. 2 which constitute the equivalent of fees incurred in favour of foreign clearing institutions shall be covered by the Fund from the assets up to the amount not exceeding the relevant costs of domestic clearing institutions referred to in para. 1.

Article 137. 1. Operating costs of a Fund which are not covered directly from its assets shall be covered by the Fund Company.

2. Employers who are shareholders of an Occupational Fund Company are under obligation to cover operating costs of that Fund Company on the terms specified in the Articles of Association of that Fund Company.

Court rulings
Jurisprudence

Article 138. (repealed)

Chapter 15

Investment Activities of Pension Funds

Article 139. A Fund shall invest its assets in accordance with the provisions of this Act and so as to ensure the maximum security of the assets and maximise the overall return on investment.

Article 140. For the purposes of determining the proportion of the assets of an Occupational Fund which may be invested in individual classes of investment, the shares deposited the quantitative accounts and amounts standing to the separate cash account of the Fund referred to in Article 100 para. 4 shall not be taken into account.

Article 141. 1. Subject to the provisions of Article 146, a Fund may only invest its assets in the following classes of investment:

- 1) bonds, bills and other securities issued by the State Treasury or the National Bank of Poland, and in loans and credits granted to those entities;
- 2) bonds and other debt securities representing cash benefits, for which the State Treasury or the National Bank of Poland stands guarantor or surety as well as in deposits, credits and loans for which those entities stand guarantors or surety;
- 3) bank deposits and bank securities, in Polish currency;
- 3a) bank deposits and bank securities, in currencies of the OECD member states and other countries with which the Republic of Poland concluded agreements on mutual support and protection of investment, save that those currencies can be purchased exclusively for the purposes of settlement of current liabilities of the Fund,
- 4) shares in companies quoted on the regulated stock market as well as the subscription rights, rights to shares and convertible bonds of those companies, quoted on the regulated stock market;
- 5) shares in companies quoted on the regulated over the counter market and shares in companies not quoted on the regulated stock market and not quoted on the regulated over the counter market but admitted to public trading of securities as well as the subscription rights, rights to shares and convertible bonds of those companies;
- 6) shares in National Investments Funds;
- 7) investment certificates issued by closed end investment funds;
- 8) participation units alienated by open end investment funds or specialist open end investment funds;
- 9) bonds and other debt securities issued by local government units, their unions or the capital city of Warsaw and admitted to public trading;
- 10) bonds and other debt securities issued by local government units, their unions or the capital city of Warsaw which are not admitted to public trading;
- 10a) income bonds referred to in the Bonds Act of June 29, 1995 (Dz. U. [Journal of Laws] of 2001, No. 120, item 1300; of 2002, No. 216, item 1824 and of 2003, No. 217, item 2124);
- 11) bonds issued by entities other than local government units, their unions or the capital city of Warsaw which are fully backed up in the amount corresponding to their full nominal value and possible interest and are admitted to public trading;

- 12) bonds issued by entities other than local government units, their unions or the capital city of Warsaw which are fully backed up in the amount corresponding to their full nominal value and possible interest and are not admitted to public trading;
- 13) bonds and other debt securities issued by public companies, other than securities referred to in paras. 11 and 12,
- 13a) bonds and other debt securities which are admitted to public trading, other than those referred to in paras. 9 and 11,
- 13b) mortgage bonds,
- 13c) GDRs within the meaning of the Act on Public Trading of Securities, admitted to public trading on regulated market in the territory of the Republic of Poland.
- 14) (repealed)

2. The assets of Funds may be invested in participation units alienated by open end investment funds and specialised open end investment funds if the investment policy of those investment funds, as reflected in their statuses and periodically published pursuant to separate regulations, consists in investing assets only in the classes of investment referred to in para. 1 and Article 143, subject to the restrictions specified in Article 142.

3. The Council of Ministers may, by way of a Regulation, specify classes of investment other than those listed in para.1, save that the investment in derivatives must be aiming at limiting the investment risk associated with investment of the Fund's assets, with consideration of: the types of risks that should be limited, the availability of instruments allowing for reduction of risk, the possibility to evaluate those instruments and the effects of using them.

Draft Acts

Article 142. 1. Investments in the classes of investment referred to in Article 141 para. 1 pts. 1-11 and 13a-13c as well as in para. 3 shall in total represent at least 90% of the value of the assets of a Fund.

2. Investments in particular classes of investment referred to in Article 141 para. 1 pts. 2-13 are subject to the following restrictions:

- 1) (repealed)
- 2) In case of the assets referred to in Article 141 para. 1 pt. 3, no more than 5% of the value of the assets of a Fund may be invested in one bank or two or more banks which are Affiliated Entities, subject to the provision that in case of one selected bank or group of banks which are Affiliated Entities such limit may be 7,5%;
- 3) in case of the assets referred to in Article 141 par 1 pt. 7, no more than 2% of the value of the assets of a Fund may be invested in investment certificates issued by one closed end investment fund, subject to para. 2a;
- 4) in case of the assets referred to in Article 141 par 1 pt. 8, no more than 5% of the value of the assets of a Fund may be invested in participation units alienated by one open end investment fund or one specialised open end investment fund, subject to the provision that no more than 15% of the value of the Fund's assets may be invested in total in all open end investment funds and specialised open end investment funds managed by one Investment Fund Company.
- 5) The total value of assets invested by a Fund in any securities issued by one issuer, or two or more issuers which are Affiliated Entities, may not exceed 5% of the total value of that Fund's assets.
- 6) The total value of assets invested in the classes of investment referred to in Article 141.1.3a may not exceed 5% of the total value of that Fund's assets.

2a. A Pension Fund can make investments in investment certificates or bonds issued by one securitisation fund up to 5% of the value of the Fund's assets.

3. The restrictions referred to in para. 2 pt. 4 do not apply to Occupational Funds.

4. The restrictions referred to in para. 2 above shall not apply if a Fund has been obliged to accept payments in the form specified in Article 97 para. 1. The provisions of Article 149 para. 2 and 3 shall apply accordingly.

5. The Council of Minister shall issue a Regulation specifying the maximum proportion of the assets of an Open Fund which may be invested in particular classes of investment referred to in Article 141.

6. The Council of Ministers may issue a Regulation specifying the maximum proportion of assets of an Occupational Fund which may be invested in particular classes of investments referred to in Article 141.

Secondary legislation

Article 143. 1. On the basis of general permit issued by the minister competent for the matters of financial institutions in a form of a Regulation, and pursuant to the terms specified therein, assets of a Pension Fund may be invested abroad, in securities issued by companies quoted on the main markets of the stock exchanges operating in any countries which are OECD members or in such other countries as may be specified in the above permit, as well as in Treasury securities issued by governments or central banks of such countries and in participation titles issued by joint investment institutions with their seats in such countries, if those institutions offer them to the public and redeem them at the request of participants.

2. The total value of investments of the assets:

1) of an Open Fund in the class of investment referred to in para. 1 may not exceed 5% of the value of those assets,

2) of an Occupational Fund in the class of investment referred to in para.1 may not exceed 30% of the value of those assets.

3. The provisions of Article 142 shall apply accordingly to the investments referred to in para. 1.

Secondary legislation

Article 144. No part of the assets of an Open Fund may be invested in:

- 1) shares or other securities issued by a the General Open Fund Company managing that Open Fund,
- 2) shares or other securities issued by a shareholder of the General Open Fund Company managing that Fund,
- 3) shares or other securities issued by entities which are Affiliated Entities in relation to the entities referred to in pts. 1 and 2.

Article 145. Assets of an Occupational Fund may not be invested in securities issued by the Occupational Fund Company managing that Fund.

Article 146. 1. No more than the total of 5% of the value of the assets of an Occupational Fund may be invested in shares or other securities issued by shareholders of the Occupational Fund Company managing that Fund.

2. No more than the total of 10% of the value of the assets of an Occupational Fund may be invested in shares or other securities issued by entities which are Affiliated Entities in relation to the shareholders referred to in para. 1

3. The assets of an Occupational Fund may be invested in securities issued by the shareholders of the Occupational Fund Company managing such Fund or by entities who are Affiliated Entities in relation to such shareholders, provided that the statute of a given Fund so permits.

Article 147. The statute of an Occupational Fund shall specify if and in what securities, treasury bills and participation units a Fund may invest its assets abroad.

Article 148. Any investment by an Occupational Fund in participation units alienated by open end investment funds or specialised open end investment funds is subject to the following restrictions:

- 1) an Investment Fund Company managing an open end investment fund or a specialised open end investment fund in whose participation units an Occupational Fund has invested must not hold more than 5% of shares of any of the shareholders of the Occupational Fund Company managing that Fund and 10% of the total number of shares of all the shareholders of that Fund Company.
- 2) No more than 5% of the value of the assets of an open end investment fund or a specialised open end investment fund may be invested in shares of any single shareholder of the Occupational Fund Company,
- 3) No member of the Management Board or Supervisory Board of an Occupational Fund Company shall be a member of the Management Board or Supervisory Board of the Investment Fund Company managing an open end investment fund or a specialised open end investment fund.

Article 149. 1. If as result of change in market prices constituting a basis for evaluation of the assets and liabilities of Funds, changes in foreign currency rates, in organisational or economic relations between entities, the financial instruments of which are object of investment of the Fund's assets, or as a result of any other circumstances beyond the immediate control of the Fund, the Fund inadvertently breaches the provisions of this chapter, it shall be under obligation to take immediate measures aimed at adjusting its investment activities to the requirements specified in the Act.

2. The adjustment of investment activities to the requirements specified in the Act shall be completed no later than 6 months after the date on which the breach occurred or when an evaluation of the Fund's assets indicated that there had been such a violation, whichever of the above occurs later.

3. Upon the request of the Fund submitted no later than 1 month from the date of occurrence of the breach or the date of discovery of such breach, in accordance with para. 2, the Supervision Authority may allow to extend the time limit referred to in para. 2 to 12 months if it is justified by the need to protect the interests of Members.

4. If a results of the implementation of the timetable referred to in Article 102, an Occupational Fund, acting with the aim to protect the interests of its Members, breaches Article 146, the adjustment of the Fund's investment activities to the requirements specified in the above mentioned Article shall be completed no later than 1 month after the date when the breach occurred or was discovered in accordance with para. 2, subject to the provision that the Supervision Authority may extend that period up to 6 months at the request of the Fund. In the latter case, the provisions of para. 3 shall apply accordingly.

Article 150. A Fund is prohibited from:

- 1) Selling its assets to:
 - a) the Fund Company which manages that Fund,
 - b) members of the Management Board of the Supervisory Board of the Fund Company,
 - c) employees of the Fund Company,
 - d) spouses, immediate family and relatives, up to second degree of kinship, of the persons listed under b) and c),
 - e) shareholders of the Fund Company,
 - f) any entity which is an Affiliated Entity in relation to the Fund Company,
 - g) any entity which is an Affiliated Company in relation to the shareholders of the Fund Company,
 - h) (repealed)
- 2) purchasing assets from any of the entities listed in pt. 1 above, paying with the Fund's assets,

- 3) granting loans, guarantees and suretyship, subject to Article 141 para. 1, Article 143 para. 1 and Article 151.

Article 151. 1. A Fund may grant cash loans from its assets to any of the entities referred to in Article 141 para. 1 pts. 4-5, save that such loans shall be treated as an investment in shares in such entities.

2. A Fund may grant loans in the form of securities admitted to public trading, on terms and conditions compliant with the provisions regulating the public trading of securities.

3. The Council of Ministers may specify detailed rules for manner and procedure of granting loans by the Funds in the form of securities admitted in public trading. The Regulation shall specify in particular – if different from the provisions regulating the public trading of securities – the manner and procedure for conclusion of loan contract, allowable limit of the Fund's involvement in granting loans in the form of securities and the manner of taking the securities lent into account when applying limitations in the Fund's investment activities as well as when evaluating the Fund's assets due to the safety of the Fund's assets and protection of interest of the Members of the Fund.

Article 152. 1. An Occupational Fund may entrust, to the extent and according to rules specified in the Act on Public Trading of Securities, the management of its assets to entities which on the basis of that Act are authorised to conduct business activities in the field of management of someone else's portfolio of securities under assignment and which hold licences of the Securities and Exchange Commission for the conduct of such activities.

2. An entity referred to in para. 1 shall be selected by the Occupational Fund Company by way of a resolution of the Supervisory Board and shall manage part or all of the assets of the Occupational Fund, on the basis of the relevant contract with the Fund and according to the statement of investment principles defined in the statute of the Fund.

3. In the event referred to in para. 1, the statute of an Occupational Fund shall define terms on which the fund entrusts the management of a part or all of its assets, or shall authorise the Occupational Fund Company to set such terms by way of a Supervisory Board resolution.

Article 153. Within the framework of investment activities conducted abroad, a Fund can entrust, in the scope defined in Article 143, the management of the Fund's assets to entities having their registered offices in foreign countries referred to in Article 143, which are authorised to conduct such activities in the field of management of someone's assets according to the laws effective in those countries.

Article 154. 1. Loans and credits taken by a Fund may not exceed 1.5% of the value of its assets.

2. An Occupational Fund may enter into a contract to receive a loan or credit only on the basis of a decision of the Occupational Fund Company in the form of a resolution of the Supervisory Board.

Article 154a. 1. A Fund Company shall keep for 3 years the documents on the basis of which individual decisions on the Fund's investments are made, in a manner enabling determination when and by whom they were made.

2. A Fund Company documents the investment process in a manner enabling determination who and when made decisions concerning investment strategy and investment of the Fund's assets.

Article 155. The Council of Ministers may issue a Regulation defining additional restrictions relating to the investment activities of the Funds, having regard to the protection of the interests of the Members.

Secondary legislation

Article 156. If a Fund does not comply with the provisions of the Act defining the rules for investment activities or fails to perform its obligations specified in Article 149, paras. 1, 2 and 4, the Supervision Authority may impose a penalty of up to PLN 500,000 on the Fund Company.

Chapter 16 The Depositary

Article 157. A Fund must appoint a Depositary to whom it shall entrust the keeping of its assets on the basis of an appropriate agreement.

Article 158. 1. A Depositary may be a bank which:

- 1) is a domestic bank in the meaning of the Banking Law Act
- 2) has a minimum equity constituting the PLN equivalent of at least EUR 100,000,000 - if it is to keep the assets of an Open Fund, or EUR 30,000,000 - if it is to keep the assets of an Occupational Fund,
- 3) does not hold shares in the Fund Company managing the Fund whose assets it keeps, or shares in an Entity Affiliated with such a Company,
- 4) is not a lender (either in loan or in credit) with respect to the Fund whose assets it keeps or the Fund Company managing that Fund, unless the amount of the loan or credit does not exceed 1% of the value of the Fund's net assets upon contracting, and
- 5) none of its employees or members of its statutory bodies are:
 - (a) members of the Management Board of Supervisory Board or employees of the Fund Company managing the Fund whose assets it keeps,
 - (b) members of the Management Board of Supervisory Board or employees of any Affiliated Entities in relation to the Fund Company referred to in a).

2. The National Depositary may be a Depositary, provided that it meets the conditions defined in para. 1 pts. 3-5.

3. If a Depositary ceases to meet any of the conditions listed in para. 1 in the duration of its agreement with a Fund, it shall immediately notify the Supervision Authority and the Fund thereof and is obligated to adjust to the requirements referred to in this provision within not longer than 3 months from the day on which it ceased to meet those conditions.

Article 159. 1. The functions of a Depositary in relation to the keeping of Fund's assets shall include the following:

- 1) running the register of the Fund's assets standing to relevant accounts and deposited with the Depositary or other entities authorised to do so by virtue of separate regulations or on the basis of agreements entered into at the Depositary's consent,
- 2) ensuring that the net value of the Fund's assets is calculated in a manner enabling the Fund to comply with the obligations specified in Chapter 17,
- 3) ensuring that agreements on the acquisition and alienation of the Fund's assets are in accordance with the Act and the provisions of the Fund's statute,
- 4) fulfilling the instructions of the Fund, unless such instructions are in violation of the Act or the Fund statute or, in the opinion of the Depositary, represent a threat to the security of the Fund's assets,
- 5) ensuring that the Fund's assets are invested in accordance with the Act and the Fund statute,
- 6) ensuring that all accounts related to agreements concerning the Fund's assets are settled on time,
- 7) fulfilling the instructions of any liquidator in relation to the liquidation of the Fund,
- 8) fulfilling other obligation provided for in this Act.

2. The Depositary may at the instruction of the Fund enter into agreements referred to in para. 1 pt. 1 with banks or financial institutions seated outside the Republic of Poland,

provided that the value of the equities of such banks or financial institutions is at least EUR 200,000,000.

3. The Depositary shall also be required to institute proceedings against the Fund Company on behalf of the Fund Members in the event of any damage caused by non-performance or improper performance of duties within the scope of Fund management and representation.

4. The Depositary shall ensure performance of the Fund's duties referred to in para. 1 pts. 2-3 and 5-6 in compliance with applicable laws and the Fund's statute, at least by exercising constant control over the factual and legal actions of the Fund and by bringing such actions in compliance with relevant laws and the Fund's statute.

Article 160. 1. The agreement with a Depositary concerning the keeping of the Fund's assets shall cover in particular the specific responsibilities of the Depositary and the Fund, the manner in which these should be performed, the remuneration of the Depositary and the manner of calculating the costs and charges to be borne by the Fund; it shall also indicate persons appointed by the Depositary who would be directly in charge of due performance of the agreement. The agreement can also specify in particular the amount of Depositary's remuneration on account of Depositary's function as an entity representing and managing the Fund in accordance with Article 64.1 or as a liquidator of an Occupational Fund. An agreement shall not limit the Depositary's statutory responsibilities.

2. A Depositary shall be liable for any damages incurred as a result of the non-performance or inappropriate performance of its responsibilities hereunder.

3. The liability referred to in para. 2 may not be excluded or restricted by any depositary agreement or by entrusting the keeping of part or all of the Fund's assets to another entity.

4. A Fund or a Depositary can terminate the depositary agreement by notice, however the period of notice may not be shorter than 6 months. A party giving notice shall immediately inform the Supervision Authority of this notice as well as reasons for termination of the contract.

Article 161. 1. In the event of non-performance or improper performance by the Depositary of its obligations under the depositary agreement:

1) the Fund shall terminate the agreement and immediately notify the Supervision Authority of the fact,

2) the Supervision Authority may request the Fund to change the Depositary.

2. The Supervision Authority may also request the Fund to change the Depositary if the financial situation of the Depositary has deteriorated substantially, threatening the security of the assets kept in its custody.

3. The National Bank of Poland shall forthwith notify the Supervision Authority of any instance of material deterioration in the financial situation of the bank acting as a Depositary referred to in para. 2.

4. The Securities and Exchange Commission shall forthwith notify the Supervision Authority of any material deterioration in the financial situation of the National Depositary in an event referred to in para. 2.

5. In the situations specified in para. 1 and 2 above, the notice period may be shorter than that specified in Article 160 para. 4.

Article 162. 1. When the Depositary has been declared bankrupt or liquidation of Depositary commenced or when the Supervision Authority has stated that a Depositary has seriously violated the terms of the agreement in a manner which threatens the safety of the Fund's assets or interests of its Members, the Fund shall immediately nominate another Depositary. In such an event the provisions of Article 160 para. 4 sentence 1 shall not apply.

2. The provision of para. 1 shall apply accordingly where a Depositary fails to satisfy any of the criteria in Article 158.1 within the time limit specified in Article 158.3.

Article 163. 1. Each change of Depositary shall be made in a manner which ensures continuous performance of custodian duties in respect of the Fund's assets.

2. In case of termination of the agreement with a Depositary, the Depositary shall release the Fund's assets in its custody and all documents relating to the performance of duties referred to in para. 1 to a new Depositary within a period agreed by the parties, but without undue delay.

Article 164. 1. A Depositary shall immediately inform the Supervision Authority of any matter which it believes constitutes an act or omission which is likely to breach the Act or the Fund's statute or cause the interest of any Members' to be improperly protected.

2. A Depositary shall immediately inform the Supervision Authority of any discovered irregularities in the calculation of the value of the Fund's net assets, the value of an accounting unit and the rate of return, as referred to in Article 166, 169 and 170.

Article 165. Fund's assets deposited in accordance with the provisions of this Chapter may not be subject to execution against a Depositary or the entities referred to in Article 159 para. 1 pt. 1, and shall not be a part of the estate in bankruptcy of the Depositary or these entities and shall not be covered by any settlement proceedings.

Chapter 17

Valuation of Assets and Calculation of the Rate of Return in Pension Funds

Article 166. The value of the net assets of a Fund shall be determined by the Fund on each Valuation Date referred to in Article 168 and as of that date and notified to the Supervision Authority.

Article 167. The valuation of a Fund's net assets shall be used to determine the price of an accounting unit in accordance with the provisions of Chapter 9.

Article 168. 1. The Valuation Date for an Open Fund means each working day (excluding Saturdays). The Valuation Date for an Occupational Fund means the last working day of each month.

2. The statute of an Occupational Fund may provide for other Valuation Dates.

Article 169. The value of an accounting unit of a Fund shall be determined by the Fund on each Valuation Date and as of that date and shall be notified to the Supervision Authority, and in the case of an Open Fund, also notified to one of the information agencies indicated by the Supervision Authority.

Article 170. An Open Fund which has been accepting contributions for at least 36 months shall at the end of March and September each year determine the rate of return for the last 36 months. The rate of return shall be notified to the Supervision Authority and put on a publicly available Web site.

Article 171. A Fund shall also be required to notify a Depositary of the figures referred to in Article 166, 169 and 170 immediately after they have been determined.

Article 172. 1. The rate of return of a Fund shall be the quotient of the difference between the value of an accounting unit on the last working day of the accounting month and the value of that unit on the last working day of the accounting month preceding the 36-month period divided by the value of that unit on the last working day of the accounting month preceding the 36-month period, expressed in percents. Accounting months are March and September respectively.

2. The rate of return, calculated as in para.1, shall be published by the Supervision Authority.

Article 173. 1. The average weighted rate of return of all Open Funds for the 36-month period shall be the total of the products of the rates of return of each of the Open Funds referred to in Article 170, and the average market share index of a given Open Fund. The average market share index of a given Open Fund shall be the arithmetic mean of the market share index as of the last working day of the month preceding the 36-month period and the market share index as of the last working day of the month ending the 36-month period. The market share index of an Open Fund as of a given day shall be the quotient of the value of that Fund's net assets and the value of net assets of all Open Funds referred to in Article 170 as on the day when the index is calculated.

2. If the average market share index of a given Fund is at least 15%, then for the purposes of calculation of the average weighted rate of return of all Open Funds:

- 1) it is assumed that the index of the Fund is 15%,
- 2) the average market share indices of the remaining Funds, calculated in accordance with para. 1, are increased proportionally so that the total of indices for those Funds constitutes the difference between 100% value and the product of the number of Funds, for which the average market share index is at least 15%, and 15% value,
- 3) if for any Fund an increased index should be applied in excess of 15%, as a result of increase of market share indices of the remaining Funds, then the index of 15% is assumed for that Fund and the indices for the remaining Funds are increased again.

3. If the number of Open Funds for which the rate of return is determined in accordance with Article 172 is greater than 6, the percentage market share index for each of those Fund is determined at equal value.

4. The average weighted rate of return of all Open Funds shall be published by the Supervision Authority.

Article 173a. An Occupational Fund can order the performance of the obligations provided for in this Chapter, in full or in part, to other entities.

Article 174. The Council of Ministers shall issue a Regulation specifying:

- 1) detailed rules for the computation of the rate of return and the average weighted rate of return of all Open Funds, including the principles of rounding-up those values,
- 2) the date when and the manner in which an Open Fund is to notify the Supervision Authority of the Open Fund's rate of return as well as the date when and the manner in which an Open Fund publishes the information about that rate's value on a publicly available Web site,
- 3) the form in which the Supervision Authority publishes the average weighted rate of return of all Open Funds, as referred to in Article 173 para. 1,
- 4) the date when and manner in which an Open Fund is to notify the Supervision Authority of the value of the Fund's net assets and the value of an accounting unit.

Secondary legislation

Chapter 18 **Deficiency**

Article 175. 1. A deficiency in an Open Fund occurs when the rate of return of that Fund for the 36-month period as referred to in Article 170 is lower than the minimum required rate of return.

2. The minimum required rate of return is a rate of return 50% lower than the average weighted rate of return of all Open Funds in the relevant period, or four percentage points below that average, whichever of the above figures is lower.

3. The amount of deficiency is calculated as the ratio of the number of accounting units of the Fund as on the last working day of the 36-month period and the difference between

the value of an accounting unit, which would be necessary to ensure the minimum required rate of return, and the actual value of accounting unit as on the last working day of the 36-month period.

Article 176. 1. When there is a deficiency, an Open Fund shall be obliged within three days of the Supervision Authority announcing the average weighted rate of return of all Open Funds to redeem the accounting units accumulated on the reserve account, referred to in Article 181 para. 1, in the number allowing for covering the existing deficiency. The funds obtained as a result of redemption shall increase the value of the Fund's accounting unit.

2. A deficiency not covered with the funds standing to the reserve account shall be covered with the funds obtained through redemption of accounting units standing to the account of additional part of the Guarantee Fund in that Open Fund within 3 days of the Supervision Authority announcing the average weighted rate of return of all Open Funds.

3. If the funds from the additional part of the Guarantee Fund in that Open Fund are not sufficient to cover the deficiency, the General Open Fund Company shall cover the deficiency from its own funds within 14 days of the Supervision Authority announcing the average weighted rate of return of all Open Funds with the reservation that the deficiency shall be first covered with the funds from the basic part of the Guarantee Fund.

Article 177. 1. (repealed)

2. On account of covering the deficiency, the Guarantee Fund acquires the right towards the General Open Fund Company or its bankruptcy estate to claim the return of the funds of Guarantee Fund used to cover the deficiency.

3. The funds obtained by the Guarantee Fund in the manner referred to in para. 2 are distributed between the basic part and the additional part of the Guarantee Fund in such proportion in which they were used to cover the deficiency.

Article 178. 1. If covering the deficiency in the manner specified in Article 176.3 proves impossible, the Management Board of the General Open Fund Company is obligated to immediately notify the Supervision Authority thereof and the Authority shall apply to the competent court for pronouncement of bankruptcy of that Fund Company.

2. In case when the Fund Company is pronounced bankrupt, the claims of the Guarantee Fund referred to in Article 177.2 can be satisfied from the bankruptcy estate only after the debts and liabilities referred to in Article 342.1.1 of the Bankruptcy and Reorganisation Law Act of February 28, 2003 (Dz. U. [Journal of Laws] No. 60, item 535 as amended⁹⁾) are satisfied.

Article 179. 1. If the deficiency is caused by the loss of the Open Fund's assets by the Depositary, such assets having a tangible form, the Depositary shall make good any deficiency before the funds standing to the reserve account, the assets of the General Open Fund Company or the funds of the Guarantee Fund are used.

2. The Depositary shall cover the deficiency within 14 days from the day on which the deficiency is stated, even if the loss of assets of an Open Fund is not attributable to the fault of the Depositary.

3. On account of covering the deficiency, the Guarantee Fund acquires the right towards the Depositary or its bankruptcy estate to claim the return of the funds of Guarantee Fund used to cover the deficiency.

Article 180. The State Treasury shall guarantee the covering of a deficiency in the event that a deficiency cannot be covered using the funds of the Guarantee Fund, on the terms and conditions defined in separate regulations.

Jurisprudence

Article 181. 1. An Open Fund shall form a reserve account.

2. Funds standing to a reserve account referred to in para. 1 constitute part of the Fund's assets and are converted into accounting units.

3. The Supervision Authority may impose on a Fund Company which does not make payments onto the reserve account a penalty in the amount of up to PLN 500,000.

Article 181a. ⁽⁸⁾ 1. A General Open Fund Company can withdraw the funds standing to the reserve account on the last working day of April or the last working day of October, provided that the rate of return of the Fund managed by that Fund Company for the last 72 months ending on the last working day of the precedent month respectively, calculated as specified in Article 172, was not lower than the Consumer Price Index in total for the last 72 months, in March with respect to March 6 years earlier and in September with respect to September 6 years earlier respectively.

2. The index referred to in para. 1 is announced by the President of Main Statistical Office in the form of announcement in the Official Journal of the Republic of Poland "Monitor Polski" by April 20 and October 20.

Article 182. Funds standing to a reserve account may not be subject to execution conducted against a General Open Fund Company.

Article 182a. 1. An Open Fund shall transfer from its assets an amount not higher than 0.005% of the value of the managed net assets of the Fund per month to the General Open Fund Company. This amount is calculated for each day of evaluation of the Fund's net assets and payable on the last working day of each month. The General Open Fund Company shall transfer that amount to the bonus account no later than on the first working day of the next month.

2. An Open Fund shall form a bonus account, on which the funds referred to in para. 1 are kept. Those funds form a part of the Fund's assets and are converted into accounting units.

3. On the first working day after the Supervision Authority publishes the average weighted rate of return of all Open Funds:

1) the Fund Company managing the Fund which attained the highest rate of return acquires the right to withdraw all amounts standing to the bonus account in accordance with Article 181a,

2) the Fund Company managing the Fund which attained the lowest rate of return shall immediately transfer all amounts standing to the bonus account to the Open Fund,

3) the Fund Companies managing the remaining Funds acquire the right to withdraw in accordance with Article 181a that part of the amounts standing to the bonus account which constitutes the product of the total sum of amounts standing to the bonus account and the percentage bonus index referred to in para. 4, and the remaining part shall be transferred to the Open Fund immediately.

4. The percentage bonus index is calculated as a quotient of the difference between the rate of return attained by the Fund and the rate of return attained by the Fund referred to in para. 3.2 and the difference between the rates of return attained by the Fund referred to in para. 3.1 and the Fund referred to in para. 3.2.

5. The amounts standing to the bonus account, with respect to which the General Open Fund Company acquired the right to withdraw in accordance with Article 181a on the basis of para. 3.1 and 3.3. shall be immediately transferred to the reserve account referred to in Article 181.1.

Article 183. The Council of Ministers shall issue a Regulation specifying the detailed principles of covering a deficiency in the cases referred to in Articles 176 to 179 as well as the manner and rules for distribution of amounts referred to in Article 177.3, having regard to the need to protect the interests of the Fund's Members.

Secondary legislation

Chapter 19

Guarantee Fund

Article 184. 1. A Guarantee Fund is hereby established, consisting of a basic part and an additional part.

2. The basic part of the Guarantee Fund shall be administered by the National Depository.

3. An Open Fund shall form an account, constituting the additional part of the Guarantee Fund, to which the payments of the General Open Fund Company are transferred. The amounts standing to the account of the additional part of the Guarantee Fund shall be not less than 0.3% and not more than 0.4% of the value of the Fund's net assets, subject to Article 187.3.

4. The amounts standing to the additional part of the Guarantee Fund constitute a part of the Fund's assets and are converted into accounting units.

Article 185. 1. The assets of the Guarantee Fund shall be constituted by payments made by General Fund Companies from their own funds and any investment returns on the Guarantee Fund's assets. The assets of the Guarantee Fund shall not be subject to execution conducted against the assets of a General Open Fund Company.

2. The payments for the basic part of the Guarantee Fund by each General Open Fund Company shall be of a uniform proportion, expressed in percents and equal for all Open Funds, representing the net value of Fund's assets for every Open Fund managed by such Company.

3. The Council of Ministers shall, by way of a Regulation, specify:

- 1) the manner and amounts of payments due to the basic part of the Guarantee Fund, subject to the reservation that the total value of the basic part of the Guarantee Fund assets may not be more than 0.1% of the net value of the assets of all Open Funds, unless the amount of liabilities of the Guarantee Fund to the Open Pension Funds exceeds that amount,
- 2) the manner of transfer of the amounts which should be transferred to the account of additional part of the Guarantee Fund by the General Open Company Fund,
- 3) the manner of withdrawing the surplus from the account of the additional part of the Guarantee Fund by the General Open Fund Company,
- 4) the manner and procedure for payments to the basic part of the Guarantee Fund as well as the manner and procedure of operation of the basic part of Guarantee Fund, including investment of its assets,
- 5) the manner of management of the assets of the basic part of the Guarantee Fund, the amount of charges payable to the National Depository for administration of the basic part of the Fund and the manner of payment thereof, detailed conditions and procedure for making payments from those assets and returning them to the General Open Fund Companies as well as the manner of settlement with those General Open Fund Companies which ceases making payments as a result of discontinuance of the activities specified in the Act,
- 6) the manner, procedure and dates for providing the National Depository by the General Open Fund Companies with information concerning the additional part of the Fund, necessary to make the financial statements of the Guarantee Fund.

Secondary legislation

Article 186. (repealed)

Article 187. 1. The assets of the basic part Guarantee Fund may be used to make payments to an Open Fund where there is a deficiency to the extent that the assets of the additional part of the Guarantee Fund accumulated in that Open Fund are insufficient to cover that deficiency, and to cover the damages referred to in Article 48 para. 1 to the extent the General Open Fund Company is not liable for those damages or the damage cannot be covered using its estate in bankruptcy.

2. In case of lack of funds in the basic part of the Guarantee Fund, the National Depository shall, by specifying a percentage ratio identical for all Open Funds, determine the amount of payments to be made from the additional part of the Guarantee Fund administered by the Funds.

3. In the event referred to in para. 2, the supplementing of funds on the account of the additional part of the Guarantee Fund in an Open Fund by the General Open Fund Companies shall take place before the day preceding the day on which the Supervision Authority publishes the average weighted rate of return of all Open Funds for the subsequent 36-month period.

Article 188. Return of payments from the Guarantee Fund constitute revenue of a General Open Fund Company, in the meaning of the provisions on corporate income tax.

Article 188a. 1. The annual statements of the Guarantee Fund are made by the National Depository.

2. The statements of the Guarantee Fund are approved by the Supervision Authority.

Chapter 20

Information-related Obligations of Pension Funds

Article 189. 1. An Open Fund shall publish its information prospectus once in a year in a national daily newspaper designated for the Fund's announcements.

2. An information prospectus of a Fund shall contain the Fund's statute, information on the Fund's investment performance and the approved annual financial statements.

Jurisprudence

Article 190. 1. An open Fund shall make its information prospectus available for inspection by any person who applies for membership in that Fund before the applicant concludes a contract with the Fund.

2. An Open Fund shall also provide its information prospectus along with the recent half-yearly statements upon each request by a Member.

3. The Supervision Authority shall be provided with the information prospectus and annual and half-yearly financial statements immediately after they are made and in case of annual financial statements - also after their approval by the General Open Fund Company granted by way of resolution of the General Meeting of Shareholders.

Article 191. A Fund shall at regular intervals, and at least once in every 12 months, provide each Member with written information containing detailed information on the assets standing to the Member's Account, dates of contributions and Transfer Withdrawals made by the member during the relevant period and conversion of those contributions and Transfer Withdrawals into accounting units as well as the results of the Fund's investment activities. Such information shall be sent to the Members by ordinary mail.

2. In case of dispute, the burden of proof of dispatch of the written information referred to in para. 1 to the last known address of a Fund's Member rests with the Fund.

Article 192. Upon a request from a Member, a Fund is required to provide that Member with a statement of the monetary value of the assets standing to his/her account.

Article 193. 1. A Fund shall provide information on the structure of the Fund's assets, subject to paras. 2-4.

2. At monthly intervals an Open Fund shall make available information on the proportion of the Fund's assets invested in particular classes of investment specified in Chapter 15 as on the last Valuation Date in a given month.

3. At semi-annual intervals an Open Fund shall provide information on the value and proportion of the Fund's assets engaged in particular investments, including details of the issuers of particular securities, as on the last Valuation Date of the last month of each half-yearly period, with the reservation that the data from a half-yearly period can refer only to investments representing at least 1% of the value of the Fund's assets.

4. Complete information on the structure of the Fund Assets of an Open Fund and Occupational Fund, including any investments, also those representing less than 1% of the value of the Fund's assets, shall be made available at the end of each 12-month period.

Article 194. 1. The information referred to in Article 193 paras. 2-4 shall forthwith be provided by an Open Fund to the Supervision Authority and published on a publicly available Web site.

2. The information referred to in Article 193 para. 4 shall forthwith be provided by an Occupational Fund to the Supervision Authority and the shareholders of the Occupational Fund Company managing the Fund.

Article 194a. 1. An Occupational Fund is obligated to prepare the declaration of rules of the Fund's investment policy.

2. The declaration shall include at least the presentation of implemented risk assessment methods and risk management procedures as well as the rules for allocation of funds in securities.

3. An Occupational Fund provides the declaration to the Supervision Authority every three years or immediately after essential changes are made to the Fund's investment policy.

4. An Occupational Fund is obligated to provide the declaration to the Supervision Authority for the first time within 6 months from the receipt of first contribution by the Fund.

5. An Occupational Fund shall also provide the declaration at a written request of a Member.

Article 195. Fund Companies and Funds shall provide the Supervision Authority with periodical reports and information on their current activities and financial situation.

Jurisprudence

Article 196. ⁽⁹⁾ The Council of Ministers shall issue a Regulation defining:

1) specific requirements to be met by an information prospectus and the content of the information referred to in Articles 191-192;

2) the time and manner by which the prospectus and the information referred to in Articles 191-193 must be made available by a Fund;

3) the scope of the reports and information to be provided by a Fund and Fund Company to the Supervision Authority and the dates when those reports and information shall be provided to the Supervision Authority.

Secondary legislation

Article 197. 1. Any information on an Open Fund or Fund Company published by a General Open Fund Company or under the assignment from the General Open Fund Company or for the benefit of the General Open Fund Company or the Fund, including any promotional information, and any information on an Occupational Fund made available by an Occupational Fund Company, must present the financial situation of that Fund and the risk relating to membership of that Fund in a fair and reliable way.

2. If the Supervision Authority states that the publications or information made available or disseminated in public referred to in para. 1 is or may be misleading, it may, by way of an administrative decision, prohibit the Fund Company from publishing, making available or distribute the same.

3. In the administrative decision referred to in para. 2, the Fund Company shall be simultaneously ordered to publish or make available a dementi with the contents and form and on the date indicated by the Supervision Authority.

4. If the prohibition or order is not complied with, the Supervision Authority shall impose on the Fund Company a penalty of up to PLN 500,000 and publish or distribute appropriate dementi referred to in para. 3 at the expense of that Company.
Jurisprudence

Article 198. If a Fund Company or Depositary does not comply with the requirements specified in this Act relating to the provision of information to the Supervision Authority or the Fund Members, the Supervision Authority may impose a penalty of up to PLN 500,000.
Jurisprudence

Chapter 21

Supervision of the Operation of Funds

Article 199. (repealed)

Article 200. 1. (repealed)

2. The tasks of the Supervision Authority are:

- 1) supervising the operations of Funds
- 2) (repealed)
- 3) supervising the operation of occupational pension schemes,
- 4) developing public awareness of the purposes and operating principles of the Funds, with particular regard to rights vested in their Members,
- 5) developing public awareness of the purposes and operating principles of the occupational pension schemes, with particular regard to rights vested in their participants,
- 6) cooperating with state administrative authorities, the National Bank of Poland, the Social Security Institution, Fund Companies, entities providing services to Funds as well as employers' associations, trade unions and other social organisations, within the scope of developing state policy aiming to ensure the secure development of funds and occupational pension schemes,
- 7) providing the National Bank of Poland with information necessary for the performance of supervision over banks - depositaries and banks which are shareholders in Fund Companies,
- 8) providing the Securities and Exchange Commission with information necessary for the performance of supervision over the operation of the National Depositary,
- 9) undertaking other activities provided for in this Act.

Article 200a. (repealed)

Article 201. (repealed)

Article 202. 1. Proceedings before the Supervision Authority shall be conducted in accordance with the Code of Administrative Procedure, unless otherwise provided herein.

2. A decision of the Supervision Authority is subject to Article 127 § 3 of the Code of Administrative Procedure.

3. A request for re-examination of a case by the Supervision Authority shall not impede the execution of the Supervision Authority's decision to cancel the licence for establishment of a Fund Company, if the licence is cancelled due to reasons other than those defined in Article 61.

3a. The Supervision Authority may append the immediate enforceability clause to the administrative decision if required by the interests of Pension Funds' members or occupational pension schemes' participants.

4. When determining the amount of penalty imposed under the provisions hereof the Supervision Authority is obligated to take into account the type and importance of

irregularities stated.

Article 203. (repealed)

Article 204. 1. Within the scope of its supervision over the activities of the Funds, the Supervision Authority shall in particular have the following rights and powers:

- 1) to request from Fund Company the copies of all documents relating to the activities of the Fund and to become acquainted with their content,
- 2) to request any information and explanations concerning the activities of a Fund or a Fund Company from the members of the Management Board, the Supervisory Board or any Employees of the Fund Company and other persons associated with the Fund Company or the Fund on the basis of contract of mandate, contract for specific work or other legal relationship of similar nature,
- 3) demand that the depositary or a third party to whom the Fund or the Fund Company entrusted some activities provides all information, documents and explanations concerning the activities performed for the benefit of the Fund and the Fund Company.

2. The Supervision Authority, sending the written demand referred to in para.1 , shall indicate the time limit for compliance therewith.

3. In the event that the Supervision Authority, on the basis of obtained information, explanations and documents referred to in para. 1, states a violation of law or interest of the Fund's Members, it shall notify the Fund Company, depositary or the third party to whom the fund or the Fund Company entrusted some activities of the stated irregularities and set the time limit for correction thereof.

4. The Fund Company, depositary or the third party to whom the fund or the Fund Company entrusted some activities can, within 7 days from the receipt of the notification, submit written objections to the notification, stating their reasons.

5. The Supervision Authority, after having examined the objections, shall notify the Fund Company, depositary or the third party to whom the fund or the Fund Company entrusted some activities about the examination procedure. In notification about the examination of objections, the Supervision Authority may:

- 1) recognise the objections in full or in part and make relevant corrections in the notification.
- 2) not recognise the objections if groundless.

6. In the event when the objections were submitted in accordance with para. 4, the time limit for correction of irregularities referred to in para. 3 shall run from the day of delivery of notification about examination of objections.

7. Within 3 days after the end of the time limit set for the correction of irregularities, the Fund Company, depositary or the third party to whom the notification was addressed shall notify the Supervision Authority in writing about the manner in which the irregularities were corrected.

8. If the irregularities are not corrected within the prescribed time limit, the Supervision Authority may impose on the Fund Company, depositary or the third party to whom the Fund or the Fund Company entrusted some activities a penalty in the amount of up to PLN 500,000.

9. If on the basis of received information, explanations or documents referred to in para. 1 a gross violation of law or a gross violation of interests of the Fund's Members is stated, the Supervision Authority may impose on the Fund Company, depositary or the third party to whom the fund or the Fund Company entrusted some activities a penalty in the amount of up to PLN 500,000 immediately after stating the instance of violation.

Court rulings

Jurisprudence

Article 204a. 1. The Supervision Authority can at any time conduct an inspection of the activities of a Fund, Fund Company, depositary or the third party to whom the fund or the

Fund Company entrusted some activities.

2. A person authorised by the Supervision Authority shall have the right to enter the premises of:

- 1) Fund Company – for the purpose of verifying whether the activities of the Fund Company or the Fund conform with the law, Articles of Association of the Fund Company, Fund's statute and interest of the Fund's Members;
- 2) Depository – for the purpose of verifying whether its activities relating to the keeping of the Fund's assets conform with the law and the agreement on keeping the Fund's assets and interest of the Fund's Members;
- 3) third party to whom the fund or the Fund Company entrusted some activities – for the purpose of verifying whether its activities relating to performance of some activities for the Fund or the Fund Company conform with the law and interest of the Fund's Members.

3. The person who conducts the inspection is entitled to:

- 1) inspect any books, documents and other data carriers,
- 2) request copies of such documents and data carriers to be made and released,
- 3) request any information from members of the statutory bodies and employees of the inspected entities and other persons associated with the inspected entity on the basis of contract of mandate, contract for specific work or other legal relationship of similar nature,
- 4) demand that documents or other evidence be secured.

4. The Supervision Authority, in the authorisation to inspect, nominates the employee of the Commission of Insurance and Pension Fund Supervision who will be empowered to conduct the inspection as well as specifies the object and scope of inspection.

5. The person conducting the inspection is obligated to make a protocol on the conducted activities and sign it. The protocol should be also signed by the person authorised to represent the inspected entity.

6. After signing the inspection protocol, the Supervision Authority shall notify the inspected entity in writing of any discovered irregularities and fix the deadline for amending them. The provisions of Article 204.4 – 8 shall apply accordingly.

7. Where there have been gross irregularities stated during the inspection. the Supervision Authority may impose on the inspected entity a penalty in the amount of up to PLN 500,00 immediately upon discovery of the irregularities.

8. The minister competent for social protection matters shall specify, by way of a Regulation, the manner and procedure of inspection and documentation of the course thereof, having regard to the achievement of the inspection's objectives referred to in para. 2 and to ensuring that the inspection would be fast and effective.

Secondary legislation

Article 204b. 1. The notification referred to in Article 204.3 and Article 204a.6 should contain:

- 1) designation of the Supervision Authority,
- 2) date of issuance,
- 3) designation of the entity to which it is addressed,
- 4) indication of irregularities stated and a time limit for their correction,
- 5) factual and legal grounds,
- 6) information about the right to submit objections,
- 7) information about the contents of Article 204.8,
- 8) signature, name, surname and function of the person authorised to issue the post-inspection notification.

2. The notification referred to in para. 1 and the notification about examination of objections referred to in Article 204.5 is a supervisory activity, which does not resolve any matter as to the essence and does not pertain to the rights or obligations resulting from the provisions of law.

3. In the case when an appeal is brought to the Administration Court against the

administrative decisions referred to in Article 204.8, the Administration Court can suspend the execution of the decision also when the appealing entity makes it plausible that the assessment of activities of a Fund Company, depositary or a third party whom a Fund or a Fund Company entrusted with performance of some activities, contained in the notification referred to in Article 204.3 or 204a.6, grossly violates the law.

Article 204c. If a Fund Company or a Fund conducts its activities with violation of law, statute, Articles of Association or gross violation of interests of the Fund's Members, the Supervision Authority may impose on a member of Management Board of a Pension Fund Company who is responsible for those violations a penalty in the amount up to the triple gross monthly remuneration of that person, calculated on the basis of the remuneration for the last 3 months before the penalty is imposed, regardless of other supervision remedies provided for in the provisions of law.

Article 205. 1. A Member may make a complaint to the Supervision Authority against the Fund if the member believes that the Fund's activity is not complying with applicable laws or provisions of the Fund's statute.

2. A complaint may also be made by a person who has been a Member of the Fund during the six months preceding the making of the complaint.

3. A complaint may also be made to the Supervision Authority on behalf of a group of Members by a social organisation whose scope of tasks does not include the conducting of business activity.

Article 206. 1. The Supervision Authority may demand the convening of meetings of the Supervisory Board or Management Board or a General Meeting of Shareholders of a Fund Company and inclusion of such matters in the agenda of such bodies' meeting as it feels are necessary in order to exercise proper supervision over the Fund or Fund Company.

2. In the cases referred to in para. 1, the Supervision Authority shall delegate its representative to participate in the meeting of the Supervisory Board or the Management Board, or in the General Meeting of Shareholders, and such representative shall be entitled to speak at the meeting in all matters included in the agenda.

3. The Supervision Authority submits the demand referred to in para. 1 in writing, indicating a time limit in which the meeting of Management Board, Supervisory Board or General Meeting of Shareholders is to be held. Such time limit may not be shorter than 30 days, counted from the date of delivery of the demand.

4. The Fund Company is obligated to immediately notify the Supervision Authority of the fixed date of meeting.

5. If the date of meeting of Management Board, Supervisory Board or General Meeting of Shareholders is not fixed within 14 days from the delivery of the demand or it is fixed with violation of the time limit set forth in the demand, the Supervision Authority can convene the meeting of Management Board, Supervisory Board or General Meeting of Shareholders at the expense of the Fund Company.

Article 207. In civil matters relating to the establishment and operation of Funds, the President of the Commission of Insurance and Pension Fund Supervision is vested with the powers of a prosecutor, resulting from the relevant provisions of the Code of Civil Procedure.

Article 207a. the Supervision Authority can be a participant in registration proceedings concerning a Pension Fund Company or a Pension Fund.

Article 208. (repealed)

Article 209. (repealed)

Article 210. The provisions of Article 49 shall apply accordingly to the President and employees of the Commission of Insurance and Pension Fund Supervision as well as to the employees of the Office of the Commission and to the persons remaining in relationship with the Commission under a contract of mandate or in another legal relationship of similar nature.

Article 211 - 214. (repealed)

Chapter 22 Criminal Responsibility

Article 215. Whoever, in its name (business name) or to define its economic activities or in advertisements, uses the words and expressions referred to in Article 10 para. 2 or Article 28 para. 1 and who is not entitled to do so, shall be liable to a fine of up to PLN 1,000,000 or to imprisonment of up to 2 years.

Article 216. Whoever, without having a required licence, conducts the activities referred to in Article 2 para. 2 or Article 29 para. 1 shall be liable to a fine of up to PLN 5,000,000 or to imprisonment of up to 5 years.

Article 217. Whoever, while making investment decisions at the account of a Fund commits a breach of the requirements relating to investment activities specified in this Act and therefore creates a threat to the interests of Members of the Fund shall be liable to a fine of up to PLN 1,000,000.

Article 218. 1. Whoever, being responsible for the information contained in the information prospectus, presents in it untrue information or withholds true information, thus materially affecting the content of information contained therein, shall be liable to a fine of up to PLN 5,000,000 or to imprisonment of up to 3 years.

2. Whoever, being responsible for other information provided to Fund Members or to the Supervision Authority under this Act, commits a breach specified in para. 1, shall be liable to a fine of up to PLN 1,000,000.

Article 219. 1. Whoever, against the prohibition provided for in Article 92.1, offers additional financial benefits within the scope of canvassing Activities as an inducement to join or remain in a Fund shall be liable to a fine of up to PLN 1,000,000.

2. Whoever, without being entered in the register of persons entitled to conduct canvassing activities for Open Funds, conducts such activities for an Open Fund or conducts the activities not in accordance with the entry in the register shall be liable to the same penalty.

2a. Whoever, conducting canvassing activities, does not do so with intermediation of a person entered into the register of persons authorised to conduct canvassing activities for Open Funds or conducts such activities with intermediation of persons who perform the activities not in accordance with the entry in the register shall be liable to a fine of up to PLN 1,000,000.

3. Whoever, conducting activities referred to in Article 92 para. 2, offers additional financial benefits in exchange for joining the specific Open Fund or remaining its Member shall be liable to the same penalty.

4. Whoever, against the prohibition set in Article 230a, concludes contracts or accepts statements from which results an obligation to join a specific Open Fund or to use the intermediation of specific entity in joining an Open Fund shall be liable to the same penalty.
Court rulings

Article 219a. Whoever conducts canvassing activities for an Open Fund with violation of rules set forth in Article 93a shall be liable to a fine of up to PLN 20,000.

Article 220. 1. Whoever discloses or exploits a professional secret concerning the activities of a Fund although he is required to keep such information secret shall be liable to a fine of up to PLN 1,000,000 or to imprisonment of up to 3 years.

2. Whoever commits the offence referred to in para. 1 for the purpose of gaining material or personal benefits shall be liable to a fine of up to PLN 5,000,000 or to imprisonment of up to 5 years.

Jurisprudence

Article 221. Whoever, being obligated to undertake the actions provided for in Chapter 18 in connection with occurrence of a deficiency in an Open Fund, does not meet his/her obligations shall be liable to a fine of up to PLN 1,000,000.

Article 222. Whoever commits the crimes defined in the preceding provisions when acting on behalf of a legal person shall also be subject to the criminal responsibility provided for in Articles 215-221.

Chapter 23 Amendments of Law

Article 223. In Article 476 § 3 of the Act of November 17, 1964 – the Code of Civil Procedure (Dz. U. [Journal of Laws] No. 43, item 296; 1965 No. 15, item 113; 1974 No. 27, item 157, No. 39, item 231; 1975 No. 45, item 234; 1982 No. 11, item 82; No. 30, item 210; 1983 No. 5, item 33; 1984 No. 45, items 241 and 242, 1985 No. 20, item 86; No. 1987 No. 21, item 123; 1988 No. 41, item 324; 1989 No. 4, item 21; No. 33 item 175; 1990 No. 14, item 88; No. 34, item 198, No. 53, item 306; No. 55, item 318; No. 79, item 464; 1991 No. 7, item 24, No. 22 item 92; No. 115, item 496; 1993 No. 12, item 53; 1994 No. 105 item 509; 1995 No. 83, item 417; 1996 No. 24, item 110, No. 43, item 189; No. 73, item 350, No. 149, item 703, 1997 No. 43, item 270, No. 54, item 348, No 75, item 471, No. 102 item 643, No. 113, item 752, No. 121, items 769 and 770 and No. 113, item 882) the full stop is removed and the following words are added: “and cases involving claims under legal relationships between members of open pension funds and between these funds and their bodies”.

Article 224. Para. 1a is added after para. 1 in Article 7 of the Act on Chambers of Commerce of May, 30 1989 (Dz. U. [Journal of Laws] No. 35 item 195; 1992 No. 75, item 368; 1996 No. 43, item 189 and 1997 No. 121, item 769 and 770), with the following wording:

“1a. The restrictions specified in para. 1 shall not apply where the founders are only Pension Fund Companies operating on the basis of the regulations concerning the organisation and operation of pension funds.”

Article 225. Para. 1a is added after para. 1 in Article 10 in the Act on Insurance Activities of July 28, 1990 (Dz. U. [Journal of Laws] of 1996, No. 11, item 62 and of 1997 No 43, item 272, No. 88, item 554, No. 107, item 685 and No. 121 items 769 and 770), with the following wording:

“1a. Provision of para. 1 shall not apply to canvassing activities for open pension funds conducted by insurance company on the basis of the regulations concerning the organisation and operation of pension funds.”

Article 226. The followings amendments are made to the Act on Personal Income Tax of July 26, 1991 (Dz. U. [Journal of Laws] 1993 No. 90, item 416; No. 134, item 646; 1994 No. 43, item 163; No. 90, item 419; No. 113. item 547; No. 123, item 602, No. 126, item 626; 1995 No. 5, item 25; No. 133, item 654; 1996 No. 25, item 113, No. 87, item 395, No. 137, item 638, No. 147, item 686, No. 156, item 776 and 1997 No. 28, item 153, No. 30, item 164, No. 71, item 449, No. 85, item 538, No. 96, item 592, No. 121, item 770, No. 123, item 776, No. 137, item 926 and No. 139, items 932 and 933): (changes not included)

Article 227 The following amendments are made to the Act on Corporate Income Tax of February 15, 1992 (Dz. U. [Journal of Laws] 1993 No. 106, item 482, No. 134, item 646; 1994 No. 1, item 2, No. 43, item 163; No 80, item 368; No. 87, item 406; No. 90, item 419, No. 113, item 547, No. 123, item 602; No. 127, item 627; 1995 No. 5, item 25, No. 86, item 433, No. 96, item 478; No. 133, item 654, No.142, item 704; 1996 No. 25, item 113, No. 34, item 146, No. 90, item 405, No. 137, item 639, No.147, item 686; 1997 No. 9, item 44, No. 28 item 153, No. 79, item 484, No. 96, item 592, No. 107, item 685, No. 118, item 754, No. 121, item 770, No. 123, items 776 and 777, No. 137, item 926 and No. 139, items 932 and 933): (changes not included).

Article 228 The following amendments are made to the Accounting Act of September 29, 1994 (Dz. U. [Journal of Laws] No. 121, item 591 and 1997 No. 32, item 183, No 43, item 272, No. 88, item 554, No. 118, item 754 and No. 139, item 933): (changes not included)

Chapter 24 **Transitional and Final Provisions**

Article 229 1. Until 31 December 2004 a General Open Fund Company may manage only one Open Fund operating on the terms defined in the Act.

2. As from 1 January 2005, a General Open Fund Company may manage two Open Pension Funds denoted respectively as an "A type Open Pension Fund" and a "B type Open Pension Fund".

3. An Open Fund conducting investment activities on the terms defined in Chapter 15 is under an obligation to use in its name the words "A type Open Pension Fund" no later than as from 1 January 2005.

4. A B type Open Fund must not invest its assets in the classes of investment specified in Article 141 para. 1 pts. 3-8, 10,12 and para. 3 and in Article 143.

5. The average weighted rate of return and the minimum required rate of return shall be determined separately for an A type Open Fund and for a B type Open Fund.

6. Whenever this Act refers to the ratio of the net value of the assets of an Open Fund to the net value of the assets of all the Open Funds, starting from 1 January 2005, this shall mean the ratio of the net value of the assets of an Open Fund of one type to the value of the assets of all Open Funds of the same type.

7. No one may be admitted to membership of an Open Fund B before the attainment of the age of 50.

Article 230. When appointing the members of the Supervision Authority Advisory Committee for the first term of office, the President of the Council of Ministers shall specify which of the members of that committee are appointed for 2 years, which for 4 years and which for 6 years.

Article 230a. Until February 15, 1999, it is prohibited to conduct canvassing activities, including advertisement, for Open Pension Funds and to conduct canvassing actions for those Funds.

Article 231. The Act comes into force on April 1, 1999, except for:

- 1) Articles 199-214 and Article 230, which shall come into force on May 1, 1998;
 - 2) Articles 1-60, Articles 92-94, Article 152, Articles 157-164, Article 197, Articles 215-222 and Article 230a, which shall come into force on August 1, 1998.
 - 3) Articles 81-85, Article 90, Article 98 and Articles 189-190, which shall come into force on March 1, 1999.
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1) This Act, in the scope of the regulations contained herein, implement the Directive 2003/41/EC of June 3, 2003 on the activities and supervision of institutions for occupational retirement provision (O.J. EC L 235 of September 23, 2003).

The data concerning the announcement of the acts of law of European Union, contained in this Act, as of the day of acquisition of membership of European Union by the Republic of Poland shall pertain to the announcement of those acts in the Official Journal of European Union – special issue.

2) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 2003 No. 60, item 535, No. 124, item 1152, No. 139, item 1324 and No. 229, item 2276 and 2004 No. 96, item 959.

3) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 2000 No. 29, item 358, 2002 No. 144, item 1204, 2003 No. 73, item 661 and 2004 No. 92, item 878.

4) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 2002 No. 240, item 2055, 2003 No. 50, item 424, No. 84, item 774, No. 124, item 1151, No. 170, item 1651 and No. 223, item 2216 and 2004 No. 64, item 594, No. 91, item 871, No. 96, item 959, No. 116, item 1205 and No. 146, item 1546.

5) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 2004 No. 64, item 593, No. 99, item 1001, No. 120, item 1252 and No. 121, item 1264.

6) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 2002 No. 126, item 1070, No. 141, item 1178, No. 144, item 1208, No. 153, item 1271, No. 169, item 1385 and 1387 and No. 241, item 2074, 2003 No. 50, item 424, No. 60, item 535, No. 65, item 594, No. 228, item 2260 and No. 229, item 2276 and 2004 No. 64, item 594, No. 68, item 623, No. 91, item 870, No. 96, item 959, No. 121, item 1264 and No. 146, item 1546.

7) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 2002 No. 240, item 2055, 2003 No. 60, item 535 and No. 90, item 844 and 2004 No. 6, item 39, No. 116, item 1207 and No. 123, item 1291.

8) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 1998 No. 162, item 1118 and 1126, 1999 No. 26, item 228, No. 60, item 636, No. 72, item 802, No. 78, item 875 and No. 110, item 1256, 2000 No. 9, item 118, No. 95, item 1041, No. 104, item 1104 and No. 119, item 1249, 2001 No. 8, item 64, No. 27, item 298, No. 39, item 459, No. 72, item 748, No. 100, item 1080, No. 110, item 1189, No. 111, item 1194, No. 130, item 1452 and No. 154, item 1792, 2002 No. 25, item 253, No. 41, item 365, No. 74, item 676, No. 155, item 1287, No. 169, item 1387, No. 199, item 1673, No. 200, item 1679 and No. 241, item 2074, 2003 No. 56, item 498, No. 65, item 595, No. 135, item 1268, No. 149, item 1450, No. 166, item 1609, No. 170, item 1651, No. 190, item 1864, No. 210, item 2037, No. 223, item 2217 and No. 228, item 2255 and 2004 No. 19, item 177, No. 64, item 593, No. 99, item 1001, No. 121, item 1264 and No. 146, item 1546.

9) Changes to the consolidated text of the Act were announced in: Dz. U. [Journal of Laws] of 2003 No. 217, item 2125 and 2004 No. 91, items 870 and 871, No. 96, item 959, No. 121, item 1264 and No. 146, item 1546.
