

# **Act No. 240/2013 Sb., on Management Companies and Investment Funds, as amended**

*(version applicable since May 1, 2020: as amended by Acts No. 336/2014 Sb., No. 377/2015 Sb., No. 148/2016 Sb., No. 368/2016 Sb., No. 183/2017 Sb., No. 204/2017 Sb. and No. 119/2020 Sb.)*

***Translation for public consultation, version of May 1, 2020***

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The Parliament has adopted the following Act of the Czech Republic:

## **PART ONE**

### **INTRODUCTORY PROVISIONS**

#### **Section 1**

##### **Subject matter**

This Act incorporates the relevant legislation of the European Union (hereinafter referred to as “EU”)<sup>1)</sup>, while builds upon directly applicable EU regulations<sup>2)</sup> and lays down the conditions for the management and administration of investment funds and foreign investment funds and the marketing of investments into these funds.

##### **Scope of the Act**

#### **Section 2**

This Act does not apply to an activity consisting in

(a) collecting

1. financial means, the main purpose of which is to finance its own production, trade, research or provision of non-financial services, and further management of such collected financial means or assets acquired in exchange for such financial means,

2. things whose value can be expressed in monetary terms, the main purpose of which is to operate its own production, trade, research or provision of non-financial services, and further management of thus collected things whose value can be expressed in monetary terms or assets acquired in exchange for such things whose value can be expressed in monetary terms,

(b) collecting financial means or things whose value can be expressed in monetary terms for the purpose of collective investment, and further management of such collected financial means or things whose value can be expressed in monetary terms or assets acquired in exchange for such financial means or things whose value can be expressed in monetary terms, if such activity is undertaken by a legal person so that it could contribute through its shareholding in one or more other legal persons to a long-term development of those legal persons, and

1. its subscribed securities are admitted to trading on an European regulated market, or
2. its primary objective is not to generate profit by disposing participation in such persons; this condition is met, in particular, if the fact that this is not its main purpose results from an annual report of this person or from other publicly available documents, or

(c) collecting financial means or things whose value can be expressed in monetary terms, if carried out within the framework of the securitization<sup>3)</sup>, and further management of such collected financial means or things whose value can be expressed in monetary terms or assets acquired in exchange for such financial means or things whose value can be expressed in monetary terms,

unless this Act provides otherwise [Section 98 (3)].

### Section 2a

This Act also does not apply to activities that consists in

(a) collecting financial means or things whose value can be expressed in monetary terms from members of family for the purpose of collective investment, and further management of such collected financial means or things whose value can be expressed in monetary terms or assets acquired in exchange for such financial means or things whose value can be expressed in monetary terms (family office vehicle), or

(b) collecting financial means or things whose value can be expressed in monetary terms for the purpose of collective investment, and to further management of financial means or things whose value can be expressed in monetary terms or assets acquired in exchange for such financial means or things whose value can be expressed in monetary terms, if the investor is solely a person who forms a concern together with a person who undertakes this activity,

unless the person performing this activity is registered in the register maintained by the Czech National Bank (hereinafter referred to as “CNB”) pursuant to Section 596 (f), or performs this activity as a manager of an investment fund, or where this Act provides otherwise [Section 98 (3)].

### Section 3

The provisions of this Act do not apply, unless other legal regulation provides otherwise, to activity performed under the

(a) supplementary pension insurance with a state contribution, supplementary pension scheme, occupational pension or other pension security scheme with the participation of a state or other public law corporation,

(b) social security, and

(c) insurance activities.

## Section 4

This Act does not apply to an activity performed by

- (a) a manager of a foreign investment fund who does not have a registered office in the Czech Republic, does not manage an investment fund in the Czech Republic and does not market, in the Czech Republic, investments in the foreign investment fund managed by such manager,
- (b) an administrator of a foreign investment fund who does not have a registered office in the Czech Republic and does not administrate an investment fund in the Czech Republic and does not market, in the Czech Republic, investments in the foreign investment fund which the administrator administrates.

## **PART TWO**

### **MANAGER**

#### **TITLE I**

##### **MANAGEMENT AND MANAGER**

###### **Chapter 1**

###### **Basic provisions**

###### Section 5

###### **Management**

(1) Management of an investment fund or a foreign investment fund is to manage the assets of the fund, including investing on behalf of such fund, and the risk management associated with such investment.

(2) Nobody may manage an investment fund without an authorisation granted by the CNB pursuant to this Act, unless this Act or other legal regulation stipulates otherwise.

(3) The provisions of Section 1401, Section 1415 (1) and Sections 1432 to 1437 of the Civil Code apply to the management of an investment fund or a foreign investment fund only to the extent to which the statute of the investment fund or a comparable document of a foreign investment fund do not deviate from these provisions or do not exclude their use.

###### Section 6

###### **Manager**

(1) Whoever manages an investment fund or a foreign investment fund is its manager; this is without prejudice to Section 9 (1). Each investment fund may have only one manager.

(2) All the sub-funds of one investment fund must have the same manager.

(3) Management of an investment fund or a foreign investment fund includes management of its sub-funds or comparable facilities. Where this Act uses the term "management of an investment fund or a foreign investment fund", it also means the management of its sub-funds or comparable facilities. Where this Act uses the term "manager of an investment fund or a foreign investment fund", it also means a manager of its sub-funds or comparable facilities.

(4) A manager of a retail alternative investment fund (hereinafter referred to as “**retail AIF**”) or a European long-term investment fund under the directly applicable EU regulation governing European long-term investment funds<sup>18)</sup> (hereinafter referred to as “**ELTIF**”) may only be a manager authorised to exceed the relevant threshold (Section 16).

(5) A manager of a money market fund under the directly applicable EU regulation governing money market funds<sup>19)</sup> (hereinafter referred to as “**money market fund**”) may only be an authorised UCITS funds or a comparable foreign investment funds manager or a manager authorised to exceed the relevant threshold (Section 16).

## Section 7

### **Management company**

A management company is a legal person having its registered office in the Czech Republic, which is authorised by virtue of an authorisation granted by the CNB to manage an investment fund or a foreign investment fund, or to perform the administration of an investment fund or a foreign investment fund, or to perform the activities specified in Section 11 (1) (c) to (f).

### **Investment fund with legal personality**

## Section 8

(1) An internally managed investment fund is an investment fund with a legal personality which is authorised, by virtue of an authorisation to perform an activity of an internally managed investment fund granted by the CNB, to manage itself or to perform its own administration. An investment fund with legal personality which has an individual statutory body which is a legal person authorised to manage this investment fund, is not an internally managed investment fund.

(2) This fund is a manager of an internally managed investment fund.

(3) An investment fund with legal personality may not manage another investment fund or foreign investment fund.

## Section 8a

Board of directors of investment fund with legal personality, which is not an internally managed investment fund, is single member and its only member is legal person.

## Section 9

(1) An investment fund with a legal personality, having an individual statutory body, which is a legal person authorised to manage this investment fund, is authorised to be managed through that person. If the legal person, which is an individual statutory body of such a fund, is also authorised to perform its own administration, the investment fund is also authorised to perform its administration through that person.

(2) The manager of an investment fund referred to in Subsection (1) is a legal person which is an individual statutory body of this investment fund.

(3) An investment fund referred to in Subsection (1) shall not

- (a) perform any activity prior to the registration in the relevant list maintained by the CNB, unless it is an activity pursuant to Section 15 (1), if it is to become a qualified investors’ fund, and
- (b) perform an activity other than its activity as an investment fund during the period of time while it is registered in the list referred to in (a).

(4) The manager of an investment fund referred to in Subsection (1) may, even without the consent of this investment fund, perform activities on its own account or on accounts of other, that fall within the field of a business enterprise of this investment fund.

## Section 10

### **Foreign person with an authorisation by the CNB**

A foreign person with an authorisation under Section 481 is a legal person established in a state which is not an EU member state, which is authorised by virtue of an authorisation granted by the CNB pursuant to Section 481

- (a) to manage an investment fund that is not a UCITS fund or a comparable foreign investment fund, whose home state is an EU member state, or
- (b) to market, in an EU member state, an investment in an investment fund that is managed by such foreign person, which is not a UCITS fund or in a comparable foreign investment fund,

or to perform the administration of an investment fund, which is not a UCITS fund or of a comparable foreign investment fund or to perform the activities specified in Section 11 (1) (c) to (f).

## Chapter 2

### **Business licence**

#### Section 11

#### **Object of business of a management company and of a foreign person with an authorisation by the CNB, which is not comparable with the internally managed investment fund**

(1) A management company and a foreign person with an authorisation pursuant to Section 481, which is not comparable with the internally managed investment fund, may to the extent specified in the authorisation granted by the CNB

- (a) manage investment funds or foreign investment funds,
- (b) perform the administration of investment funds or foreign investment funds,
- (c) manage the assets of a client, which includes a financial instrument, on a discretionary basis within the framework of a contractual arrangement (portfolio management),
- (d) perform the safekeeping and administration of financial instruments including related services, but only in relation to securities and book-entry securities issued by an investment fund or a foreign investment fund,
- (e) receive and transmit orders relating to financial instruments, and
- (f) provide investment advice on financial instruments.

(2) A management company and a foreign person authorised under Section 481, which is not comparable with the internally managed investment fund, shall not perform the activities referred to in Subsection (1) (d) to (f) if it is not authorised to perform the activity referred to in Subsection (1) (c). A foreign person with an authorisation pursuant to Section 481 shall not even manage an ELTIF.

(3) A management company authorised to manage a UCITS funds or comparable foreign investment funds must not manage a foreign investment fund that is comparable to a UCITS fund, if it does not manage at least one UCITS fund.

(4) A management company authorised to manage only UCITS funds or comparable foreign investment funds must not perform the activities referred to in Subsection (1) (e) and in Subsection (6).

(5) A management company or a foreign person authorised under Section 481 which is not comparable to an internally managed investment fund may perform as an entrepreneur only activity that directly relates to the management of its own assets or other activities, involved in the management or administration of the investment fund or foreign investment fund. To perform an individual activity, involved in the management or administration of an investment fund or a foreign investment fund by a management company or a foreign person with an authorisation under Section 481 that is not comparable to an internally managed investment fund, no other authorisation is required for those who comply with prudential rules that are comparable to prudential rules under EU law and supervised by the supervisor.

(6) A management company authorised to exceed the relevant threshold, which is authorised to provide an investment service pursuant to Subsection (1) (c), and a foreign person with an authorisation pursuant to Section 481, who is authorised to provide an investment service pursuant to Subsection (1) (c), may also as an entrepreneur

- (a) be a trustee of a trust, which is not an investment fund, or
- (b) to manage the assets of a client, which does not include an financial instrument, by virtue of discretion within the contractual arrangements including valuation of such assets and keeping financial accounts in respect of such assets.

## Section 12

### **Subject of business of an internally managed investment fund and foreign persons authorised by the CNB comparable to an internally managed investment fund**

An internally managed investment fund and a foreign person with an authorisation under Section 481 that is comparable to an internally managed investment fund may as an entrepreneur perform only activity that is specified in an authorisation granted by the CNB and only to the extent specified in this authorisation.

## Section 13

### **Day of commencement of the authorisation to perform the management**

(1) The authorisation for a legal person registered in the Commercial Register to manage an investment fund or a foreign investment fund commences

- (a) on the day on which the decision of the CNB to grant an authorisation to perform becomes final and such authorisation was granted to
  1. management company pursuant to Section 479,
  2. an internally managed investment fund pursuant to Section 480, or
  3. foreign person pursuant to Section 481,
- (b) on a later day specified in the holding of the decision referred to in (a), or
- (c) on the day of entry of this authorisation in the Commercial Register in case of an investment fund referred to in Section 9 (1).

(2) An authorisation to manage an investment fund or a foreign investment fund commences on the date of entry in the Commercial Register in respect of a legal person not registered in the Commercial Register, but who has been granted an authorisation according to Sections 479, 480 or 481 by the CNB or who was registered in a relevant register pursuant to Section 513.

## Section 14

### **Management of an investment fund by a foreign person**

(1) A foreign person who is not comparable to an internally managed investment fund, and who is authorised by a supervisory authority of another EU member state granted in accordance with requirements laid down in Articles 6 to 8 of the Directive of the European Parliament and of the Council on the coordination of the rules in the field of collective investment in relation to depositaries of UCITS funds<sup>4)</sup> (hereinafter referred to as “UCITS-D”) may manage a UCITS fund

- (a) through a branch if the condition laid down in Section 338 (2) is met, or
- (b) without location of a branch if the conditions set out in Section 339 are met.

(2) A foreign person who is not comparable to an internally managed investment fund, and who is authorised by a supervisory authority of another EU member state, granted according to the requirements laid down in Articles 6 to 8 of the Directive of the European Parliament and of the Council on alternative investment fund managers<sup>5)</sup> (hereinafter referred to as “AIFMD”), may manage a retail AIF fund or qualified investors’ fund

- (a) through a branch, where the conditions laid down in Section 342 are met, or
- (b) without location of a branch if the conditions set out in Section 343 are met.

(3) Section 20, 21 and 23 to 26 do not apply to a foreign person referred to in Subsection (1) or (2) who manages an investment fund.

## Chapter 3

### **Asset management comparable to management of an investment funds**

## Section 15

(1) A legal person who is not authorised to manage investment funds, and who, in the Czech Republic manages or intends to manage assets under a trading licence or a similar way, for the purpose of earning income, consisting in collecting financial means or things whose value can be expressed in monetary terms from investors, or acquired in exchange for such financial means or things whose value can be expressed in monetary terms, for the purpose of collective investment on the basis of a defined strategy for the benefit of these investors, must submit an application for registration in a register kept by the CNB according to Section 596 (f) and be registered in this register. The first sentence does not apply to the assets management of an investment fund. A person registered in the register maintained by the CNB according to Section 596 (f) is not authorised to exceed the relevant threshold.

(2) The asset management referred to in the first sentence of Subsection (1) takes place, if the legal person, that manages or intends to manage the assets, has registered office in the Czech Republic.

(3) The court, upon an application filed by the CNB or by the person having a legitimate interest, dissolves a legal person, who is not registered in the relevant register pursuant to Subsection (1), and orders its liquidation, or eventually decides that the administration of a trust fund or other facility terminates in the case of a trustee of a trust fund or other trustee that is not registered in the relevant register pursuant to Subsection (1). The court provides the legal person or the trustee with a reasonable period of time to rectify the situation prior to the decision.

## Chapter 4

### Exceeding the relevant threshold

#### Section 16

(1) Exceeding the relevant threshold occurs when the value of the assets of all investment funds and foreign investment funds and the assets pursuant to Section 15 (1) which are legally or de facto managed or managed by one person, exceeds the amount corresponding to

- (a) EUR 100 000 000, or
- (b) EUR 500 000 000,
  - 1. if no part of such asset is acquired using the leverage effect and
  - 2. payout or distribution of such asset to the person from whom the financial means or things whose value can be expressed in monetary terms were collected in such asset, may not occur until the expiry of five years from the date of their collection.

(2) The value of the assets referred to in Subsection (1) does not include the assets of a UCITS fund or of a comparable foreign investment fund.

(3) The way of determining the excess of the relevant threshold is defined in Articles 2 to 5 of the Commission Delegated Regulation (EU) No 231/2013. Section 196 applies *mutatis mutandis* to the valuation of assets of a person under Section 15 (1), for the purpose of assessing whether or not such person exceeds the relevant threshold.

(4) For the purposes of this Act, the use of leverage means the use of any procedures leading to an increase in the exposure of an investment fund or a foreign investment fund, such as the acceptance of a credit or a loan of financial means, or financial instruments, or investing in transferable securities or money market instruments containing a derivative.

(5) For the purposes of this Act, the level of the use of leverage is understood as a numerical figure calculated as the ratio of the exposure of an investment fund or a foreign investment fund and the fund capital of the investment fund or comparable value of the foreign investment fund. For the purposes of this Act, fund capital is understood as the value of assets of an investment fund lowered by the value of debts of the investment fund.

(6) The method of calculating the exposure of an investment fund and a foreign investment fund which is not a UCITS fund or a comparable foreign investment fund, and which is managed by a manager authorised to exceed the relevant threshold, as well as the method of calculating the level of the use of leverage, is specified in Articles 6 to 11 of the Commission Delegated Regulation (EU) No 231/2013. For the purposes of determining whether the relevant threshold has been exceeded, the exposure of the assets managed under Section 15 (1) must also be taken into account with respect to the use of leverage by such fund.

#### Section 17

### Excess of the relevant threshold by a person not authorised to exceed it

(1) If a legal person with its registered office in the Czech Republic, who does not have an authorisation from the CNB pursuant to Section 479 or 480 to exceed the relevant threshold, exceeds the relevant threshold, it shall file an application for the relevant authorisation within 30 days after it learns or could have learned of the excess of the relevant threshold, unless it ensures within this period that the relevant threshold will no longer be exceeded.

(2) Where the legal person referred to in Subsection (1) has applied for the relevant authorisation before the date on which it exceeded the relevant threshold, Subsection (1) shall not apply until the date on which the proceedings for that application have been closed upon a final decision. For this legal person, Subsection (3) shall apply *mutatis mutandis* from the date when the relevant threshold was exceeded.

(3) If the legal person referred to in Subsection (1) submits an application for granting the relevant authorisation according to the procedure provided for in Subsection (1), it is authorised to exceed the relevant threshold until the effective date of the decision of the CNB. For this legal person, the provisions of this Act and the directly applicable EU regulation implementing the AIFMD<sup>6)</sup> imposing obligations on a manager authorised to exceed the relevant threshold shall apply *mutatis mutandis*.

(4) If the proceedings in respect of the application for granting the authorisation filed by a legal person referred to in Subsection (1) or (2) is closed upon a final decision without granting the relevant authorisation, the legal person ensures no later than within 30 days from the effective date of such decision that the relevant threshold will no longer be exceeded. If the same legal person submits a new application for granting an authorisation after the proceeding was closed upon a final decision, Subsection (4) shall not apply.

(5) Where the legal person referred to in Subsection (1) exceeds the relevant threshold after the expiry of the period referred to in Subsection (1) or (4), unless it is the case according to Subsection (3), the court dissolves the legal person and orders its liquidation upon an application filed by the CNB or the person having a legitimate interest. The court provides the legal person with a reasonable period of time to rectify the situation prior to the ruling.

## TITLE II

### RULES OF THE ACTIVITY AND ECONOMY

#### Section 18

##### **Professional care**

The investment fund or foreign investment fund manager is obliged to manage this fund with professional care.

#### Section 19

##### **Proper and prudent performance of the activity**

(1) A manager of an investment fund or a foreign investment fund shall perform its activity properly and prudently.

(2) In order to ensure the proper and prudent performance of the activity, the investment fund or foreign investment fund manager shall establish, maintain and apply the directing and controlling system.

#### Section 20

##### **Directing and controlling system**

(1) The directing and controlling system of the manager of an investment fund or a foreign investment fund always includes

(a) strategic and operative directing,

- (b) organizational arrangement and internal regulations governing it, with a clear definition of activities, including activities of bodies of the manager and its committees it has set up, and the scope of competence and decision-making powers connected thereto; the offices, which may not be performed simultaneously must be determined within the framework of an organizational arrangement,
- (c) the risk management system, which always includes
  1. the manager's approach to risks to which the manager or an investment fund or a foreign investment fund managed by the manager is or may be exposed, including risks arising out of internal or external environment and out of insufficient liquidity risks, and
  2. detection, assessment, measuring, monitoring, reporting and limiting the risks including adoption of measures leading to the limitation of the occurrences or impacts of risks occurrences and
- (d) internal control system which always includes
  1. a control of the subordinate employees and natural persons who perform their activities according to orders of another (hereinafter referred to as "**worker**"), their superiors,
  2. a continuous control of compliance with the legal obligations laid down in particular by this Act, by a legal regulation issued on the basis of this Act, by directly applicable EU legislation governing investment funds<sup>2)</sup>, by an internal regulation and by the statute of an investment fund or a comparable documents of a foreign investment fund (hereinafter referred to as "**compliance**"), and
  3. an internal audit ensuring an independent and objective internal control of the performance of the activity of this manager and submission of clear recommendations to rectify thus ascertained shortcomings of the respective level of directing.

(2) The directing and controlling system of a manager of an investment fund or a foreign investment fund further includes

- (a) internal and external communication system,
- (b) monitoring, assessing and updating of internal rules,
- (c) management of conflicts of interests in the performance of an activity, including, but not limited to, its investigation, prevention and notification to unitholders, shareholders and beneficiaries of the fund,
- (d) keeping the accounts of a manager,
- (e) controlling the activities of persons who are not its workers, but with whose help it performs the activity,
- (f) securing continuous performance of the activity and permanent operation of the manager on the financial market in accordance with the subject matter and plan of his activity,
- (g) ensuring the trustworthiness and necessary knowledge and experience of persons with whose help it performs the activity,
- (h) control and security measures for the processing and record-keeping of information,
- (i) the record-keeping of transactions relating to the assets of an investment fund or a foreign investment fund managed by it and control of correctness of the kept data, For the purpose of keeping this record, this manager is authorised to keep the birth numbers of the participants of these transactions,
- (j) a remuneration system of persons whose activities within their employment, profession or function have a significant influence on risks to which the manager or an investment fund or a foreign investment fund managed by the manager may be exposed, and its degree, including
  1. the principles for determination and conditions for payment of a fixed and a variable part of the remuneration,
  2. procedures for taking decisions on remuneration,
  3. procedures for assessing a performance so that the remuneration system contributes to and is consistent with sound and effective risk management,
- (k) rules for the use of leverage,
- (l) rules for trading with instruments within securitisation, and
- (m) ensuring compliance with the rules of conduct.

(3) The directing and controlling system of a manager of an investment fund or of a foreign investment fund must be effective and comprehensive and proportionate to the nature, extent and complexity of the activities performed by the manager, in its entirety and in its parts.

(4) A manager of an investment fund or of a foreign investment fund verifies and regularly assesses the effectiveness, comprehensiveness and adequacy of the directing and controlling system in its entirety and in its parts and provide an adequate remedy without undue delay.

(5) The CNB lays down, by a regulation, the requirements for the qualitative criteria of the directing and controlling system of a manager of an investment fund or of a foreign investment fund to the extent that is not covered by the directly applicable EU regulation implementing the AIFMD<sup>6)</sup>.

## Section 20a

### **Reporting mechanism**

(1) A manager of an investment fund or of a foreign investment fund shall establish, maintain and apply, for its workers, an effective mechanism for reporting violations or imminent violations of this Act, its implementing regulations and the directly applicable EU regulation governing management of investment funds<sup>2)</sup> through a special, independent and a separate communication channel.

(2) The reporting mechanism referred to in Subsection (1) shall include at least:

- (a) procedures for reporting and assessing violations or imminent violations,
- (b) protection of a person who reports a violation or an imminent violation; if it is an worker, at least against discrimination or other types of unfair treatment,
- (c) the protection of the personal data of a person who reports a violation or an imminent violation or who is allegedly responsible for a violation or an imminent violation, unless disclosure is required under national law in connection with further investigations or subsequent judicial proceedings.

(3) The CNB may, by means of a regulation, lay down requirements for the reporting mechanism referred to in Subsection (1).

## Section 21

### **Personal equipment**

(1) Personnel of the manager of an investment fund or a foreign investment fund must be adequate to the nature, extent and complexity of the activities performed by the manager.

(2) The manager of an investment fund or a foreign investment fund ensures that the persons with whose help it performs the activity are trustworthy and have sufficient knowledge and experience necessary for the proper exercise of tasks assigned to them, especially the knowledge of the procedures and regulations necessary to fulfil the obligations accompanied with the performance of the activity.

(3) The manager of an investment fund or a foreign investment fund ensures that the extent and nature of activities performed by the persons referred to in Subsection (2) do not prevent the due performance of particular activities.

(4) The manager of an investment fund or a foreign investment fund must have at least two managing persons (Section 624) sufficiently experienced in the asset management, on which the investment strategy [Section 93 (3)] of an investment fund or a foreign investment fund managed by the manager is focused, and in the performance of activities necessary for the proper exercise of the office.

(5) If an investment strategy of an investment fund or of a foreign investment fund differs in essential features from the investment strategy of a majority of other investment funds or foreign investment funds managed by the same manager, the condition pursuant to Subsection (4) in relation to this fund is fulfilled, if the manager has at least two persons who actually manage the activity of this manager in relation to this fund and are sufficiently experienced in the asset management, on which the investment strategy of this fund is focused, and in the performance of activities necessary for the proper exercise of the office.

## Section 22

### **Rules of conduct**

(1) A manager of an investment fund or a foreign investment fund in performing its activity

- (a) does not disturb the stability and functioning of the market,
- (b) acts in a qualified, honest and justly,
- (c) acts in the best interests of the unitholders, shareholders and beneficiaries of this fund.

(2) A manager of an investment fund or a foreign investment fund shall establish, maintain and apply

- (a) procedures to ensure the protection of internal information,
- (b) procedures to prevent market manipulation,
- (c) procedures for the economic analysis of advantageousness of a trade from reliable and up-to-date information,
- (d) procedures for the conclusion of trades in a financial instrument by a person with a special relationship with a manager, if the person goes above and beyond its working obligations or if it concludes a trade
  1. on its own account,
  2. on the account of a close person according to the Civil Code,
  3. on behalf of the person with whom it is closely connected, or
  4. on the account of another person, if the person with a special relationship with the manager is, directly or indirectly, materially interested in the result of the trade, which is not a fee or remuneration for making such trade,
- (e) the rules for executing trades under best conditions
- (f) the rules for processing the trades justly and without undue delay,
- (g) rules for pooling trades,
- (h) rules for the admission, offering or providing of an incentive, and
- (i) the principles for the exercise of voting rights attached to subscribed securities belonging in the assets of that fund.

(3) A manager of an investment fund or a foreign investment fund further

- (a) does not offer benefits which may not be reliably guaranteed,
- (b) makes cashless payments, unless it is excluded by their nature,
- (c) does not make redundant trades in order to achieve its own profit without having regard to the best interests of unitholders, shareholders or beneficiaries of investment funds or foreign investment funds managed by it,
- (d) keeps records of the manner of a trade execution and control the correctness of the kept information,
- (e) makes all effort that may be required to ensure that an investment fund or a foreign investment fund managed by him or unitholders, shareholders or beneficiaries of this fund do not incur unreasonable costs,
- (f) executes trades under best conditions,
- (g) does not accept, offer or provide an incentive that could result in a violation of obligations under Subsection (1) (b) or (c),

- (h) does not use deductions, surcharges or fees directly related to the issuance or redemption of securities or book-entry securities specified in a statute or a comparable document of a UCITS fund or a comparable foreign investment fund, if the securities or book-entry securities issued by such a fund are being acquired into or disposed of the assets of another UCITS fund or a comparable investment fund managed by the managers who are members of the same group,
- (i) manages conflicts of interests including their investigation, prevention and notification to the unitholders, shareholders or beneficiaries of this fund, and
- (j) observes the statute of an investment fund managed by it or a comparable document of a foreign investment fund managed by it.

(4) For the purposes of this Act, a person having a special relationship with a legal person is considered

- (a) the managing person of this legal person,
- (b) a worker who is involved in activities of that legal person, or
- (c) a person who is directly involved in activities, which this legal person has delegated to another to perform.

(5) An incentive for the purposes of this Act means a fee, a remuneration or another pecuniary or non-pecuniary benefit.

(6) The CNB lays down in a regulation the requirements for the qualitative criteria of the procedures, rules and principles referred to in Subsection (2) and obligations referred to in Subsections (1) and (3) to the extent not covered by a directly applicable EU regulation implementing the AIFMD<sup>6)</sup>.

### **Delegation to another**

#### Section 23

A manager of an investment fund or a foreign investment fund may delegate the performance of an individual activity to another, included in the management of an investment fund or a foreign investment fund, only if

- (a) it has been notified in advance to the CNB,
- (b) it does not prevent the CNB from supervision of the performance of the obligations of such manager under this Act, the directly applicable EU regulations governing investment funds<sup>2)</sup> or its obligations under the statute of a concerned investment fund or a comparable document of a concerned foreign investment fund,
- (c) it does not prevent a manager from performing its activities in relation to this fund in a diligent and prudent manner and from acting in the best interests of the unitholders, shareholders or beneficiaries of the fund,
- (d) it is ensured that this manager may control and influence by means of its orders the performance of this activity by the delegated person,
- (e) it is ensured that the manager may terminate, with immediate effect the delegation if it is in the interest of the unitholders, shareholders or beneficiaries of the fund,
- (f) it is able to justify this delegation, even in relation to other delegations to perform an activity, that is included in the management of that fund, and in relation to the delegation to another to perform an act from this activity,
- (g) it is able to prove that the person to be delegated fulfills the requirements under Section 25 and that such delegation has been preceded by a diligent selection, and
- (h) a statute or comparable document of that fund defines this activity as an activity the performance of which may be delegated to another.

## Section 24

(1) If a manager of an investment fund or a foreign investment fund delegates another to perform a particular activity, included in the management of an investment fund or a foreign investment fund, the manager shall introduce, maintain and apply appropriate risk management measures for the management of risks connected therewith and regularly controls the performance of this activity.

(2) The delegation of an individual activity to another pursuant to Subsection (1) does not prejudice the manager's obligation in respect of third parties to compensate harm incurred as a result of violation of the manager's obligation laid down by this Act, on the basis of this Act, or by directly applicable EU regulations governing investment funds<sup>2)</sup>, or of his duty ensuing from the statute of a concerned investment fund or from a comparable document of a concerned foreign investment fund.

## Section 25

(1) A manager of an investment fund or a foreign investment fund may delegate a particular activity, included in the management of an investment fund or a foreign investment fund to be performed only by a person

- (a) who has the necessary material, organizational and personal requirements for the performance of this activity,
- (b) whose managing persons are trustworthy and have the necessary knowledge and experience for the performance of this activity,
- (c) who has a business or other licence to pursue this activity,
- (d) who complies with prudential rules which are comparable to prudential rules under EU law, and who is subject to supervision of the supervisory authority of the state in which it has its registered office,
- (e) who is not the depository of this fund or the person to whom the performance of the activity of this depository has been delegated, and
- (f) who is not a person who may be in a conflict of interests with the manager or a conflict of interest with the mutual interests of the investors of the fund concerned.

(2) A manager of an investment fund or a foreign investment fund may delegate a particular activity included in the management of an investment fund or a foreign investment fund to a person with its registered office or residing in a non-member state, only if the cooperation of the CNB and the supervisory authority of the state, in which the person has its registered office or residence, is ensured.

(3) A manager of an investment fund or a foreign investment fund may delegate a particular activity, included in the management of a qualified investors' fund or a comparable foreign investment fund to a person who does not meet the requirement under Subsection 1 (d), if the person notifies the CNB, no later than 1 month before the effective date of the delegation, of an information on who is to be delegated the performance of this activity and at the same time provides it with the information necessary to assess compliance with Section 23, and the CNB does not notify this manager within 1 month that it does not agree with this delegation.”

(4) The manager authorised to exceed the relevant threshold may delegate the performance of a particular activity included in the management of an investment fund which is not a UCITS fund or of a comparable foreign investment fund and of a person who does not meet the requirement under Subsection (1) (f), if the person to be delegated with the performance of this activity,

- (a) has introduced organisational requirements guaranteeing a proper, independent and impartial control of the performance of the activity,
- (b) has functionally and hierarchically separated the performance of this activity from its other activities, that pose a threat of a conflict of interests, and

(c) introduces, maintains and applies the procedures for managing conflicts of interests pursuant to point (b), including investigation, prevention and notification of such conflicts of interests to its unitholders, shareholders and beneficiaries of this fund.

## Section 26

### **Delegation to another by a delegated person**

(1) Anyone, who has been delegated, by a manager of an investment fund or a foreign investment fund, to perform a particular activity included in the management of an investment fund or a foreign investment fund, may delegate to another the performance of an act or some acts from this activity, only if

- (a) the manager of this fund has consented to it in advance,
- (b) it has been previously notified to the CNB and
- (c) the conditions laid down in Sections 23 and 25 are fulfilled *mutatis mutandis*.

(2) Anyone, who has been delegated, by a manager of an investment fund or a foreign investment fund, to perform a particular activity included in the management of an investment fund or a foreign investment fund shall regularly control the performance of an act or acts of that activity, the performance of which has been delegated to another pursuant to Subsection (1).

(3) Anyone, who has been delegated the performance of an act or acts pursuant to Subsection (1), may delegate their performance to another, if the conditions in Subsection (1) (a) and (b), Subsection (2) and Sections 23 to 25 are fulfilled *mutatis mutandis*.

## Section 27

### **Relationship to EU law**

The obligations of the manager authorised to exceed the relevant threshold are further regulated by Articles 13, 16 to 25, 27 to 58, 60 to 64, 66 and 75 to 82 of directly applicable EU regulation implementing the AIFMD<sup>6</sup>.

## Section 28

### **Manager of qualified investors' funds and comparable foreign investment funds not authorised to exceed the relevant threshold**

Articles 7 to 10 of the Regulation (EU) No 345/2013 of the European Parliament and of the Council, as amended (hereinafter referred to as "EUVECA-R") shall apply *mutatis mutandis* to managers of qualified investors' funds and comparable foreign investment funds not authorised to exceed the relevant threshold and Sections 20 (2) (j), 20a, 20 (5), Section 22 (6) and Sections 23 to 27 shall not apply.

TITLE III  
CAPITAL REQUIREMENTS

Section 29

**Initial capital requirements**

(1) Initial capital must amount to at least EUR 125 000 in case of initial capital of

- (a) a management company which manages a UCITS fund or a comparable foreign investment fund,
- (b) a management company authorised to exceed the relevant threshold that is not a management company under (a), and
- (c) foreign persons with an authorisation pursuant to Section 481, which is not comparable with the internally managed investment fund.

(2) The initial capital must amount to at least EUR 300 000 in case of initial capital of

- (a) an internally managed investment fund, which is a UCITS fund,
- (b) an internally managed investment fund authorised to exceed the relevant threshold, which is not an internally managed investment fund under (a), and
- (c) foreign person with an authorisation pursuant to Section 481, which is comparable to an internally managed investment fund.

(3) The initial capital of a management company not mentioned in Subsection (1) (a) or (b) and an internally managed investment fund not referred to in Subsection (2) shall amount to at least EUR 50 000.

(4) For the purposes of this Act, the initial capital shall be a sum of

- (a) the paid-up registered capital (entered registered capital),
- (b) the paid-in share premium,
- (c) mandatory reserve funds,
- (d) other reserve funds created from the profit after tax, with the exception of special purpose reserves, and
- (e) the difference between a profit retained from previous periods, which is referred to in an audited financial statement approved by a general meeting, which the general meeting did not resolve to be distributed, and accumulated losses including losses from previous accounting periods.

Section 30

**Minimum amount of capital**

(1) The management company referred to in Section 29 (1) (a) or (b) an internally managed investment fund referred to in Section 29 (2) (a) or (b), and the foreign person referred to in Section 29 (1) (c) or Section 29 (2) (c) keeps the capital continuously in the amount of a sum of one fourth of administrative costs and one fourth of depreciation of long-term corporeal and incorporeal asset declared in a previous accounting period, whereas it takes into account the changes in the scope of its activity.

(2) If the person referred to in Subsection (1) has not performed its activity for the whole preceding accounting period, the planned administrative costs and depreciation according to its business plan shall be used for the calculation under Subsection (1).

(3) The capital of a management company, an internally managed investment fund and a foreigner fund with an authorisation pursuant to Section 481 shall not fall below the minimum amount of initial capital set out in Section 29 (1), (2) or (3) throughout the entire period of the existence such company, fund or foreign person.

(4) Paid-up registered capital to which, in particular, mandatory reserve funds, share premium and undistributed profit from previous periods are added and, in particular, the value of incorporeal asset and accumulated losses from previous periods are deducted, form the basis for determining the amount of capital for the purposes of determining whether the amount of capital corresponds to the requirements pursuant to Subsections (1) and (3).

(5) The CNB lays down, by a regulation, a rules for determining the amount of capital referred to in Subsection (4).

## Section 31

### **Increase of capital**

(1) The management company referred to in Section 29 (1) (a) increases the capital according to Section 30 (1) and (3) by at least an amount equal to 0.02 % of the sum of the value of the assets of investment funds and foreign investment funds, which it manages, exceeding the amount corresponding to EUR 250 000 000, but not to an amount higher than that corresponding to EUR 10 000 000.

(2) The amount by which the management company increases the capital referred to in Subsection (1) may be up to 50 % covered by the guarantee provided by a bank, foreign bank or insurance company which is domiciled in a state requiring compliance with prudential rules according to the law of the EU, or rules which the CNB deems equal.

(3) The calculation referred to in Subsection (1) shall include investment funds and foreign investment funds managed by the management company, without having regard to the fact whether the management company has delegated to another person the performance of an activity included in the management of these funds, but not investment funds and foreign investment funds, in respect of which the management company has been delegated to perform activity included in the management of these funds.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to the management company mentioned in Section 29 (1) (b), the internally managed investment fund referred to in Section 29 (2) (a) or (b), and the foreign person referred to in Section 29 (1) (c) or Section 29 (2) (c) in relation to investment funds managed by it, which are not a UCITS fund and comparable foreign investment funds.

(5) The management company referred to in Section 29 (1) (b) and a foreign person with an authorisation pursuant to Section 481 referred to in Section 29 (1) (c) must furthermore

- (a) in compliance with Articles 12 and 14 of the Commission Delegated Regulation (EU) No 231/2013 raise its capital according to Section 30 (1) and (3) and Subsection (1) by an amount corresponding to the risk of harm in connection to the management of investment funds that are not UCITS funds and comparable foreign investment funds, or
- (b) in compliance with Articles 12 and 15 of the Commission Delegated Regulation (EU) No 231/2013 be insured for the events of inception of its obligation to compensate harm incurred in connection with the management of investment funds which are not a UCITS funds and comparable foreign investment funds.

(6) For an internally managed investment fund referred to in Section 29 (2) (b) and for a foreign person with an authorisation pursuant to Section 481, referred to in Section 29 (2) (c), Subsection (5) shall apply *mutatis mutandis* in case of its own management.

## Section 32

### Placement of the capital

(1) The capital, referred to in Section 30 and 31, of a management company authorised to exceed the relevant threshold and the capital of a foreign person with an authorisation under Section 481 that is not comparable to an internally managed investment fund may be placed in liquid things in legal terms (hereinafter referred to as “**thing**”) whose transformation into financial means is possible within a short period of time, while this thing does not contain a speculative element.

(2) The asset used to increase, according to Section 31 (5) (a), the capital of an internally managed investment fund authorised to exceed the relevant threshold or the capital of a foreign person with an authorisation under Section 481 comparable to an internally managed investment fund can only be placed in a liquid thing whose conversion into financial means is possible in a short period of time, and this thing does not contain a speculative element.

## TITLE IV

### PROVISION OF INVESTMENT SERVICES

## Section 33

(1) If a manager of an investment fund or a foreign investment fund perform the activities specified in Section 11 (1) (c) to (f) in the Czech Republic for another, it

- (a) must, in performing these activities, fulfil the same requirements as an investment firm in providing an investment service consisting in the management of the assets of a client according to an act regulating business activities on the capital market, in a manner adequate to the extent, complexity and nature of the performed activities thereof as defined in Section 11 (1) (c) to (f), in particular it introduces, in relation to these activities, prudential rules for the provision of financial services including the rules for performing the activity of an investment firm by delegated person and rules for the protection of clients' assets,
- (b) complies, *mutatis mutandis*, with the rules on capital adequacy set out for an investment firm which is not a bank and which is not authorised to provide investment services for the trading with financial instruments on its own account and the subscription or placement of financial instruments with a subscription commitment, and
- (c) perform these activities for another person with due professional care and follows, by analogy, the provisions of an act regulating business activities on the capital market concerning the provision of the same investment services by an investment firm, especially the provisions regulating
  1. the journal of an investment firm,
  2. expertise of the persons with whom an investment firm performs the activity,
  3. negotiations of an investment firm with client,
  4. tied agents of investment firms,
  5. Guarantee Fund of Investment Firms in relation to the activity specified in Section 11 (1) (c) or (d) and
  6. the disclosure obligations of an investment firm, except for the reporting of trades.

(2) If a manager of an investment fund or a foreign investment fund in the Czech Republic performs the activity specified in Section 11 (1) (c) for another person, it may not, without the prior express consent of such a client, invest its assets in unit certificates or subscribed securities issued by an investment fund or a foreign investment fund managed by it or to use such assets so that the client would otherwise become a unitholder, shareholder, a person increasing assets of the fund by a contract, or a founder of an investment fund or a foreign investment fund managed by such a founder.

## TITLE V

### OBLIGATIONS CONCERNING THE EXCESS OF CERTAIN SHARES IN VOTING RIGHTS OF CERTAIN LEGAL PERSON

#### Section 34

##### **Making some information available to unitholders, shareholders or beneficiaries of a fund**

(1) The manager authorised to exceed the relevant threshold, who in relation to the shares in voting rights relating to the assets of investment funds managed by him, which are not UCITS funds or comparable foreign investment funds, has exceeded the share in the amount of 50% of all voting rights of a legal person, whose subscribed securities are not admitted to trading on a European regulated market and

- (a) which meets at least two of the following three criteria:
  - 1. an overall number of employees in the employment relationship is at least 250,
  - 2. net annual turnover according to the latest financial statements at least EUR 50 million, or
  - 3. a total amount of assets according to the latest financial statements at least EUR 43 million, or
- (b) whose exclusive activity is not to acquire, dispose of or administer immovable assets or rights connected with the ownership of immovable assets, ensures, that information about the funding of the exceeding of such a share will be made available to the unitholders, shareholders or beneficiaries of such a fund.

(2) The manager referred to in Subsection (1) shall ensure that the following information will be made available to unitholders, shareholders or beneficiaries of a concerned fund within the time period set for making an annual report of such a fund:

- (a) objective assessment of business activity of a controlled legal person in the accounting period,
- (b) a description of all significant events which relate to a controlled legal person and which have occurred after the end of the accounting period,
- (c) information on the expected future development of the business of the controlled legal person, and
- (d) information on the acquisition of own shares of the controlled legal person to the extent stipulated by an act regulating legal relations of business corporations and cooperatives, if the legal person is a joint stock company, or information on acquiring own subscribed securities by such a person in a comparable extent, if such a person is a foreign person comparable to a joint stock company.

(3) A manager does not fulfil the obligation under Subsection (2) if it proceeds according to Section 234 (2) (d). The manager will choose whether it proceeds according to Subsection (2) or Section 234 (2) (d).

(4) For the purposes of the calculation of a share in voting rights in accordance with Subsection (1), this manager's share includes voting rights relating to assets of investment funds managed by it and that are not a UCITS fund or a comparable foreign investment fund, without having regard to whether they are exercised or not, and voting rights related to the subscribed securities or shares,

- (a) which are at the disposal of another person acting in concert with the manager,
- (b) which the manager may temporarily exercise on the basis of a valid contract for pecuniary interest,
- (c) which have been provided as collateral to the manager or to the fund managed by it,
- (d) to which the manager or the fund managed by it has a lifetime right of use,
- (e) which the manager administers, manages or which are deposited with the manager, unless it has been given special instructions by the owner for voting,
- (f) which may be exercised by another person on behalf of the manager or the fund managed by the manager,

- (g) which are exercised by the manager on the basis of a power of attorney, if it can exercise those rights at its discretion and no special orders relating to the voting have been given to it by the principal,
- (h) which the manager is authorised to acquire by unilateral expression of will.

(5) For the purposes of this Act, a controlled legal person means a legal person whose voting rights the share has been exceeded in the manner and in the amount stipulated in Subsection (1) or in Section 35 (3).

## Section 35

### **Making some information available to a controlled legal person and to its shareholders**

(1) The manager referred to in Section 34 (1) shall ensure, without undue delay after he learns or could have learned of the excess of a share, that the controlled legal person and its shareholders whose identity and address are known to him or whose identity and address he may learn from this legal person or from a public register, that have been made access to the information:

- (a) about the excess of the share,
- (b) about the day as of which the excess has occurred,
- (c) about the resulting share in the voting rights of the controlled legal person,
- (d) information necessary for identification of involved shareholders and persons authorised to exercise voting rights on their behalf; if possible, the manager adds this information by a visual representation of relations between the persons through which the voting rights are exercised, and information about the other conditions that has lead to the exceeding of the share,
- (e) about the intentions of a manager in relation to the future development of the activity of the controlled legal person and its impacts on its employees, especially with regard to the prospect of a possible significant change in the working conditions of its employees,
- (f) the information necessary to identify a manager and, where appropriate, other persons with whom it is acting in concert,
- (g) about the management of conflicts of interests including their detection and prevention, particularly between the manager, concerned fund and controlled legal person, including information about particular measures guaranteeing that the contracts concluded by the manager and controlled legal person are not substantially unbalanced, and
- (h) about the procedures governing the internal and external communications of the controlled legal person, in particular in relation to its employees or their agents.

(2) The data referred to in Subsection (1) (a) to (d) shall be made available no later than within 10 working days after the manager referred to in Section 34 (1) has learned or could have learned about the excess of the share.

(3) For a manager authorised to exceed the relevant threshold, which, in relation to the shares in the voting rights relating to the assets of investment funds, managed by it, which are not a UCITS fund or comparable foreign investment funds, has reached or exceeded a share in the amount of 30 % of all voting rights of a legal person whose issued subscribed securities are admitted to trading on an European regulated market in case of a legal person having its registered office in the Czech Republic or a comparable decisive threshold established under the law of another EU member state for the purpose of compulsory takeover bids if a legal person is established in that other EU member state, Subsection (1), with the exception of point (a) to (e) shall apply *mutatis mutandis*.

(4) Section 34 (4) shall apply *mutatis mutandis* to the calculation of the share in the voting rights referred to in Subsection (3).

## Section 36

### **Making certain information available to the employees of a controlled legal person or to their representative**

(1) The manager referred to in Section 34 (1), in making the information according to Section 35 (1) (a) to (e) available to the controlled legal person, shall request the statutory body of this person for making available, without undue delay, to the employees of this person or to their representatives, the information referred to in Section 35 (1) (a) to (e), and to the extent possible, the manager ensures that the statutory body fulfil this obligation.

(2) The manager referred to in Section 34 (1) or in Section 35 (3), in making the information referred to in Section 35 (1) (f) to (h) available to the controlled legal person, shall request the statutory body of this person for making available, without undue delay, to the employees of this person or to their representatives the information referred to in Section 35 (1) (f) to (h), and to the extent possible, the manager ensures that the statutory body fulfil this obligation.

(3) The manager referred to in Section 34 (1) shall request the statutory body of the controlled legal person for making available, within the period of time, within which the annual report of this person according to the relevant legal regulations must be made available, to the employees of this person or to their representatives, the annual report of this person containing information referred to in Section 34 (2), and to the extent possible, the manager ensures that the statutory body fulfil this obligation.

(4) The manager does not fulfil the obligation according to Subsection (3), if it proceeds according to Section 234 (2) (d); in such a case the manager referred to in Section 34 (1) requests the statutory body of the controlled legal person for making available, within the period of time, within which the annual report of this person according to the relevant legal regulations must be made available to the unitholders, shareholders or beneficiaries, to the employees of this person or to their representatives the information referred to in Section 34 (2), and to the extent possible, the manager ensures the statutory body fulfil this obligation.

(5) The representative of the employees means for the purposes of this Act a trade union organisation, a council of the employees, employees' representative for occupational safety and health or representatives of employees according to the laws of another state.

## Section 37

### **Preventing certain dispositions with the assets of a controlled legal person**

(1) The manager referred to in Section 34 (1) or Section 35 (3) shall, for a period of 24 months as from the day of reaching or exceeding the share in the voting rights according to Section 34 (1) or Section 35 (3), prevent

- (a) a distribution of profit or other own resources of a controlled legal person among its shareholders,
- (b) a reduction of the registered capital of the controlled legal person or reduction of a comparable quantity, in case of a legal person having its registered office abroad, and
- (c) an acquisition of shares in the registered capital, in a comparable quantity, in case of a legal person having its registered office abroad, or in the voting rights of the controlled legal person into its assets.

(2) The provisions of Subsection (1) (a) shall apply only if

- (a) the value of the assets, lowered by the debts of the controlled legal person ascertained according to the last regular financial statement, is lower, or would be lower due to such a distribution than the amount of the registered capital or would be a comparable quantity, in case of a legal person having its registered office abroad,
  - 1. increased by that part of the reserve fund or reserve fund which can not be provided to meet its shareholders, and
  - 2. reduced by unpaid registered capital or a comparable quantity, in case of a legal person having its registered office abroad, which is not included in the balance sheet under assets, or
- (b) the amount to be distributed among the shareholders exceeds the amount of economic result of the last accounting period
  - 1. increased by undistributed profit from previous periods and by payments from reserve funds designated for this purpose, and
  - 2. reduced by losses from previous periods and by allocations to the reserve funds and other funds in accordance with the law and articles of association of a controlled legal person.

(3) Subsection (1) (b) applies only if the reduction of registered capital or a comparable quantity for the purpose of settling a loss or of a transfer into a reserve fund and of settling future losses, and the amount of such reserve funds does exceed 10% of the reduced registered capital or a reduced comparable quantity.

(4) Subsection (1) (c) applies only if such acquisition, including shares already owned by this person and shares held by another on its account, would lead to a decrease in the value of the asset reduced by the debts of this legal person below the amount of its registered capital or a comparable quantity, in case of a legal person having its registered office abroad,

- (a) increased by the part of reserve funds or by reserve funds that cannot be provided to the shareholders, and
- (b) reduced by unpaid registered capital or a comparable quantity, in case of a legal person having its registered office abroad, that is not included in the balance sheet under assets.

## **PART THREE**

### **ADMINISTRATOR**

#### **TITLE I**

#### **ADMINISTRATION AND ADMINISTRATOR**

##### **Chapter 1**

###### **Basic provisions**

###### **Section 38**

###### **Administration**

(1) The administration of an investment fund or a foreign investment fund includes in relation to this fund always the following activities:

- (a) keeping of accounts (accounting),
- (b) the provision of legal services,
- (c) compliance and internal audit,
- (d) dealing with complaints and complaints by investors,
- (e) evaluation of its assets and debts,
- (f) calculation of the current value of the security and book-entry security issued by the fund,

- (g) fulfillment of obligations relating to taxes, fees or other comparable pecuniary performance,
- (h) keeping a list of the owners of securities and book-entry securities issued by the fund,
- (i) allocation and payment of revenues of the fund's assets,
- (j) ensuring the issuance, exchange and redemption of securities and book-entry securities issued by this fund
- (k) execution and update of an annual report and a semi-annual report of this fund,
- (l) execution and update of a key investor information document of this fund or a comparable documentation in accordance with law of other state and an implementation of its changes,
- (m) execution of promotional communications relating to this fund,
- (n) disclosing, making available and providing information and documentation to unitholders, beneficiaries or shareholders of this fund and other persons,
- (o) reporting of data and providing of documents, in particular to the CNB or the supervisory authority of another EU member state,
- (p) performance of another activity relating to the management of the values in the assets of this fund, for example
  1. performance of a consultation activity relating to the capital structure, industrial strategy and questions related to thereto persons, on which this fund holds stakes, and
  2. provision of services regarding transformation of commercial companies or transfers of business enterprise to persons, on which such a fund holds stakes, and
  3. the maintenance of an individual thing owned by the fund,
- (q) the distribution and payment of pecuniary performance in connection with the dissolution of this fund,
- (r) keeping records of the issuance and redemption of securities and book-entry securities issued by the fund, and
- (s) perform or procure activities referred to in Subsection (2),
- (t) other activities directly related to the activities referred to in points (a) to (s).

(2) The administration of an investment fund or a foreign investment fund may further be the following activities:

- (a) the safekeeping of securities and the keeping of records of book-entry securities issued by the fund, or
- (b) marketing investments in that fund.

(3) The activities referred to in Subsection (1) (c) and (p) shall be performed by an administrator of an investment fund or a foreign investment fund in relation to such fund only if it is agreed in the agreement on administration.

(4) The administration of an investment fund or a foreign investment fund shall also include the administration of its sub-funds or comparable facilities. Where this Act uses the term "administration of an investment fund or a foreign investment fund", it also means the administration of its sub-funds or comparable facilities. Where this Act uses the term "administrator of an investment fund or a foreign investment fund", it shall also mean the administrator of its sub-funds or comparable facilities. All sub-funds of one investment fund must have the same administrator.

(5) Nobody shall be allowed to perform the administration of an investment fund without an authorisation granted pursuant to this Act by the CNB, unless this Act or any other legal regulation stipulates otherwise.

## Section 39

### **Requirement for other business licences**

(1) Individual activities, included in the administration of an investment fund or a foreign investment fund, may also be performed under an authorisation other than the relevant authorisation granted by the CNB pursuant to this Act; However, the activities thus performed are not the administration of an investment fund or a foreign investment fund.

(2) No other authorisation shall be required for the administration of an investment fund or a foreign investment fund by a person with a relevant authorisation granted by the CNB pursuant to this Act; this shall be without prejudice to Subsections (3) and (4). No other authorisation is required to perform an individual activity involving the administration of an investment fund or a foreign investment fund, by an investment fund administrator or a foreign investment fund administrator, for those who comply with prudential rules that are comparable to prudential rules according to the law of the EU and are supervised by the supervisory authority; this shall be without prejudice to Subsections (3) and (4).

(3) The performance of an activity pursuant to Section 38 (2) (a) requires an authorisation for the provision of investment services of safekeeping and administration of financial instruments including related services or an authorisation for the performance of an activity under the Section 11 (1) (d).

(4) The performance of an activity pursuant to Section 38 (2) (b) requires an authorisation for the provision of an investment service of reception and transmission of orders in relation to financial instruments or authorisation to perform activities pursuant to Section 11 (1) (e).

(5) Individual activities, included in the administration of an investment fund or a foreign investment fund, performed by a manager, in relation to the investment fund or a foreign investment fund, managed by such manager, does not require an authorisation pursuant to the Subsection (3) (4). If the manager of an investment fund or a foreign investment fund performs activities pursuant to Section 38 (2) (b) without the authorization referred to in Subsection (4), the manager must perform such activity with a professional care and comply with the rules of conduct for the investment firm's dealing with clients in providing them an investment service of reception and transmission of orders in relation to financial instruments mutatis mutandis.

(6) The person authorised to administer retail AIFs may also perform individual activities, which include the administration of UCITS funds or comparable foreign investment funds.

## Section 40

### **Administrator**

(1) Anyone who performs the administration of an investment fund or a foreign investment fund on the account of such a fund is its administrator. Each investment fund may only have one administrator.

(2) The administrator of a UCITS fund may only be its manager.

(3) An investment fund with a legal personality shall not perform an administration of another investment fund or foreign investment fund.

## Section 41

### **Main administrator**

The main administrator is a legal person with its registered office in the Czech Republic authorised by the CNB to administer the investment fund or the foreign investment fund and is not authorised to manage investment funds or foreign investment funds.

## Chapter 2

### **Business licence**

## Section 42

#### **Object of business of the main administrator**

(1) The main administrator may perform the administration of an investment funds, which are not UCITS funds, or comparable foreign investment funds or perform individual activities, which are included in the administration of UCITS fund or a comparable foreign investment fund, only in the extent listed in the authorisation granted by the CNB.

(2) The main administrator, which is not a bank or an investment firm, may as a part of its business only perform activities, which directly connect to the management of its own assets.

## Section 43

### **Business licence**

(1) An authorisation to perform the administration of an investment fund or a foreign investment fund for a legal person registered in the Commercial Register commences

- (a) on the date of legal effect of the decision of the CNB on granting the authorisation to perform the activity to
  - 1. management company pursuant to Section 479,
  - 2. an internally managed investment fund pursuant to Section 480,
  - 3. foreign person pursuant to Section 481, or
  - 4. the main administrator pursuant to Section 482,
- (b) on a later day stated in the operative part of the decision referred to in point (a), or or
- (c) on the day of entry of such authorisation to the Commercial Register in case of an investment fund listed in Section 9 (1).

(2) An authorisation to perform the administration of an investment fund or a foreign investment fund for a legal person not registered in the Commercial Register, to which the authorisation in accordance with Sections 479, 480, 481 or 482 was granted by the CNB or which was registered in the relevant register in accordance with Section 513, commences on the day of entry to the Commercial Register.

## Section 44

### **Administration of the investment fund by a foreign person**

(1) The foreign person referred to in Section 14 (1) may administer the UCITS fund it manages.

(2) The foreign person referred to in Section 14 (2), having its registered office in an EU member state, may administer the retail AIF it manages or the qualified investors' fund it manages.

(3) If the foreign person referred to in Subsection (1) or (2) is performing the administration of an investment fund, Section 47, 48 and 50 to 53 shall not apply.

TITLE II  
RULES OF THE ACTIVITY AND ECONOMY

Section 45

**Professional care**

The administrator of an investment fund or a foreign investment fund is obliged to administer the fund with professional care.

Section 46

**Proper and prudent performance of the activity**

(1) The administrator of an investment fund or a foreign investment fund shall perform the activity properly and prudently.

(2) In order to ensure the proper and prudent performance of the activity, the administrator of an investment fund or a foreign investment fund shall establish, maintain and apply a directing and controlling system.

Section 47

**Directing and controlling system**

(1) The directing and controlling system of an investment fund or a foreign investment fund always includes

- (a) strategic and operational management,
- (b) the organizational arrangements and internal regulations regulating them, with a clear definition of the activities, including activities of bodies of the administrator and its committees set up by the administrator, and the scope of competence and decision-making powers thereof; within the framework of organisational arrangement are to be determined the offices, which may not be performed simultaneously,
- (c) risk management system which always includes the approach of the administrator to risks, to which the administrator is or may be exposed, including risks arising from internal or external environment, and discerning, assessing, measuring, monitoring, reporting and limiting risks including adopting measures leading to limit risk occurrence or the impacts of risk occurrence, and
- (d) the internal control system, which always contains
  1. control of subordinate employees by their superiors,
  2. compliance and
  3. an internal audit ensuring an independent and objective internal control of performance of the activity of an administrator and the performance of the activity of a manager in relation to an investment fund or a foreign investment fund, whose administration it performs, and submission of clear recommendations in order to ensure the rectification of thus identified shortcomings to the respective level of management.

(2) The directing and controlling system of an investment fund or a foreign investment fund includes

- (a) internal and external communication system,

- (b) monitoring, evaluating and updating internal rules,
- (c) management of conflicts of interests during the performance, including but not limited to its investigation, prevention and notification to unitholders, shareholders and a beneficiary of the fund,
- (d) handling complaints and claims of unitholders or shareholders of a retail investment fund, whose administration the administrator performs, or of persons, being in a similar position, of a comparable foreign investment fund, whose administration the administrator performs,
- (e) bookkeeping of an investment fund and a foreign investment fund, whose administration it performs, including accounting of the asset of the fund and bookkeeping of the administrator,
- (f) control of the activity of persons who are not the employees of the administrator, but with whose help it performs the activity,
- (g) ensuring continuous performance of the activity and permanent functioning of the administrator on a financial market in accordance with the object of business and plan of the activity of such administrator,
- (h) ensuring trustworthiness and necessary knowledge and experience of persons, with whose help it performs the activity,
- (i) control and safety measures in the processing and record keeping of information,
- (j) record keeping of subscriptions, issuances and redemption of securities and book-entry securities issued by an investment fund or a foreign investment fund whose administration the administrator performs,
- (k) procedures for evaluation of the asset and debts of an investment fund or a foreign investment fund, whose administration the administrator performs, and
- (l) ensuring compliance with the rules of conduct.

(3) The directing and controlling system of a manager of an investment fund or a foreign investment fund must be effective and comprehensive and proportionate to the nature, scale and complexity of the activities performed by the fund as a whole and in its parts.

(4) The administrator of an investment fund or a foreign investment fund shall verify and regularly evaluate the effectiveness, comprehensiveness and adequacy of the directing and controlling system as a whole and in its parts and shall, without undue delay, make appropriate correction.

(5) The CNB shall lay down in a regulation the requirements for the qualitative criteria of the directing and controlling system of the administrator of an investment fund or a foreign investment fund to the extent not regulated by directly applicable EU legislation implementing the AIFMD<sup>6</sup>.

## Section 47a

### **Reporting mechanism**

An administrator of an investment fund or a foreign investment fund shall establish, maintain and apply the reporting mechanism, Section 20a shall apply *mutatis mutandis*.

## Section 48

### **Personnel of the administrator**

(1) Personnel of the administrator of an investment fund or a foreign investment fund must be adequate to the nature, extent and complexity of the activities performed by him.

(2) The administrator of an investment fund or a foreign investment fund ensures that the persons with whose help it performs the activity are trustworthy and have sufficient knowledge and experience necessary for the proper exercise of tasks assigned to them, especially the knowledge of the procedures and regulations necessary to properly fulfil the obligations accompanied with the performance of the activity.

(3) The administrator of an investment fund or a foreign investment fund ensures that the extent and nature of activities performed by the persons referred to in Subsection (2) do not prevent the proper performance of particular activities.

(4) The administrator of an investment fund or a foreign investment fund must have at least 2 managing persons who have sufficient experience in performing the activities necessary for the proper performance of this office.

## Section 49

### **Rules of conduct**

(1) The administrator of an investment fund or a foreign investment fund, in performing the activity, acts

- (a) in a qualified, honest and equitable way, and
- (b) in the best interests of unitholders, shareholders and beneficiaries of this fund.

(2) The administrator of an investment fund or a foreign investment fund shall establish, maintain and apply

- (a) procedures for informing about an executed order to issue or redeem a security or a book-entry security issued by this fund, and
- (b) rules for accepting, offering or providing incentives.

(3) An administrator of an investment fund or a foreign investment fund further

- (a) properly ensures the issuance and redemption of securities and book-entry securities issued by this fund and informs the owners of these securities or book-entry securities about the result,
- (b) does not market benefits that may not be reliably guaranteed,
- (c) makes cashless payments, unless it is excluded by their nature,
- (d) does not spread false or misleading information,
- (e) makes every effort that may be required so that an investment fund or a foreign investment fund administered by the administrator, or the unitholders, the shareholders or the beneficiaries of such a fund do not incur unreasonable costs; in particular, the administrator handles a complaint or a claim by a unitholder or a shareholder of a retail investment fund or of a comparable foreign investment fund at no charge,
- (f) does not accept, offer or provide an incentive that could result in a breach of obligations under Subsection (1),
- (g) does not use deductions, surcharges or fees directly related to the issuance or redemption of securities or book-entry securities specified in a statute or a comparable document of a UCITS fund or of a comparable foreign investment fund if the securities or book-entry securities issued by this fund are being acquired into or disposed of the asset of another UCITS fund or a comparable investment fund managed by the managers who are members of the same concern.
- (h) manages conflicts of interest, including detection, prevention, and notification to the unitholders, shareholders or beneficiaries of such funds,
- (i) comply with the statute of an investment fund or a comparable document of a foreign investment fund administered by it.
- (j) comply with the Section 1843 of the Civil Code setting an reporting obligations in connection with the conclusion of a financial services contract.

(4) The CNB shall lay down, by a regulation, the qualitative requirements for the procedures and rules referred to in Subsection (2) and the obligations referred to in Subsections (1) and (3) to the extent not covered by a directly applicable EU regulation implementing the AIFMD<sup>6)</sup>.

## **Delegation to another**

### Section 50

The administrator of an investment fund or a foreign investment fund may delegate the performance of an individual activity, included in the administration of an investment fund or a foreign investment fund, to be performed by another, only if

- (a) it has been notified in advance to the CNB,
- (b) the manager of this fund agrees with it,
- (c) it does not prevent the CNB from the exercise of supervision over the performance of the obligations of the manager of this fund and this administrator laid down by this Act, on the basis of this Act or by directly applicable EU legislation in the field of the management of investment funds<sup>2)</sup>, or over the performance of his obligations ensuing from the statute of the concerned investment fund or from a comparable document of the concerned foreign investment fund,
- (d) it does not prevent the manager of this fund or this administrator from performing their activity in respect of this fund properly and prudently and from acting in the best interest of the uni-holders, shareholders or beneficiaries of this fund,
- (e) it is ensured that the administrator of this fund may control and influence by its instructions the performance of that activity by the delegated person,
- (f) it is ensured that the administrator of this fund may, with immediate effect, terminate this delegation if it is in the interest of the unitholders, shareholder or beneficiary of the fund, and
- (g) a statute or a comparable document of that fund defines that activity as an activity the performance of which may be delegated to another.

### Section 51

(1) If an administrator of an investment fund or a foreign investment fund delegates the performance of an individual activity, included in the administration of an investment fund or of a foreign investment fund, to another, the administrator introduces, maintains and applies appropriate measures for the management of risks connected therewith and regularly controls the performance of this activity.

(2) The delegation of performance of an individual activity, included in the administration of an investment fund or of a foreign investment fund, to another, does not prejudice the administrator's obligation in respect of third parties to compensate harm incurred as a result of breach of his obligation laid down by this Act, on the basis of this Act, or by directly applicable EU legislation in the field of the management of investment funds<sup>2)</sup>, or his obligations stemming from the statute of the concerned investment fund or from a comparable document of the concerned foreign investment fund.

### Section 52

The administrator of an investment fund or a foreign investment fund may delegate the performance of an individual activity, included in the administration of an investment fund or a foreign investment fund, only to such a person

- (a) who has the necessary material, organizational and personal prerequisites to perform that activity,
- (b) whose managing persons are trustworthy and have the necessary knowledge and experience to perform such activities, and
- (c) who has a business or another licence to perform that activity.

## Section 53

### **Delegation to another by the delegated person**

(1) The person to whom the administrator of an investment fund or a foreign investment fund has delegated the performance of an individual activity, included in the administration of an investment fund or a foreign investment fund, may delegate the performance of an act or some acts from this activity to another, if

- (a) the manager of such a fund agrees with it in advance,
- (b) it has been notified in advance to the CNB,
- (c) the conditions laid down in Section 50 and 52 are fulfilled *mutatis mutandis*.

(2) The person to whom the administrator of an investment fund or a foreign investment fund has delegated the performance of an individual activity, included in the administration of an investment fund or a foreign investment fund, regularly controls the performance of the act or acts from this activity, the performance of which such person has delegated to another pursuant to Subsection (1).

(3) The person to whom the administrator of an investment fund or a foreign investment fund has delegated, according to Subsection (1), the performance of an act or some acts, that is a part of the activity, included in the administration of this fund, may further delegate the performance thereof to another, if the conditions in Subsection (1) (a) and (b), Subsection (2) and Sections 50 to 52 are fulfilled *mutatis mutandis*.

## Section 54

### **Keeping of records**

(1) The administrator of an investment fund or a foreign investment fund ensures the keeping of records in respect of

- (a) the securities taken in safekeeping and book-entry securities issued by an investment fund or a foreign investment fund administered by the administrator,
- (b) the issue and redemption of securities and book-entry securities issued by an investment fund or a foreign investment fund the administration of which it performs.

(2) For the purposes of Subsection (1), the administrator of an investment fund or a foreign investment fund is entitled to keep the birth identification number of the participants of trades.

(3) The records referred to in Subsection (1) shall be kept in electronic form.

## Section 55

### **Relationship to the law of the EU**

The other obligations of the administrator of a retail AIF, a qualified investors' fund or a comparable foreign investment fund managed by the manager authorised to exceed the relevant threshold are defined in Articles 16 to 24, 26, 57 to 62 and 65 to 82 of Commission Delegated Regulation (EU) No 231/2013.

Section 56

**The administrator of qualified investors' funds and of comparable foreign investment funds managed by a manager not authorised to exceed the relevant threshold**

For the administrator of qualified investors' funds and comparable foreign investment funds managed by a manager referred to in Section 28 to the extent of administration of these funds, the provisions of Section 47 (5), 47a, 49 (4) and 50 to 53 and 55 shall not apply and the Articles 7 to 11 of the EUVECA-R<sup>7)</sup> shall apply *mutatis mutandis*.

TITLE III

CAPITAL REQUIREMENTS

Section 57

**Initial capital requirements**

The initial capital of the main administrator must amount to at least EUR 50 000.

Section 58

**Minimum amount of capital**

(1) The capital of the main administrator must not fall below the minimum initial capital as set forth in Section 57 for the entire period of its existence.

(2) The paid-up registered capital of main administrator plus, in particular, mandatory reserve funds, share premium and undistributed profit from previous periods and less, in particular, the value of incorporeal property and accumulated losses from previous periods, form the basis for determining the amount of capital for the purposes of determining whether the amount of capital conforms to the requirements pursuant to Subsection (1).

(3) The CNB lays down in a regulation the rules for the determination of the amount of capital referred to in Subsection (2).

TITLE IV

ADMINISTRATION AGREEMENT

Section 59

(1) Under the administration agreement the administrator of an investment fund or a foreign investment fund undertakes to administer this fund and the manager of this fund undertakes to pay the administrator a fee for this administration.

(2) The administration agreement must be made in writing.

(3) The administrator of an investment fund or a foreign investment fund may delegate the performance of an individual activity, included in the administration of an investment fund or a foreign investment fund, to another, only if so stipulated in an administration agreement.

(4) Subsection (3) is without prejudice to the provisions of this Act for the delegation of the performance of an individual activity, included in the administration of an investment fund or of a foreign investment fund, to another.

(5) The manager of an investment fund or a foreign investment fund is further obligated under the administration agreement to

- (a) provide cooperation to the administrator of this fund so that this administrator could discharge his obligations ensuing from legal regulations, and
- (b) inform the administrator of this fund and the depository of this fund, which the administrator administers, about the facts that the manager learns of and that are significant for the performance of their activities, and to hand over documents necessary in that connection and to keep records in that respect.

(6) The administrator of an investment fund or a foreign investment fund is further obligated under an administration agreement to

- (a) provide cooperation to the manager so that the manager could discharge his obligations ensuing from legal regulations, and
- (b) inform the manager and the depository of an investment fund and a foreign investment fund, which the administrator administers, about the facts that he learns of and that are significant for their activities, and to hand over documents necessary in that connection and to keep records in that respect.

## **PART FOUR**

### **DEPOSITORY**

#### **TITLE I**

##### **BASIC PROVISIONS**

###### **Section 60**

###### **Depository**

(1) A depository of an investment fund or a foreign investment fund shall be a person authorised by the depository agreement to

- (a) have in safekeeping the assets of an investment fund or a foreign investment fund,
- (b) create and maintain monetary accounts and keep records of the movement of all financial means belonging in the assets of an investment fund or a foreign investment fund, and
- (c) keep records and control the status of the assets of an investment fund or a foreign investment fund other than the assets referred to in (a) or (b).

(2) The depository of a foreign investment fund which is not domiciled in an EU member state and which is managed by a management company or a foreign person with an authorisation according to Section 481 must be the person referred to in Section 327.

###### **Section 61**

###### **Incompatibility**

The investment fund's depository must not be the manager of this fund.

## Section 62

### **Professional care and acting in the best interest**

(1) The depository of an investment fund is obliged to perform the activity of the depository with a professional care and to act in the best interest of the investment fund, whose it is a depository, and of unitholders, shareholders, or beneficiaries of this fund.

(2) The depository shall fulfill the obligations under this Act or under the depository agreement in a way that corresponds to the nature, scope and complexity of the activities performed by it.

## Section 63

### **A special rule for the repeated provision of financial collateral**

(1) The depository of an investment fund must not, without prior consent of the manager of this fund, use the fund's assets in safekeeping for the purposes of its own or another person.

(2) The depository of a UCITS fund or an ELTIF shall use the assets referred to in Subsection (1) only if it is in favor of that fund and its unitholders or shareholders.

(3) The depository of a UCITS fund or an ELTIF, that used the assets referred to in Subsection (1), shall provide a financial collateral in accordance with the law governing financial collateral, in such a way that the fund's claims are sufficiently secured.

## Section 64

### Conflicts of interests

(1) The depository of an investment fund introduces, maintains and applies procedures for the management of conflicts of interests between the depository, the investment fund, the manager of the fund and unitholders, shareholders, or beneficiaries of this fund, including detecting, preventing and reporting such conflicts.

(2) If there is a threat of a conflict of interests pursuant to Subsection (1), the depository of an investment fund notifies it without undue delay to the manager of this fund, as well as to the unitholders, shareholders, or beneficiaries of this fund.

## Section 65

### **Separation of the performance of another activity from the depository's activity**

(1) The depository of an investment fund may perform for this fund other activities than the activity of a depository of this fund.

(2) If a conflict of interests according to Section 64 (1) may arise from the performance of this other activity, a depository of such a fund must introduce organisational measures ensuring an effective separation of the performance of this other activity from the activity of a depository, in order to minimize this conflict of interests.

(3) The depository of an investment fund may evaluate the assets and debts of an investment fund, whose it is a depository, or perform calculations of the actual value of a unit certificate or an investment share issued by such investment fund only if such depository has introduced the organisational measures

- (a) for the evaluation of the assets and debts of this fund, or for the calculation of an actual value of a unit certificates or an investment share issued by this fund, and
- (b) ensuring an effective separation of the performance of this activity from the activity of a depository of this fund.

## Section 66

### **Procedure upon detecting shortcoming**

If the depository of an investment fund detects in the performance of his activity the fact indicating that the manager of this fund has breached his obligation under this Act, on the basis of this Act, by directly applicable EU legislation in the field of management of investment funds<sup>2)</sup>, by the statute of this investment fund or by a depository agreement, the depository shall discuss this matter with the manager without undue delay.

## Section 66a

### **Reporting mechanism**

The depository of an investment fund introduces, maintains and applies a reporting mechanism, Article 20a shall apply *mutatis mutandis*.

## Section 67

### **Depository agreement**

(1) Under a depository agreement a depository of an investment fund undertakes to perform the activity of a depository of this fund to the extent of obligations arising from this Act and a manager of this fund undertakes to discharge his obligations in connection with the performance of the activity of a depository arising from this Act and to pay the depository for his activity a depository fee.

(2) The depository agreement must be made in writing.

## TITLE II

### DEPOSITORY OF THE RETAIL INVESTMENT FUND

## Section 68

### **Obligation to have one depository**

Each retail investment fund must have only one depository. If the fund's articles of association allow the creation of a sub-fund, the depository of the fund shall also act as depository for such sub-funds.

## Section 69

### **Persons eligible to be depository**

(1) The depository of a retail investment fund may only be

- (a) a bank with its registered office in the Czech Republic,
- (b) a foreign bank having a branch located in the Czech Republic,
- (c) an investment firm which is not a bank and which

1. is obliged to comply with the capital adequacy according to Section 8a (1) of the Act regulating the capital market business, and
2. is authorised to provide the investment service of safekeeping and administration of financial instruments, including related services, or

(d) a foreign person who

1. has the authorisation of the supervisory authority of another EU member state to provide the investment service of safekeeping and administration of financial instruments, including related services,
2. provides investment services in the Czech Republic through a branch of a business enterprise and
3. is obliged to comply *mutatis mutandis* with capital adequacy according to Section 8a (1) of the Act regulating the capital market business.

(2) The depository of a retail investment fund must create prerequisites for fulfilling the obligations of a depository of the retail investment fund arising from this Act, a directly applicable EU regulation implementing the AIFMD<sup>6)</sup> and directly applicable EU regulation implementing the UCITS-D<sup>8)</sup>.

## Section 70

### **Some requirements of a depository agreement**

(1) The depository of a retail investment fund and a manager of a retail investment fund shall define the manner of mutual communication in the depository agreement, including the manner of securing of information that are kept in respect of such communication, and the manner of protection of confidential information and personal information.

(2) The depository of a UCITS fund and the manager of such a fund shall also specify in the depository agreement the period within which the depository shall provide the manager with an inventory of the assets of the fund which the depository has in safekeeping, custody or of which the depository keeps a record, including financial means in the accounts that is kept in the name of such fund and in favor of such fund.

(3) The other requirements of the depository agreement are defined in Section 83 of Commission Delegated Regulation (EU) No 231/2013 and directly applicable EU regulation implementing the UCITS-D<sup>8)</sup>.

## Section 71

### **Custody, safekeeping and records of the fund's assets**

(1) Within the framework of the activities of a depository, the depository of a retail investment fund

- (a) has in custody the substitutable financial instruments that are included in the assets of a retail investment fund by way of keeping records of these substitutable financial instruments on an ownership account which the depository of the retail investment fund keeps for this fund in the Central Registry of the book-entry securities, in the separate register of financial instruments, in the register linked to these registers, in the register similar to these registers governed by the law of a foreign state; The depository agreement permits the depository of the retail investment fund to secure the custody of the substitutable financial instruments by establishing an ownership account for that fund with the Central Depositary of the book-entry securities or a comparable facility established or created under the law of a foreign state, Subsection (3) shall not apply in this case,
- (b) has in safekeeping the financial instruments and other assets of the retail investment fund, the nature of which allows it, and

(c) ensures keeping of records of the retail investment fund's assets, the nature of which allows it.

(2) Within the framework of the depository's activity, the depository of the retail investment fund shall also keep record of the assets of the retail investment fund which holds or is entitled to hold the prime broker of such retail investment fund.

(3) Articles 88 to 90 of Commission Delegated Regulation (EU) No 231/2013 and the directly applicable EU regulation implementing the UCITS-D<sup>8)</sup> define which substitutable financial instruments pursuant to Subsection (1) (a) shall be held in custody of a depository, as well as define the manner of discharging obligations according to Subsection (1) by a depository of a retail investment fund.

(4) Subsection (1) shall not apply to assets held or entitled to hold by the prime broker of such retail investment fund.

## Section 72

### **Depository's obligations in relation to the maintenance of financial means**

(1) Within the framework of the activity of a depository of a retail investment fund, the depository shall open or keep

- (a) monetary accounts in the name of this fund,
- (b) monetary accounts in the name of the manager of this fund opened in favour of this fund, or
- (c) monetary accounts in its own name opened in favour of this fund; in such a case the depository of a retail AIF ensures that there are no financial means of such depository in this account.

(2) The depository is entitled to open monetary accounts with

- (a) the CNB or a central bank of another state,
- (b) a bank with registered office in the Czech Republic,
- (c) a foreign bank with a branch located in the Czech Republic,
- (d) a foreign bank which has its registered office in another EU member state and which does not have a branch located in the Czech Republic,
- (e) foreign bank or a similar person established in a third country and such country requires compliance with prudential rules which are comparable to prudential rules under an EU law,
- (f) a savings and credit co-operative, or
- (g) who is the prime broker (Part Five) of the retail investment fund.

(3) The depository shall deposit, without undue delay in the respective monetary account opened by the depository according to Subsection (1) or (2), all the financial means of this fund acquired particularly by subscription or issuance of securities and book-entry securities issued by this fund.

(4) Within the framework of the activity of a depository of a retail investment fund, the depository keeps records of all monetary accounts opened for this fund and shall control the cash flow of that fund in these accounts.

(5) The manner of discharging obligations referred to in Subsections (1) to (4) by the depository of a retail investment fund are defined by Articles 85 and 86 of Commission Delegated Regulation (EU) No 231/2013 and the directly applicable EU regulation implementing the UCITS-D<sup>8)</sup>.

## Section 73

### **Control obligations**

(1) Within the framework of the activity of a depository of a retail investment fund, the depository controls whether, in compliance with this Act, the directly applicable EU regulations governing investment funds<sup>2)</sup>, the statute of the retail investment fund and the the depository agreement provisions

- (a) unit certificates or investment shares were issued and redeemed,
- (b) current value of a unit certificate or an investment share was calculated,
- (c) the assets and debts of this fund were evalued,
- (d) consideration payment for trades involving the asset of this fund was paid in a regular time-limits,
- (e) revenues resulting for this fund are used,
- (f) manager's orders aimed to acquire or dispose of the things in the assets of that fund are executed, whereas it is sufficient that the depository controls how those orders have been executed, if the reasons for a special consideration are given for this type of control; the depository further controls how the orders were executed as regards to orders, in case of orders relating to
  1. a trade whose value does not exceed CZK 500 000 and whose aggregated daily value corresponds to 0.1 % of the value of the fund's assets,
  2. a trade concluded on the market referred to in Section 3 (1) (a) of a Government regulation on the investment of investment funds and techniques for their management, or
  3. a trade in security or book-entry security issued by a retail investment fund or a comparable foreign investment fund.

(2) Within the framework of the activity of a depository of a retail investment fund, the depository shall execute the orders of the fund manager according to the statute of the fund and according to the depository agreement.

(3) Within the framework of the activity of a depository of a retail investment fund, the depository shall also inspect the statute of the assets of the UCITS fund which which may not be in custody pursuant to Section 71 (1) (a) or in safekeeping pursuant to Section 71 (1) (b).

(4) The manner of discharging obligations referred to in Subsection (1) by the retail investment fund depository is defined in Articles 92 to 97 of the Commission Delegated Regulation (EU) No 231/2013<sup>3)</sup> and directly applicable EU regulation implementing the UCITS-D<sup>8)</sup>.

## Section 74

### **Obligations of the manager in relation to the maintenance of financial means**

(1) The manager of a retail investment fund is, after previous notification to the depository of this fund, entitled to open an account for this fund with a person referred to in Section 72 (2).

(2) The manager of a retail investment fund disposes of financial means of this fund only through the depository of this fund or through a person referred to in Section 72 (2) with which the manager has opened a monetary account.

(3) The manager of a retail investment fund deposits without undue delay in the respective monetary account opened pursuant to Subsection (1) or opened by the depository of this fund pursuant to Sections 72 (1) and (2) all the financial means received particularly by subscription or issuance of securities or book-entry securities issued by this fund.

(4) The manner of discharging obligations referred to in Subsections (1) to (3) by the manager of a retail investment fund shall be defined in Article 87 of the Commission Delegated Regulation (EU) No 231/2013 and a directly applicable EU regulation implementing the UCITS-D<sup>8</sup>.

## Section 75

### **Obligations of the former depository**

(1) If the depository of a retail investment fund ceased to perform the activity of a depository of this fund, it is obligated, without undue delay, to properly inform the new depository of this fund about its previous activity and to submit to the new depository all documents associated with the performance of activity as the depository of this fund and to disburse all of the financial means of this fund and assets of this fund held in its power.

(2) Until all documents are handed over and all financial means and assets of a retail investment fund are disbursed, the person who ceases performing activity as a depository is considered as the depository of this fund; the Section 81 shall not apply for the person ceding performing activity as the depository.

## Section 76

### **Obligations of a manager**

The manager of a retail investment fund without undue delay after the termination of the respective depository agreement, unless this agreement was simultaneously replaced by a new depository agreement,

- (a) suspends issuing and redeeming of unit certificates or investment shares issued by this fund and suspends disposing of the assets of this fund, which has been held in the power of a person ceased to perform the activity of the depository of this fund, with the exception of reimbursement of obligations created before termination of the obligations ensuing from the depository agreement, and reimbursement of essential operating and salary expenses until the new depository agreement takes effect,
- (b) submits information on suspension of disposing of the assets of this fund according to (a) and on suspension of issuing and redeeming unit certificates or investment shares issued by this fund to the CNB and publishes it on the website of this fund, and
- (c) takes steps to establish a new depository.

### **Delegation to another**

## Section 77

(1) A depository of a retail investment fund may delegate the performance of an individual activity specified in Section 71 (1) to another, only if:

- (a) the depository agreement allows it,
- (b) it is able to prove that the person to be delegated fulfils the conditions according to Section 78 and that the delegation was preceded by a diligent selection, and
- (c) it does not prevent the depository from performing its activity in relation to this fund with a professional care and from acting in the best interest of unitholders, shareholders or beneficiaries of this fund, and
- (d) it is ensured that this depository or the manager of this fund may control and through its orders influence the performance of the activity by the delegated person.

(2) The depository of a retail investment fund regularly controls the performance of an individual activity referred to in Section 71 (1), which it has delegated to another.

(3) The manner of discharging obligations referred to in Subsection (1) (b) by the depository of a retail investment fund is defined in Article 98 of Commission Delegated Regulation (EU) No 231/2013 and the directly applicable EU regulation implementing UCITS-D<sup>8</sup>).

## Section 78

(1) The depository of a retail investment fund may delegate the performance of an individual activity specified in Section 71 (1) only to the person who

- (a) has the necessary material, organizational and personnel prerequisites for performing that activity, which is adequate to the nature, extent and complexity of the activity,
- (b) separates the assets of depository's clients from its own assets and from the assets of the depository so that it is clear at any moment that the assets in question belongs to this fund,
- (c) applies procedures, for the management of conflicts of interest, including their detecting, preventing and reporting according to Section 64 *mutatis mutandis*, and
- (d) has introduced organizational prerequisites according to Section 65 *mutatis mutandis*, if a conflict of interests may result from the performance of an activity, which has been delegated to it.

(2) A depository of a retail investment fund may delegate the performance of the individual activities specified in Section 71 (1) (a) and (b) only to a person who

- (a) complies with the prudential rules, including minimal capital requirements, and is subject to supervision of a supervisory authority of the state in which it has its registered office, and
- (b) is subject to regular external audits to verifying that the particular financial instruments are in the power of this person.

(3) A depository of a retail investment fund may delegate the performance of an individual activity specified in Section 71 (1) (a) and (b) to such a person not fulfilling some of the requirements according to Subsection (2), if

- (a) the person to be delegated has its registered office in a state, that is not a member state,
- (b) the law of the state referred to in point (a) requires that the particular financial instruments are maintained by the person to be delegated in a manner comparable to Section 71 (1) (a) and (b),
- (c) the unitholders, shareholders and beneficiaries of this fund were, before an investment in the financial instruments, which are supposed to be in the power of the person to be delegated, properly informed
  - 1. about this delegation, including the circumstances justifying such delegation, and
  - 2. about the fact that the delegation is necessary due to limitations resulting from the law of the state referred to in (a), and
- (d) the depository has a written permission from a manager of the fund to delegate the performance of this activity to a person to be delegated.

(4) A depository of a UCITS fund may delegate the performance of an individual activity specified in Section 71 (1) (a) and (b) only to a person, who take measures which, in the event of the insolvency of such person, leads to the returning of the fund's assets *mutatis mutandis* to the returning of the clients assets after the the declaration of insolvency and the bankruptcy on the assets of the investment firm under the Act regulating the capital market business.

(5) The requirements for the separation of the assets of a retail investment fund pursuant to Subsection (1) (b) are defined in Article 99 of the Commission Delegated Regulation (EU) No 231/2013 and a directly applicable EU regulation implementing the UCITS-D<sup>8</sup>.

## Section 79

### **Delegation to another by the delegated person**

(1) The person to whom the performance of an individual activity referred to in Section 71 (1) has been delegated by the depository of a retail investment fund may delegate the performance of an act or some acts to another, if the depository agrees with it in advance and if the conditions laid down in Sections 77 and 78 are fulfilled *mutatis mutandis*.

(2) The person to whom the performance of an individual activity referred to in Section 71 (1) has been delegated by the depository of a retail investment fund, controls regularly the act or acts from this activity, which it has delegated to another in accordance to the Subsection (1).

(3) In order to be exempted from the obligation to replace the loss of financial instruments by the person who has delegated the act or some acts pursuant to Subsection (1), Section 82 shall apply *mutatis mutandis*.

## Section 80

### **Compensation for Harm by a Depository**

(1) A depository of a retail investment fund that caused harm to the manager of this fund, to this fund, to the unitholder or to the shareholder of that fund by breaching its obligation laid down or arranged for the performance of its activity as a depository, is obligated to compensate the harm.

(2) The depository of a retail investment fund is released from the obligation pursuant to Subsection (1) only if it proves that it did not cause the harm even by negligence.

## Section 81

(1) In case of loss of financial instruments, held in custody by the depository of a retail investment fund pursuant to the part of the sentence before the semicolon of the Section 71 (1) (a) or in case of loss of financial instrument, which the depository of a retail investment fund has in safekeeping of financial instruments pursuant to Section 71 (1) (b), the depository shall, without undue delay, compensate the harm caused to this fund resulting therefrom; it is of no importance whether the depository has delegated the performance of an activity to another.

(2) The cases of losses referred to in Subsection (1) are defined in Article 100 of the Commission Delegated Regulation (EU) No 231/2013 and the directly applicable EU regulation implementing the UCITS-D<sup>8</sup>).

## Section 82

(1) The depository of a retail investment fund may be released from the obligation to compensate pursuant to Section 81, only under the conditions laid down in Article 101 of Commission Delegated Regulation (EU) No 231/2013 and directly applicable EU regulation implementing the UCITS-D<sup>8</sup>).

(2) The depository of a retail AIF may be released from the obligation to compensate pursuant to Section 81 even if it has previously agreed, in writing with a person, to whom it has delegated the performance of the activity specified in Section 71 (1) (a) or (b), on that the delegated person will compensate the loss of financial instruments instead of the depository, and if it proves that

(a) the conditions laid down in Section 78 (1) and (2) were fulfilled when delegating another to perform an activity referred to in Section 71 (1) (a) or (b), and

(b) there was an objective reason for the conclusion of such an agreement, as defined in Article 102 of the Commission Delegated Regulation (EU) No 231/2013.

### TITLE III

#### DEPOSITORY OF THE QUALIFIED INVESTORS' FUND

##### Section 83

(1) A qualified investors' fund shall have at least one depository; a qualified investors' fund managed by a manager authorised to exceed the relevant threshold may have only one depository. Sections 69 to 82, with the exception of Section 73 (1) (f) and Section 73 (2) and with the exception of references to a directly applicable EU regulation implementing the UCITS-D<sup>8</sup>), apply to a depository of a qualified investors' fund *mutatis mutandis*. A directly applicable EU regulation implementing the AIFMD<sup>6</sup> does not apply to a depository of a qualified investors' fund whose manager is not authorised to exceed the relevant threshold as far as the manner of performance of obligations pursuant to Section 71 (3), Section 72 (5), Section 73 (4) and Section 74 (4) is concerned.

(2) If the articles of association of the qualified investors' fund allow the creation of a sub-fund, the depository of such fund shall also act as depository for these sub-funds.

(3) The depository of a qualified investors' fund shall also have the obligation to compensate for the harm pursuant to Section 80 (1), even if the harm is caused to a beneficiary or to another shareholder other than the shareholder of that fund.

(4) Section 82 does not apply to depositaries of an ELTIF in which investments are marketed to clients, who are not the professional clients under the law governing a capital market business.

(5) A depository of a qualified investors' fund exercises control over the orders pursuant to Section 73 (2) after their execution unless otherwise agreed with the manager.

##### Section 84

(1) A notary may be a depository of a qualified investors' fund, which is not an ELTIF, in which the investments are marketed to clients, who are not the professional clients under the law governing the capital market business; the notary may only be the depository of a qualified investors' fund,

(a) in respect of which the payment or the division of the assets of this fund to persons from whom the financial means or things whose value can be expressed in monetary terms were collected, may not, pursuant to this Act, another legal regulation or a statute of this fund, take place before the expiration of five years since the day of their collection from a given person, and

(b) which, according to its statute, invests

1. no more than 10 % of the value of its assets in financial instruments, which the depository of a retail investment fund shall otherwise have pursuant to Section 71 (1) (a) in custody, or
2. more than 90 % of the value of its assets in intellectual property rights, securities or book-entry securities representing holding on the commercial company or other legal person or the participation in commercial companies or other legal person such that the proportion of voting rights in such commercial companies or legal persons has been exceeded in the manner and in the amount stipulated in Section 34 (1) or in Section 35 (3).

(2) A depository of an investment fund shall be a party to the agreement with a prime broker only if the prime broker is authorised to possess the assets pursuant to Subsection 1 (b).

(3) A notary who is the depository of a qualified investors' fund shall have the necessary prerequisites for fulfilling the obligations of the depository of the qualified investors' fund pursuant to this Act and the directly applicable EU regulation implementing the AIFMD<sup>6)</sup>.

(4) Section 69 shall not apply to a notary, who is the depository of a qualified investors' fund.

## **PART FIVE**

### **PRIME BROKER**

#### **Section 85**

##### **Prime broker**

The prime broker of an investment fund is a person who is, on the basis of a contract with a manager of this fund or on the basis of an agreement with a manager and the depository of the fund, authorised to perform the following financial services:

- (a) to provide or to give over financial means or financial instruments for the purpose of supporting the financing of this fund, or
- (b) to settle trades executed within the framework of the defined investment strategy of the fund.

#### **Section 86**

##### **Person who can be the prime broker**

The prime broker can only be

- (a) a bank with its registered office in the Czech Republic,
- (b) a foreign bank with its registered office in an EU member state,
- (c) an investment firm which is not a bank and which is obliged to comply with the capital adequacy *mutatis mutandis* according to Section 9 and 9a of the Act governing the capital market business,
- (d) a foreign person authorised by the supervisory authority of another EU member state to provide investment services if:
  1. it provides investment services in the Czech Republic through a branch of a business enterprise or even without placing a branch,
  2. it is obliged to comply with the capital adequacy *mutatis mutandis* according to Section 9 and 9a of the Act regulating the capital market business and
- (e) a foreign person with its registered office in a state, that is not a member state, if:
  1. is required to comply with the prudential rules under the law of its home state, and
  2. is subject to supervision in its home state.

##### **Activity of the prime broker**

#### **Section 87**

The prime broker of an investment fund or a foreign investment fund, who is authorised to perform, on the account of this fund, financial services referred to in Section 85, may further come to an agreement with the manager of this fund or with the depository of this fund, if the depository is a party to the agreement referred to in Section 85, that the prime broker is authorised, on the account of this fund, to

- (a) perform other supportive services such as
  1. ensuring the settlement of trades with financial instruments performed within the framework of a specified investment strategy of this fund,

2. providing tailored technological support to this fund, or
3. handing over information on the concluded trades to the manager of this fund, or

(b) possess the assets of this fund in order to perform financial services referred to in Section 85, or other supporting services pursuant to letter (a).

#### Section 88

(1) The agreement under which the prime broker performs financial services or other supporting services or holds the assets of an investment fund must be concluded in writing.

(2) The agreement referred to in Subsection (1) must be in compliance with the statute of the investment fund for which the prime broker performs financial services or other supporting services or whose assets the prime broker possesses.

(3) The manager informs the particular depository of the commencement or termination of an obligation from the agreement referred to in Subsection 1, unless the depository is a party to the agreement.

#### Section 89

(1) The manager of an investment fund for which the prime broker performs financial services or other supporting services or whose assets it possesses, will ensure that the prime broker provide the depository with the needed information and documents, which are necessary for the proper performance of the activity of a depository, especially those relating to the assets of this fund, which is in possession of the prime broker.

(2) The obligation under Subsection (1) is further defined in Article 91 of Commission Delegated Regulation (EU) No 231/2013.

#### Section 90

#### **A special rule for the repeated provision of financial collateral**

The prime broker of an investment fund must not, without prior consent of the manager of such a fund, provide as financial collateral or comparable security according to the laws of another state or other collateral, the financial instruments which have been provided out of the assets of such a fund as financial collateral or comparable security according to the laws of another state or other collateral.

#### Section 91

#### **The performance of the activity of a depository by the prime broker**

(1) The prime broker of an investment fund may perform the activity of a depository of this fund, only if:

- (a) it fulfils the conditions laid down in this Act with respect to the performance of the activity of a depository of this fund,
- (b) it has functionally and hierarchically separated the performance of the activity of a prime broker from the performance of the activity of a depository, and
- (c) it introduces, maintains and applies procedures for the management of conflicts of interests arising from the performance of the activity of a prime broker and the performance of the activity of a depository, including their detection, prevention and reporting.

(2) In case of a threat of a conflict of interests according to Subsection (1), the prime broker of an investment fund or a foreign investment fund reports this without undue delay to the manager of this fund, as well as to the unitholders, shareholders or beneficiaries of this fund.

## **PART SIX**

### **INVESTMENT FUNDS**

#### **TITLE I**

#### **BASIC PROVISIONS**

##### **Chapter 1**

###### **Investment funds and their divisions**

###### Section 92

###### **Divisions of investment funds**

(1) Investment funds are retail investment funds and qualified investors' funds.

(2) Retail investment funds are UCITS funds (in Czech “*standardní fondy*”) and retail AIFs (in Czech “*speciální fondy*”).

###### Section 93

###### **Retail investment funds**

(1) The retail investment fund (in Czech “*fond kolektivního investování*”) is

- (a) a legal person having its registered office in the Czech Republic which is authorised to collect financial means from the public by issuing shares and to perform joint investment of the collected financial means on the basis of a defined investment strategy on a risk-spreading principle in favour of owners of these shares, and further manage such assets, and
- (b) a mutual fund whose purpose is to collect financial means from the public by issuing units certificates and to perform joint investment of the collected financial means on the basis of a defined investment strategy on a risk-spreading principle in favour of the owners of such unit certificates and further manage such assets.

(2) A mutual fund or a joint stock company with variable capital, whose purpose consists in collecting financial means from at least two retail investment funds or comparable foreign investment funds or sub-funds of the retail investment funds or a comparable foreign facilities, are further considered to be a retail investment fund if such a fund, sub-fund or facility invests into unit certificates or investment shares issued by this mutual fund or by this joint stock company with variable capital more than 85 % of the value of its assets.

(3) For the purposes of this Act, an investment strategy means the manner of investment by an investment fund encompassing particularly

- (a) types of things which may be acquired into the fortune (fortune consists of assets and liabilities) of an investment fund and if securities or book-entry securities may be acquired into its fortune, also a type of these securities or book-entry securities such as shares or bonds, and if the bonds or similar securities or book-entry securities representing a right to payment of an outstanding amount may be acquired into its fortune, as well as a type of these bonds or similar securities or book-entry securities representing a right to payment of an outstanding amount according to their issuer, such as bonds issued by the state or bonds issued by commercial companies,
- (b) investment limits which must be observed in relation to the things referred to in point (a),
- (c) information on whether an investment fund copies or intends to copy the composition of an index of shares or bonds or of another index, or information on whether an investment fund monitors or intends to monitor a certain index or another financial quantitatively expressed indicator (benchmark); what index or indicator is concerned and in what manner or in what extent the investment fund monitors or copies or intends to monitor or copy, must result from this information,
- (d) information on a particular sector or part thereof, a particular geographic area or a particular financial market area in which an investment fund concentrates or intends to concentrate its investments or a particular type of things in which the investment fund concentrates or intends to concentrate its investments,
- (e) options and limits of a collateral or guarantee in the case that the return of an investment, its part or the revenue of this investment are supposed to be collateralized (hedged funds) or guaranteed (guaranteed funds), and information on the manner of reaching the collateral or guarantee,
- (f) options and limits of the use of an accepted credit or loan on the account of an investment fund,
- (g) options and limits of the use of the assets of an investment fund to provide credit, loan, gift and collateral of an obligation of another person or to pay a debt not relating to its management,
- (h) options and limits relating to the sale of things on the account of an investment fund not being in the assets of the investment fund, and (i) information on techniques for the management of an investment fund and options and limits of their use.

(4) The copying of an index composition for the purposes of this Act means the copying of the composition of things to which the index relates, including the use of derivatives and other techniques for the management of an investment fund.

## Section 94

### **UCITS funds and retail AIFs**

(1) A UCITS fund is a retail investment fund which complies with the requirements of the UCITS-D<sup>4)</sup> and as such is registered in the relevant list maintained by the CNB (Section 511).

(2) A retail AIF is a retail investment fund which does not meet the requirements of the UCITS-D<sup>4)</sup> and is not a UCITS fund registered in the relevant list maintained by the CNB (Section 511).

## Section 95

### **Qualified investors' funds**

(1) The qualified investors' fund (in Czech “*fond kvalifikovaných investorů*”) is

- (a) a legal person with its registered office in the Czech Republic authorised to collect financial means or things whose value can be expressed in monetary terms from multiple qualified investors by issuing subscribed securities or by the qualified investors becoming its shareholders, and to perform common investment of the collected financial means or things whose value can be expressed in monetary terms on the basis of a specified investment strategy generally based on risk-spreading principle in favour of these qualified investors and to further manage these assets,

- (b) a mutual fund whose purpose is to collect financial means or things whose value can be expressed in monetary terms from multiple qualified investors by issuing unit certificates and common investment of the collected financial means on the basis of a specified investment strategy generally based on risk-spreading principle in favour of the owners of these unit certificates and to further manage these assets, and
- (c) a trust,
  - 1. whose statute defines multiple qualified investors as beneficiaries, consisting of the founder of this trust or a person having increased the assets of this trust by an agreement, and
  - 2. which is established for the purpose of investing on the basis of a defined investment strategy, usually based on a risk-spreading principle, in favour of its beneficiaries.

(2) The condition of the multiplicity of qualified investors pursuant to Subsection 1 does not have to be fulfilled if a unitholder, a shareholder or a beneficiary of a qualified investors' fund is

- (a) a state, an international financial organization or a legal person that is subordinated to the central governmental authority, or
- (b) a qualified investor investing financial means or things whose value can be expressed in monetary terms in favour of other qualified investors with whom they are, for the purposes of such investment, in a contractual relationship.

## Section 96

### **EuVECA, EuSEF and ELTIF**

The following investment funds are further to be considered a qualified investors' fund:

- (a) the qualifying venture capital fund referred to in Article 3 (b) the EUVECA-R<sup>6)</sup> (hereinafter referred to as "EuVECA"),
- (b) the qualified social entrepreneurship fund referred to in Article 3 (b) the Regulation (EU) No 346/2013 of the European Parliament and of the Council, as amended (hereinafter referred to as "EuSEF") and
- (c) the ELTIF.

## Section 97

### **Foreign investment fund**

A foreign investment fund is

- (a) a legal person, having its registered office in a state other than the Czech Republic, comparable to an investment fund, or
- (b) a facility, established under the law of a foreign state, comparable to a trust or an investment fund which is a mutual fund.

## **Chapter 2**

### **Underhand retail investment funds**

#### **Section 98**

(1) It is prohibited to collect, as well as to attempt to collect, financial means or things whose value can be expressed in monetary terms from the public for the purpose of joint investing them or investing of thus acquired financial means or things whose value can be expressed in monetary terms, if the return of an investment or profit of an investor is to be, even if partially, dependent on the value or revenue of the assets in which the financial means or things whose value can be expressed in monetary terms, that have been invested under conditions other than those provided for or allowed by this Act.

(2) The prohibition under Subsection (1) shall not apply to the case where it is collected exclusively from the qualified investors.

(3) Subsection (1) is not affected by Section 2 (b) and (c) and Section 2a.

(4) The prohibition pursuant to Subsection (1) shall also apply to an activity performed in connection with Section 15 (1).

#### **Section 99**

It is prohibited to allow or facilitate the activity prohibited under Section 98 by its promoting or by ensuring its accessibility in another way.

## **TITLE II**

### **ADMISSIBLE LEGAL FORMS**

## **Chapter 1**

### **Basic provisions**

#### **Section 100**

### **Retail investment funds**

(1) A retail investment fund may only be

- (a) a mutual fund (in Czech “podílový fond”), or
- (b) a joint-stock company (in Czech “akciová společnost”).

(2) A UCITS fund, a retail investment fund investing as a money market fund or a retail investment fund investing in real estate or participations in a real estate company may only be an open-ended mutual fund or a joint-stock company with variable capital.

(3) For the purposes of this Act, a real estate company means a joint-stock company, a limited liability company or a comparable legal person under the law of a foreign state whose principal activity is the acquisition of real estate, real estate management and the transfer of ownership of immovable property in return for profit, for the purposes of achieving profit.

## Section 101

### **Qualified investors' funds**

(1) A qualified investor fund may only be

- (a) a mutual fund,
- (b) a trust (in Czech “*svěřenský fond*”),
- (c) a limited partnership (in Czech “*komanditní společnost*”),
- (d) a limited liability company (in Czech “*společnost s ručením omezeným*”),
- (e) a joint-stock company,
- (f) a European company (in Czech “*evropská společnost*”), or
- (g) a cooperative (in Czech “*družstvo*”).

(2) However, a qualified investors' fund investing as a money market fund may only be an open-ended mutual fund or a joint-stock company with variable capital.

## **Chapter 2**

### **Mutual fund**

#### **Subchapter 1**

##### **General provisions**

## Section 102

(1) A mutual fund consists of a fortune. The right of ownership to the assets in a mutual fund belongs jointly to unitholders in a portion according to the value of unit certificates owned by them. None of the unitholders may however request a separation of the assets in a mutual fund, apportionment of a mutual fund or dissolution of a mutual fund. The provisions of the Civil Code concerning co-ownership do not apply.

(2) The rights of ownership to the assets in a mutual fund are exercised by the manager in its own name and on the account of the mutual fund.

(3) Unitholders shall not be liable to creditors for debts in the mutual fund.

(4) The claims corresponding to the mutual fund's debts shall be satisfied by the mutual fund's assets.

## Section 103

The mutual fund has no legal personality.

## Section 104

A mutual fund must have its own designation. The designation must differentiate the mutual fund from another mutual fund. The designation must not be misleading.

## Section 105

If a legal regulation or a legal act requires information about the owner, the information about all unitholders will be replaced by the designation of a mutual fund and by information necessary for the identification of the manager of this mutual fund.

## **Creation, incorporation and wind up of the mutual fund**

### **Section 106**

(1) The founders shall create a mutual fund, if they agree on the contents of the statute of a mutual fund with a person who is to become its manager.

(2) A mutual fund may also be created by a unilateral legal act, adopting the statute of a mutual fund, of a person, who is to become its manager.

(3) A legal act concerning the creation of a mutual fund requires a written form, otherwise it is invalid; a court will take the invalidity into account even without an application.

### **Section 108**

(1) The mutual fund shall be incorporated as of the day of registration in the register of mutual funds kept by the CNB. The mutual fund is wound up as of the day of expungement from this register.

(2) The application for registration of a unit certificate in the register of mutual funds is to be filed by a person who is to become its manager. The application for expungement of a mutual fund files the liquidator, the manager of a mutual fund, or a person with a legitimate interest.

(3) After the incorporation of the mutual fund, the founding legal act must not be declared invalid and the registration in the register of mutual funds must not be cancelled for this reason.

## **List of unitholders**

### **Section 109**

(1) The administrator of a mutual fund maintains a list of unitholders of the mutual fund. If the book-entry units are issued, the statute may determine that a list of unitholders is replaced by the records of book-entry units.

(2) A list of unitholders contains entries on the designation of the type of a unit, a name and domicile or a name and registered office of a unitholder, number of bank account kept with a person authorised to provide banking services in a state which is full member of the Organisation for Economic Co-operation and Development, a designation of a unit and a change of the entries. A list of unitholders contains a designation of the form in case of a certificated (in physical form) unit as a security.

### **Section 110**

(1) A unitholder is presumed to be the person registered in the list of unitholders.

(2) The administrator will enter a new owner in the list of unitholders without undue delay, after the change in the person of the owner is notified to the administrator.

### **Section 111**

(1) The information entered in the list of unitholders may be used by an administrator only for the purposes of an administration of a mutual fund. Information entered in the list of unitholders may be used for other purposes only with consent of the concerned unitholders.

(2) If a unitholder ceases to be a unitholder, the administrator will delete him from the list of unitholders without undue delay.

## Section 112

### **Equal treatment**

(1) The manager and the administrator of the mutual fund shall treat all unitholders under the same conditions in the same manner.

(2) Legal acts whose purpose is to provide an unreasonable advantage to any unitholder to the detriment of the mutual fund will not be taken into consideration, unless this Act provides for otherwise, or if it would be detrimental to third parties who relied on such legal acts in good faith.

## Section 113

### **Assembly of unitholders**

(1) An assembly of unitholders shall be established if the statute of the mutual fund so provides, it shall also set down the scope of the assembly and rules for decision making.

(2) The provisions of the Civil Code on the invalidity of a resolution of the membership meeting of an association shall apply to a resolution of the assembly of unitholders *mutatis mutandis*.

## Section 114

### **Bookkeeping**

Bookkeeping concerning the assets relations of a mutual fund, as well as other facts, will be maintained in such a manner that it allows the execution of financial statement for every individual mutual fund.

### **Unit certificates**

## Section 115

A unit certificate is a security or a book-entry security representing a share of a unitholder in a mutual fund to which the rights of a unitholder ensuing from this Act or from the statute of the mutual fund are attached.

## Section 116

(1) Financial means or things whose value can be expressed in monetary terms are collected into a mutual fund by issuing unit certificates.

(2) Provisions, on the valuation of non-monetary contributions with respect to a joint-stock company, of an act governing the legal relations of commercial companies and cooperatives apply to the evaluation of a thing whose value can be expressed in monetary terms *mutatis mutandis*.

## Section 117

(1) The unit certificate shall contain at least:

- (a) a designation "unit certificate" (in Czech "podílový list"),
- (b) information necessary to identify the mutual fund,
- (c) a nominal value, including the indication of a currency, in which the nominal value is expressed, or information about the fact that the unit certificate is without nominal value,

- (d) information on the type of the unit certificate, or by way of a reference to the statute,
- (e) designation of a form of the unit certificate, unless the unit certificate is issued as a book-entry security, and
- (f) a numerical designation of the unit certificate, unless the unit certificate was issued as a book-entry security.

(2) A unit certificate in a certificated form may only be in the form of an order instrument or a registered security.

(3) It is sufficient for book-entry securities, if the information referred to in Subsection (1) may be ascertained from the relevant register of book-entry securities.

(4) If a global unit certificate has been issued, such a global unit certificate further contains information on how many unit certificates and what kind of unit certificates it replaces.

## Section 118

Nominal value of the unit certificates issued by the same mutual fund may be expressed in various currencies, if, at the same time, the statute of a mutual fund defines the relevant currencies.

## Section 119

For the transfer of a unit certificate in certified form to take effect towards the administrator of a mutual fund, a notification of a change in the person of a unitholder to the administrator and submission of the unit certificate to the administrator is required.

## Section 120

(1) Unit certificates to which the same rights are attached form one type.

(2) To unit certificates may be attached, in particular, a right to

- (a) a different, fixed or subordinate share in profit or in liquidation value,
- (b) a payment of the advance on profit,
- (c) a lower payment charged in the case that the productivity of a mutual fund exceeds a determined indicator (benchmark), against which the productivity is compared, or
- (d) a lower deduction for redemption if the right of redemption is attached to a unit certificate.

(3) The manager of a mutual fund decides on the payment of the advance on profit. Advance on a profit share may be paid only if it results from reasonably diligent deliberation that the mutual fund has or will have enough means for the distribution of profit.

## Section 121

(1) Special rights and their content shall be determined in the statute of a mutual fund. In the case of any doubt about their content, a court may, upon an application of the unitholder of a mutual fund,

- (a) decide what special right is attached to the unit certificate if it is apparent from the circumstances that such a right expresses the will contained in the statute or closest to such will in term of content, or
- (b) decide that the unit certificate is a mutual certificate with which no special right is attached, if it is not possible to proceed under Subsection (a).

(2) The procedure referred to in Subsection (1) is a procedure under Section 83 (2) (d) the Code of Civil Procedure.

(3) The parties to the proceedings are a claimant, a manager of this mutual fund and the one whose name or typical feature of its name contains the designation of this mutual fund.

**Change of the type or form of unit certificates and the exclusion of unit certificates from trading on a European regulated market**

Section 122

An administrator shall notify the unitholders, without undue delay, in the manner specified in the mutual fund's statute, about the day on which the change of the type or form of unit certificates was registered in the list of unitholders,

Section 123

(1) If a decision on the change of the type or the form of unit certificates or on the elimination of unit certificates from trading on a European regulated market has been made, it is possible to

- (a) redeem these unit certificates only without deduction; However, an amount equal to the efficiently incurred costs connected with the redemption of a unit certificate can be deducted, and
- (b) issue new unit certificates and determine a time-limit to submit the unit certificates for the exchange only after this change is entered in the list of unitholders.

(2) Provisions of an act regulating legal relations of commercial companies and cooperatives, regarding the reduction of the nominal value of shares apply *mutatis mutandis* to the procedure of the exchange of unit certificates for unit certificates of a different type or form.

Section 124

(1) If it has been decided on the change of the type or form of unit certificates issued by a closed-end mutual fund or on the exclusion of unit certificates issued by a closed-end mutual fund from trading on a European regulated market, the manager makes a public offer of a contract for the redemption of unit certificates on the account of the mutual fund with respect to these unit certificates within 30 days from the day of registration of the change of the type or form of unit certificates in the list of unitholders or from the day of exclusion of unit certificates from trading on a European regulated market.

(2) The redemption of unit certificates issued by a closed-end mutual fund, if it was decided according to Subsection (1) in such a way, that is different from the public offer of a contract according to Subsection (1), is prohibited.

(3) Subsections (1) and (2) do not apply if the redemption concerns

- (a) less than 100 persons,
- (b) unit certificates whose aggregate nominal value does not exceed 1 % of the fund 's capital of this fund, or
- (c) units certificates traded exclusively on a European regulated market in case of a decision to change the type or form of unit certificates.

(4) The public offer of a contract according to Subsection (1) cannot be revoked once it has been made. The public offer can be changed only if the possibility of such a change is explicitly stated in its conditions or if it will be preferable for the persons interested in such a public offer; such changes will be reflected in all contracts already concluded on the basis of this public offer.

## Section 125

(1) The public offer of a contract according to Section 124 (1) must be addressed to the persons that were, as of the day of the assembly of unitholders, the owners of the unit certificates, to which the decision on the change of type, form or exclusion relates, and who did not vote in favour of this decision.

(2) If the assembly of unitholders has not voted on the change of type, form or exclusion, the public offer of a contract must be addressed to all persons that were, until the registration of the change of type or form of unit certificates or the elimination of unit certificates from trading on a European regulated market in the list of unitholders, the owners of the unit certificates, to which the decision on the change of type, form or elimination relates.

## Section 126

(1) The authorised person referred to in Section 125 may waive his rights to redeem unit certificates.

(2) The waiver of rights under Subsection (1) shall be in a written form with an officially certified signature and shall have effect also on any further acquirer of such unit certificate.

## Section 127

In case of the change of the type or form of a unit certificate, the rights attached to this type or form of the unit certificate are changed when the change of the statute of the mutual fund takes effect regardless of the time of exchange of the unit certificates.

## **Subchapter 2**

### **Open-ended mutual fund**

## Section 128

(1) A unit certificate issued by an open-ended mutual fund shall be linked to the right of the unitholder to redeem it on behalf of the fund.

(2) A number of unit certificates issued by an open-ended mutual fund is not limited.

## Section 129

The designation of the open-ended mutual fund includes the words "open-ended mutual fund" (in Czech "otevřený podílový fond").

## Section 130

### **Issuing of participation certificates**

(1) The administrator of an open-ended mutual fund ensures issuing of a unit certificate for the amount which equals its current value announced as of the decisive day determined in the statute; this amount can be raised by an additional fee whose amount is stated in the statute.

(2) The administrator of an open-ended mutual fund may, for the maximum period of three months from the day when the manager has commenced issuing the unit certificates of this fund, ensure their issuing for the amount, which equals their nominal value or for the amount referred to in the statute, in case of the unit certificates without nominal value; this amount can be raised by an additional fee stated in the statute.

(3) The unit certificate cannot be issued until the amount according to Subsection (1) and (2) is paid at the monetary account the depository or the manager has opened for this fund or until a non-monetary consideration is provided in the amount equal in value to the amount according to Subsection (1) and (2).

(4) The unit certificate may be issued other than pursuant to Subsection (3) only if it has been requested by a person who is a professional client pursuant to Section 2a (1) (a) to (h) of a law regulating the capital market business or a similar person under the law of another Member State, in the form of an irrevocable commitment to subscribe for a unit certificate and to pay the amount referred to in Subsection (1) or (2) to the account set up for the fund by its depository or manager within the time limit set by the statute.

### **Redemption of unit certificates**

#### **Section 131**

The administrator of an open-ended mutual fund ensures the redemption of a unit certificate of this fund for the amount which equals its current value for the day as of which he received an application of a unitholder for redemption of the unit certificate; this amount may be reduced by deduction stated in the statute. Unit certificates cease to exist upon redemption.

#### **Section 132**

(1) The administrator of an open-ended mutual fund shall ensure redemption of unit certificates of this fund on the account of this mutual fund no later than until

- (a) 2 weeks, in case of a UCITS fund,
- (b) 1 month in case of a retail AIF that does not invest in real estate or in shareholdings in a real estate company,
- (c) 1 year in case of a qualified investors' fund not investing in real estate or in shareholdings in a real estate company, and
- (d) 2 years, in case of an investment fund investing in real estate or in shareholdings in a real estate company.

(2) The application for redemption of a unit certificate issued by an open-ended mutual fund may be submitted at any time. The administrator of an open-ended mutual fund ensures publication of the earliest time-limit for redemption of the unit certificates of this fund on the website of this fund. The administrator of an open-ended mutual fund ensures, within this time-limit, redemption of all unit certificates of this fund, for the redemption of which the unitholders submitted an application in the last period of time from the last time-limit for redemption of unit certificates of this fund.

(3) For the period of time referred to in the statute of the open-ended mutual fund which is a special fund investing in real estate or in shareholdings in real estate companies, during which the fund does not observe investment limits according to a government regulation on investing of investment funds, however, up to three years from the day when the mutual fund was incorporated, the unit certificates issued by this fund are not being redeemed.

(4) During the period specified in the statute of an open-ended mutual fund, which is a qualified investors' fund, but no later than 5 years from the date on which the mutual fund was created, the unit certificates issued by this fund shall not be redeemed.

## Section 133

For the period of time during which the administrator of an open-ended mutual fund ensures issuing unit certificates of this fund for the amount, which equals its nominal value, or for the amount referred to in the statute, in case of unit certificates without nominal value, the administrator ensures redemption of unit certificates of this fund for the same amount for which it ensures their issuing

### **Suspension of issuing or redeeming unit certificates**

## Section 134

(1) A manager may decide on the suspension of issuing and redeeming unit certificates of an open-ended mutual fund only,

- (a) if it is necessary due to protection of rights or unitholders' interests protected by law, or
- (b) for as long as necessary for the operational reasons, in particular in relation to the activities related to the financial statement.

(2) The manager of a feeder fund may also decide on the suspension of issuing or redeeming of unit certificates of an open-ended mutual fund, if issuing and redeeming securities or book-entry securities issued by the master fund is suspended (Section 245).

(3) The manager will produce a record of its decision according to Subsection (1) or (2), in which the manager includes

- (a) a date and the exact time of its decision,
- (b) reasons for the suspension of issuing or redeeming the unit certificates,
- (c) whether it has decided that the suspension also applies to unit certificates of whose issuance or redemption was requested prior the moment referred to in point (e) and of which no consideration has yet been paid for the redemption or the issuance of unit certificates,
- (d) whether, following the resumption of the issuing or redeming of unit certificates, it will proceed according to Section 139 (1) (a) point 1. or point 2. or pursuant to Section 139 (1) (b) eventually, how it will proceed in the case of a decision under Subsection (2),
- (e) a moment from which the issuing and redeeming is suspended, and
- (f) the period for which the issuing and redeeming of unit certificates is suspended.

## Section 135

(1) Issuance or redemption of unit certificates of an open-ended mutual fund shall be suspended from the moment specified in the record pursuant to Section 134 (3) (e).

(2) From the moment specified in the record pursuant to Section 134 (3) (e) until the date of resumption of issuing or redeeming of unit certificates pursuant to Section 141, it is not possible to issue or redeem the unit certificate of this fund, except for the unit certificates for which the issuance or redemption was requested before the moment mentioned in the record pursuant to Section 134 (3) (e) and which have not yet been issued or paid the consideration for redemption. This exemption shall not apply if the manager has decided that the decision to suspend the issuance or redemption also applies to such unit certificates.

## Section 136

(1) The period of time for which the issuing or redeeming of unit certificates is suspended shall not exceed 3 months.

(2) The statute of an open-ended mutual fund investing in real estate or in shareholdings in a real estate company may determine the period of time for issuing and redeeming unit certificates differently; it is prohibited to set forth a period of time longer than 2 years.

(3) The statute of an open-ended mutual fund, which is a qualified investors' fund, may, by way of derogation, set a time limit for the suspension of issuing or redeeming of units; it is prohibited to set a time limit for longer than 2 years.

### Section 137

(1) The administrator of an open-ended mutual fund shall, without undue delay, after the production of a record referred to in Section 134 (3), ensure the publication of this record on the website of the fund.

(2) The manager who has decided to suspend the issuing or redeeming of unit certificates shall send, without undue delay, the record of such decision to the supervisory authorities of other EU member states in which the unit certificates of this mutual fund are publicly marketed. The record shall include, in particular, the measures taken and further facts intended to remove the reasons for suspending the issuance or redemption of unit certificates.

### Section 138

(1) The administrator of an open-ended mutual fund shall ensure, without undue delay after the notification of a decision of the CNB on cancellation of the decision of a manager on suspension of issuing and redeeming unit certificates, the publication of this decision on the website of this fund.

(2) The administrator of the open-ended mutual fund shall, without undue delay after the notification of the interim measure that has an impact on suspension of issuing and redeeming the unit certificates, the publication of this interim measure on the website of this fund.

### Section 139

(1) If the issuing or redeeming of unit certificates was restored pursuant to Section 141 (a), then the administrator

- (a) without undue delay after the date referred to in Section 141 (a) ensures the issuing and redeeming of all unit certificates in respect of which the issuing or redeeming has been requested and for which no consideration has been paid for the redeeming or issuing of unit certificates of shares for an amount equal to
  1. an amount equal to their current value as at the date of the submission of application, or
  2. the first current value determined as of the date of renewal of issuing or redeeming of unit certificates pursuant to Section 141 (a); in such a case, shall not calculate the current value of the unit certificates during the suspension period, or
- (b) the application for the issuing or redeeming of unit certificates, for which no consideration has been paid for the redeeming or the issuing of unit certificates, shall not take into account and the persons submitting such an application shall, without undue delay after the day pursuant to Section 141 (a), invite them to re-submit their application if their interest persists.

(2) If the CNB has canceled the decision to suspend the issuing or redeeming of unit certificates, the administrator shall, without undue delay after the day pursuant to Section 141 (b) ensure the issuance and redemption of all unit certificates whose issuance or the redemption the unitholders have applied, and for which the consideration for the issuing or redeeming of unit certificates has not been paid, for an amount equal to their current value as of the date of the submission of an application.

(3) If the issuing or redeeming of securities or book-entry securities issued by the master fund has been restored, the procedure specified in the record pursuant to Section 134 (3) (d).

#### Section 140

(1) A unitholder does not have a right to late payment interest for the period of time of suspension of issuing or redeeming the unit certificates of an open-ended mutual fund; this does not apply

- (a) if the administrator of the open-ended mutual fund is in default with payment of consideration for redemption as of the day of suspension, or
- (b) if the CNB has canceled the decision on suspension of issuing or redeeming the unit certificates and the consideration for the redemption has not been paid to the unitholder.

(2) The manager and the administrator of an open-ended mutual fund shall be obliged to pay the late payment interest according to Subsection (1) jointly and severally.

#### Section 141

The date of resumption of the issuing or redeeming of the unit certificates is

- (a) the day following the day on which the period of time, for which the issuing or redeeming of unit certificates was suspended, expired,
- (b) the day when the decision of the CNB cancelling the decision of the manager of an open-ended mutual fund on suspension of issuing or redeeming of unit certificates, becomes effective, or
- (c) the day following the day on which the period of time, for which the issuing or redeeming of securities or book-entry securities issued by a master fund was suspended, expired.

### Subchapter 3

#### Closed-ended mutual fund

##### Section 142

A unit certificate issued by a closed-ended mutual fund does not carry the right of the unitholder to redeem it for the fund's account.

##### Section 143

The designation of the closed-ended mutual fund includes the words "closed-ended mutual fund" (in Czech "uzavřený podílový fond").

##### Section 144

If the manager of a closed-ended mutual fund created for a definite period of time, does not decide until the expiration of this period of time, whether the mutual fund enters into liquidation or transforms into an open-ended mutual fund or a joint stock company with variable capital, the mutual fund enters into liquidation after the expiration of this period of time.

##### Section 145

#### Issuance of unit certificates

(1) Section 130 shall apply *mutatis mutandis* to the issuance of unit certificates by a closed-ended mutual fund.

(2) A closed-ended mutual fund may not issue or have issued unit certificates that do not have a nominal value.

#### Section 146

##### **Granting of right to redemption of unit certificates in statute**

(1) The statute of a closed-ended mutual fund may determine that the unitholder has, during the existence of the closed-ended mutual fund, a right of redemption of a unit certificate on the account of this mutual fund within the fixed periods of time, longer than one year. The statute of a closed-ended mutual fund, that is a retail investment fund, created for an indefinite period of time or for a definite period of time longer than ten years, enables the unitholders the redemption of the unit certificates owned by them after ten years day from the date of incorporation of the fund and further in the period of time, that is longer than 1 year, referred to in the statute, however at least each ten years; otherwise, after the expiration of ten years from the incorporation of the fund, the unitholder has a right of redemption of their unit certificates on the account of the mutual fund.

(2) Sections 131 to 141 applies *mutatis mutandis* to redemption of unit certificates of a closed-ended mutual fund.

#### Section 147

(1) If a court decides in the case of a closed-ended mutual fund pursuant to Section 121 (1) (b), the owner of the unit certificate on whose type has been decided, may require that the manager of the mutual fund redeem for an appropriate price the unit certificate on the account of the mutual fund, within one month from the day when the decision of the court has taken legal effect, unless there has been a doubt as to the contents of a special right attached to the unit certificate and such doubt has already been obvious at the time when the unitholder received the unit certificate. The manager purchases the unit certificate from the entitled owner within 15 working days from the date on which an offer for a contract was delivered to him.

(2) If a manager fails to comply with the obligation laid down in Subsection (1), the entitled owner of the unit certificates has a right to demand before the court the conclusion of a contract with the manager on sale of unit certificates or request the compensation for harm within a period of 6 months from the date on which the manager received the offer for a contract referred to in Subsection (1).

### **Chapter 3**

#### **Trust**

#### Section 148

(1) An investment fund is created as a trust on the basis of a contract; the trust may not be created by way of making another legal act. The trust may not be created by separation of the assets from a retail investment fund. Legal acts concerning the creation of an investment fund as a trust require a written form, otherwise such acts are invalid; court takes such invalidity into account of its own motion.

(2) An investment fund created as a trust may have more founders. If the investment fund created as a trust has more founders, they adopt a decision by mutual agreement, if the statute of the trust does not provide that only one of them decides or that the decision is adopted in another way.

(3) A trust shall be incorporated as an investment fund as of the day of registration in the relevant register kept by the CNB. After the incorporation of a trust as an investment fund, the founding legal act of such investment fund may not be declared invalid and the registration in the register of investment funds having the form of a trust may not be cancelled for this reason.

(4) Section 114 shall apply *mutatis mutandis* to an investment fund as a trust.

#### Section 149

Section 1452 of the Civil Code does not apply to an investment fund as a trust. Where the Civil Code uses the term “trust statute” (in Czech “*statut svěřenského fondu*”), it means in relation to an investment fund as a trust the statute of this fund.

#### **Trustee**

#### Section 150

(1) The investment fund as a trust has one investment trustee.

(2) Only a person, who is according to this Act authorised to manage such investment fund, may be the investment trustee.

(3) Subsection (1) is without prejudice to the provisions of this Act concerning the delegation of the performance of an individual activity, included in the management of an investment fund, to another.

(4) Section 1454 of the Civil Code does not apply to an investment fund as a trust.

#### Section 151

Under the conditions determined by this Act, a management company may be a trustee of a trust, which is not an investment fund.

#### **Supervision over administration**

#### Section 152

(1) Supervision of a maintenance of the trust, which is an investment fund, is performed by the fund manager.

(2) Section 150 (3) shall apply *mutatis mutandis*.

#### Section 153

Section 1465 of the Civil Code does not apply to an investment fund as a trust.

## Chapter 4

### Joint-stock company with variable capital

#### Subchapter 1

##### Basic provisions

###### Section 154

(1) A joint stock company with variable capital is a joint stock company which issues shares with which the right of the shareholder is connected to their purchase on behalf of the company and whose business name contains the designation “investment fund with variable capital” (in Czech “*investiční fond s proměnným základním kapitálem*”) which may be replaced by an abbreviation “SICAV” (in Czech “*SICAV*”).

(2) A joint stock company with variable capital may only be an investment fund.

###### Section 155

##### Registered capital

(1) The registered capital of a joint stock company with variable capital shall be equal to its fund capital. The amount contributed by way of subscription of founders’ shares is entered as registered capital in the Commercial Register (entered registered capital); the entered registered capital shall be inscribed in the articles of association instead of the registered capital.

(2) The amount of the entered registered capital of a joint stock company with variable capital is at least CZK 1 or EUR 1; the provisions of Section 246 (2) of the act regulating legal relations of commercial companies and cooperatives shall not apply to the registered capital of a joint stock company with variable capital.

###### Section 156

##### Content of the articles of association

(1) The articles of association of a joint stock company with variable capital further contain

- (a) the information whether the company may create sub-funds,
- (b) the manner of determining remuneration for its management and administration as an investment fund,
- (c) the determination of the types of costs that may arise in connection with the performance of its management and its administration as an investment fund,
- (d) principles of asset management and the rules governing payment of profit shares,
- (e) the manner of determining the actual value of investment shares and the frequency of such determining,
- (f) procedures and conditions for the issuing and redeeming of investment shares,
- (g) the determination of the lowest and highest limit of registered capital in which the company issue and redeem investment shares, and
- (h) the manner of notifying the intention of any of the owners of founders’ shares to transfer such shares [Section 160 (1)].

(2) If the articles of association allow the possibility of creating sub-funds, it shall also determine the rules for their creation and the rules for the reimbursement of costs that may arise in connection with performance of their management and administration.

(3) The provisions of the act regulating legal relations of commercial companies and cooperatives shall not apply to the stating of the number of shares and the total number of votes in the company in articles of association shall not apply to a joint stock company with variable capital.

### Section 157

(1) The provisions of the act regulating legal relations of commercial companies and cooperatives concerning the nominal value and provisions concerning the subscription and acquisition of own shares, financial assistance, issue price and share premium and concerning issuance of option certificates do not apply to a joint stock company with variable capital.

(2) A joint stock company with variable capital, whose general meeting has decided to exclude investment shares from trading on a European regulated market, does not have to make a public offer of a contract.

(3) A joint stock company with variable capital does not have to constitute a reserve fund.

## Subchapter 2

### Founders' shares and investment shares

#### Section 158

(1) A joint stock company with variable capital issues shares as shares without nominal value.

(2) The founders' shares of a joint stock company with variable capital are shares subscribed by the founders of the joint stock company; the founders' shares remain to be also those founders' shares subscribed by another person than the owner of the founders' shares as none of these owners have exercised their pre-emption right according to Section 160, and the founders' shares acquired by another person than the owner of the founder shares as none of these owners have exercised their pre-emption right for subscription of new founders' shares according to Section 161.

(3) Other shares of a joint stock company with variable capital are investment shares.

(4) Founders' share contains designation that it is a founders' share; investment share contains designation that it is an investment share and information from which it emerges whether it is a share with a voting right.

## **Founders' shares**

### Section 159

(1) A right of redemption of founders' share on the account of the company or any other special right may not be attached to founders' share.

(2) The founders' share must not be accepted for trading on the European regulated market or other public market.

(3) Provisions of an act regulating legal relations of commercial companies and cooperatives concerning the change in the amount of registered capital of a joint stock company and concerning decision making of the general meeting in relation to the change in the amount of registered capital of a joint stock company apply to the joint stock company with variable capital only in relation to the entered registered capital and founders' shares.

### Section 160

(1) If any of the owners of founders' shares intends to transfer their founders' shares, the other owners of the founders' shares have a pre-emptive right related to these shares for six months after it has been announced to them, unless the owner of the founders' shares transfers the founders' shares to another owner of founders' shares. If it is not agreed upon in the articles of association as to how the owners of founders' shares exercise the pre-emption right, they have a right to redeem the founders' shares proportionately according to the size of their shares.

(2) The owners of the founders' shares have a pre-emptive right even if an owner of the founders' shares transfers the founders' shares free of charge; in such a case, the owners of the founders' shares have a right to redeem the founders' share for a regular price. This also applies in other cases of a statutory pre-emptive right.

### Section 161

Each of the owners of founders' shares has a pre-emptive right to subscribe part of new founders' share to the extent of their shares. Unless the articles of association provide otherwise, each of the owner of founders' shares has a pre-emptive right to subscribe those founders' shares that, in accordance with the law, have not yet been subscribed by another shareholder. Sections 485 to 490 of an act regulating legal relations of business companies and cooperative apply by analogy to the rest. Further, Section 485 to 490 of the act regulating legal relations of commercial companies and cooperatives shall apply *mutatis mutandis*.

## **Investment shares**

### Section 162

(1) A right of redemption is attached to an investment share at the request of its owner on the account of the company or sub-fund to which it was issued. Investment shares cease to exist by redemption.

(2) If a law requires voting by the types of shares at the general meeting, the owner of an investment share without voting rights is entitled to vote at the general meeting.

(3) Unless otherwise provided in the articles of association, the voting right is not attached to the investment share.

## Section 163

(1) The investment shares shall be subscribed on the basis of a public call for their subscription.

(2) Sections 130 to 140 apply to the issuing and redeeming of investment shares *mutatis mutandis*.

(3) The day of restoration of issuing or redeeming investment shares is

- (a) the day following the day on which the period of time, for which the issuing and redeeming of investment shares was suspended, has expired,
- (b) the day on which the decision of the CNB cancelling the decision on suspension of issuing or redeeming investment shares has taken legal effect, or
- (c) the day following the day on which the period of time, for which the issuing or redeeming of securities or book-entry securitites issued by a master fund was suspended, has expired.

(4) The manager of an investment fund which is a joint stock company with variable capital shall, in case of reaching the lowest or highest limit of the range mentioned in Section 156 (1) (g), take the necessary measures to remedy the situation without undue delay or decide on dissolution of the fund. An effective measure may be a decision to suspend issuing or redeeming of investment shares whilst Subsection (3) and Sections 131 to 140 apply *mutatis mutandis*.

## **Fortune of a joint stock company with variable capital that does not create sub-funds**

### Section 164

(1) A joint stock company with variable capital that does not create sub-funds separates, from an accounting and property perspective, the assets and the debts of its investment activity from its other fortune.

(2) Only the assets of this investment activity may be used to satisfy a creditor or shareholder's claim on a joint stock company with variable capital that does not create sub-funds and such claim has arisen from the company's investment activity. Assets from the investment activity of this company can not be used to meet a debt that is not the debt that has arisen from the company's investment activity.

(3) The rights of a shareholder to participate in profit and liquidation value as well as other property rights associated with the investment share of a joint stock company with variable capital that does not create sub-funds relate only to assets and debts arising from the investment activity of that company. This is without prejudice to such a company issuing different types of investment shares under the conditions laid down by the act regulating legal relations of commercial companies and cooperatives.

### Section 164a

A joint stock company with variable capital that has not yet created sub-funds may use the assets and debts of its investment activity to create one or more sub funds if its articles of association allows sub-funds to be created.

## **Subchapter 3**

### **Sub-funds**

#### **Section 165**

##### **Fortune of a joint stock company that creates sub-funds**

(1) A joint stock company with variable capital may create sub-funds, if the articles of association so provides. A sub-fund is, from an accounting and property perspective, a part separated from the fortune of the joint stock company. Bookkeeping concerning the assets relations of a sub-fund, as well as other facts, will be maintained in such a manner that it allows the execution of financial statement for every individual mutual fund.

(2) A joint stock company with variable capital includes in the sub-fund or sub-funds the assets and debts from its activity. If the joint stock company with variable capital does not also include in the sub-fund or sub-funds the assets and debts that are not part of the assets and debts of this company from investment activity, such assets and debts do not form a sub-fund.

(3) A sub-fund has its own investment strategy, unless the articles of association provides otherwise.

(4) To satisfy a claim of a creditor or a shareholder of the joint stock company with variable capital that has arisen in relation to the performing an investment strategy of such company within a particular sub-fund, only the assets in such a sub-fund can be used.

(5) Information on whether a joint stock company may create sub-funds shall also be entered in the Commercial register.

#### **Section 166**

The designation of a sub-fund must contain a typical feature of a business name of a joint stock company with variable capital and the word "sub-fund" (in Czech "*podfond*"), or otherwise express its characteristics of the sub-fund.

#### **Section 167**

##### **Investment shares in case of a sub-fund**

(1) A joint-stock company with variable capital shall issue, for each sub-fund, investment shares representing equal share in the sub-fund's fund capital. A right to share in the profit ensuing only from the financial performance of this sub-fund and right to a liquidation value ensuing only upon wind up of this sub-fund with liquidation are attached to the investment shares issued by the sub-fund. This does not preclude, however, the joint stock company from issuing different types of investments shares for the same sub-fund under conditions provided for by an act regulating legal relations of business companies and cooperatives.

(2) Investment shares for the sub-fund cannot be issued until the necessary information for identification of the sub-fund are registered in the particular register maintained by the CNB.

(3) An investment share referred to in Subsection (1) contains the designation of the sub-fund to which the rights defined in Subsection (1) relates, or other special rights attached to it.

(4) The articles of association may provide that only the owners of investment shares issued with respect to this sub-fund vote on the matters, which relate only to this sub-fund and do not have a significant impact on other sub-funds, while it is of no relevance whether they are the owners of shares with voting rights. In such a case, the articles of association defines these matters in detail.

#### Section 168

If another legal regulation or a legal act requires information necessary for the identification of an owner, the designation of the sub-fund and information about investment fund of the concerned sub-fund shall be provided

#### Section 169

#### **Statute and key investor information document**

(1) Each sub-fund must have a statute. The statute of the sub-fund may be incorporated into the investment fund's statute unless it reduces the clarity of the statute for investors.

(2) The key investor information document of the retail investment fund, whose articles of association allows the creation of a sub-fund, is made for each sub-fund.

#### Section 169a

Where this Act uses the term "investment fund", "retail investment fund" or "qualified investors' fund", it shall mean, in the case of an investment fund that creates sub-funds, an investment fund's sub-fund, unless otherwise provided by this Act."

### **Chapter 5**

#### **Limited partnership on investment certificates**

#### Section 170

(1) Limited partnership on investment certificates is a limited partnership company where only one partner is liable for debts of the company in an unlimited way (hereinafter referred to as "**general partner**") and at least one partner is not liable for debts of the company (hereinafter referred to as "**limited partner**"). The shares of limited partners are represented by investment certificates.

(2) The business name contains the designation "limited partnership on investment certificates" (in Czech "komanditní společnost na investiční listy"), which can be replaced by the abbreviation "kom. spol. na invest. listy" or "k. s. i. l."

(3) The limited partnership on investment certificates may only be an investment fund or a person according to Section 15 (1).

#### Section 171

#### **Types of shares**

(1) A memorandum of association may allow the creation of more types of shares. Investment certificates that represent shares with equal rights and obligations form one kind. Investment certificate that represents a share with no special rights or obligations is a basic investment certificate.

(2) A memorandum of association may stipulate that the limited partner may own multiple shares, including shares of various types. If the memorandum of association allows the creation of more shares for one limited partner, the company may issue an investment certificate for each share or issue a global unit certificate; a memorandum of association also includes the designation of the investment certificate that represents the share.

(3) Various types of shares, special rights and obligations and their content shall be determined in the memorandum of association.

(4) If the memorandum of association of a limited partnership on investment certificates includes different types of shares, there shall be entered, at least by way of a reference to the memorandum of association included in the Collection of instruments of the Commercial register, into the Commercial register the information on the type of share and a description of the rights and obligations attached thereto. The information about limited partners, in relation to the limited partnership on investment certificates, shall not be entered into the Commercial register. The Court, which maintains the Commercial register, shall also disclose to the public the data on the limited partners contained in the memorandum of association of a limited partnership on investment certificates, included in the Collection of instruments of the Commercial register. Only a person with a legitimate interest may receive a copy of the memorandum of association, including the details of the limited partners, except where the special legal regulation provides otherwise.

(5) In the event of any doubt about the content of a special right or about the content of special obligation attached to an investment certificate, Section 121 and 147 shall apply *mutatis mutandis*.

### **Investment certificate**

#### Section 172

(1) An investment certificate is a certificated security to order that contains at least

- (a) the designation "investment certificate" (in Czech "*investiční list*"),
- (b) the information necessary to identify the company,
- (c) the information necessary to identify a limited partner,
- (d) the amount of a contribution attributable to a share, and the paid-up portion of that contribution at the date of issue of the investment certificate, and
- (e) the designation of the investment certificate, its number and the signature of the general partner.

(2) The investment certificate may not be issued as a book-entry security.

(3) The limited partnership on investment certificates shall, upon the submission of an investment certificate, indicate on the investment certificates the actual amount of the paid-up part of the contribution, if it differs from the data referred to in Subsection (1) (d).

#### Section 173

An investment certificate must not be admitted to trading on a European regulated market or on any other public market.

#### Section 174

(1) A memorandum of association of a limited partnership on investment certificates may limit, but not exclude, the transferability of investment certificates.

(2) Section 210 of the act regulating legal relations of business companies and cooperatives shall also apply *mutatis mutandis* to the transfer of the investment certificate.

## Section 175

(1) If a limited partner or other person is obliged to submit an investment certificate to a limited partnership on investment certificates, it shall submit it within the period of time stipulated by the memorandum of association, otherwise within a period of time specified in a written notice of a liquidator or a general partner.

(2) The investment certificates which have not been surrendered within the period of time referred to in Subsection (1), shall be declared invalid by a general partner or a liquidator. A declaration of invalidity of investment certificates shall be published on the company's website.

## Contributions

### Section 176

A person, who is supposed to become the general partner, manages the paid-up contributions of the limited partnership on investment certificates before its incorporation.

### Section 177

The contribution obligation of a shareholder of a limited partnership on investment certificates is fulfilled in monies.

### Section 178

(1) The contribution of a general partner corresponds to 2% of the total contributions of the founding limited partners, unless the memorandum of association determines that the amount of contribution of a general partner is different or that the general partner has no contribution duty.

(2) The contribution of a general partner must be fully paid up before filing an application for registration of the limited partnership on investment certificates in the Commercial register.

## Special provisions for the decision-making of shareholders

### Section 179

(1) The decision to amend the memorandum of association, as well as the decision resulting in amendment of the memorandum of association, requires the approval of the general partner and, unless the memorandum of association determines a larger majority, the approval of at least a majority of all limited partners.

(2) The shareholders may not reserve decision-making on matters which fall according to this Act or another legal regulation or the memorandum of association within the scope of competence of another body of the limited partnership on investment certificates.

### Section 180

Neither the general partner nor the limited partner may exercise the voting rights in the event that the shareholders are deciding on their expelling, or in other matters, if it is stipulated in this Act or another legal regulation or the memorandum of association. The votes that may not be exercised are not taken into account during the decision-making of the shareholders.

## **Special provisions on the termination of shareholding of a shareholder**

### Section 181

(1) Limited partners may exclude a general partner from a limited partnership on investment certificates, but only for reasons referred to in the memorandum of association.

(2) The exclusion of a general partner must be made in the form of a notarial deed about the decision of a body of a legal person.

(3) The exclusion of a general partner must be agreed upon by the majority of at least two-thirds of the limited partners, unless the memorandum of association stipulates a larger majority. The exclusion of a general partner is considered to be an amendment of a memorandum of association.

(4) The exclusion of a general partner enters into force on the date of entry of another general partner into the limited partnership. If the entering general partner, who enters upon the amendment of a memorandum of association, does not enter a limited partnership on investment certificates within the time limit specified in the decision on the exclusion of the general partner, but not later than 3 months from the date of adoption of this decision, the limited partnership shall enter, upon expiration of such time limit, the liquidation. There is no need for the consent of the excluded general partner to the admission of another general partner.

### Section 182

(1) Unless otherwise stipulated in the memorandum of association, the reason for dissolution of limited partnership on investment certificates is not the extinction of the participation of a limited partner in the company.

(2) In case of a death or winding up of a limited partner, the ownership of a share in the limited partnership on investment certificates of such limited partner transfers to the heir or legal successor. The memorandum of association may prohibit or restrict the transfer of the investment certificate.

(3) The limited partner must not withdraw from the limited partnership on the investment certificates or cancel its participation with a notice, unless the memorandum of association determines otherwise.

(4) The withdrawal of a general partner shall be effective on the date of entry of another general partner into a limited partnership on investment certificates; this also applies to the cancellation with a notice of the participation of a general partner. The withdrawing general partner and the general partner, who canceled its participation with a notice, has the same responsibilities to the entering general partner as an excluded general partner.

### Section 182a

#### **Submission of the investment certificate**

(1) A limited partner, heir, legal successor or insolvency administrator hand over the investment certificate to the company without undue delay after the termination of the shareholding of the limited partner without a legal successor in the company.

(2) The right to repay the settlement amount or the share in the liquidation value shall arise by submitting an investment certificate of the limited partnership on investment certificates, otherwise it also arises by the publication of a declaration of its invalidity pursuant to Section 175 (2).

(3) The submitted investment certificate shall be destroyed immediately by the limited partnership on investment certificates or by the liquidator.

## **Chapter 6**

### **Special provisions on limited partnerships**

#### **Section 183**

(1) This chapter does not apply to a limited partnership on investment certificates.

(2) A limited partnership, which is an investment fund, may have only one general partner.

#### **Section 184**

Sections 176 to 180 shall apply *mutatis mutandis* to a limited partnership which is an investment fund.

### **Some provisions on the termination of the shareholding of a shareholder**

#### **Section 185**

(1) Section 181 applies *mutatis mutandis* to exclusion of a general partner of the limited partnership.

(2) A memorandum of association of a limited partnership, which is an investment fund, contains information in respect of each of the shareholders with limited liability, which is necessary for the identification of another shareholder, whom the shareholder with limited liability designated as the key shareholder [Section 186 (2)], or information that the shareholder with limited liability have not designated another shareholder for the purposes of its withdrawal.

#### **Section 186**

(1) A shareholder with limited liability must not withdraw from a limited partnership or terminate its participation with a notice, unless the memorandum of association determines otherwise.

(2) A shareholder with limited liability may also withdraw the company, if the shareholding of a shareholder, whom this shareholder designated in the memorandum of association for the purposes of its withdrawal as the key shareholder, has terminated. Withdrawal from a limited partnership may be undertaken only within 10 working days after the day when the shareholding of a shareholder designated for the purposes of withdrawal as the key shareholder has terminated; later withdrawal will not be taken into account.

(3) Withdrawal of the shareholder according to Subsection (1) or (2) is considered to be a change of the memorandum of association.

(4) Section 182 (4) applies to the general partner *mutatis mutandis*.

## TITLE III

### SOME COMMON ISSUES

#### Section 187

##### **Verification of a financial statement**

A financial statement of an investment fund and its sub-funds is verified by the auditor.

#### Section 188

##### **Investment fund's promoter**

(1) Investment fund's promoter is a person that has the right to decide who will be the manager, administrator and depository of that investment fund, as well as to decide on a change in the person of the promoter, manager, administrator or depository.

(2) If the investment fund's promoter is a legal person, the competent authority for this decision is the statutory body of that legal person; another body of this legal person otherwise authorised to make decisions under this Act or another legal regulation does not make decisions in this case.

(3) If the right to make decisions pursuant to Subsection (1) belongs to the body of investment fund with legal personality, this fact shall be stated in the statute of that investment fund.

(4) If there is more than one investment fund's promoter, they shall take the decisions pursuant to Subsection (1) by mutual agreement, unless the statute of the investment fund states that only one of them makes decisions or that the decision is taken differently.

#### Section 189

##### **Statute of investment fund**

Each investment fund must have a statute. The statute of an investment fund is issued and updated by its manager.

##### **Calculation of the current value of unit certificates, investment shares and other shares in an investment fund**

#### Section 190

(1) The current value of a unit certificate is a share in the fund capital of a mutual fund allotted to one unit certificate.

(2) The basis for calculation of the current value of a unit certificate is the fund capital of a mutual fund as of the day of calculation of current value. The time resolution of regular costs, particularly fees referred to in the statute, such as payment for management, administration, performance of the activity of a depository, audit and expected tax duty as of the day of calculation of current value, are to be considered in the fund capital.

(3) In case of a unit certificate without nominal value or if all unit certificates have the same nominal value, the current value of a mutual fund will be determined as the value of the fund capital of this fund divided by the number of unit certificates issued; otherwise, the current value will be determined as the value of the fund capital of this fund as of the day of calculation of the current value divided by the sum of all nominal values of unit certificates in circulation issued by the fund, multiplied by the relevant nominal value of a unit certificate rounded to a number of decimal places referred to in the statute.

(4) If there are special rights attached to a unit certificate, the current value of a unit certificate will be determined by virtue of the fund capital allotted to the respective types of unit certificates according to the ratio determined by calculation referred to in the statute.

(5) The current value of a unit certificate shall be calculated without execution of financial statement.

#### Section 191

(1) The basis for calculation of the current value of an investment share is the fund capital from the investment activity within the meaning of Section 164 (1) as of the day of calculation of the current value. The second sentence of Section 190 (2) shall apply *mutatis mutandis*.

(2) The current value of an investment share is determined as the value of the fund capital from the investment activity within the meaning of Section 164 (1) divided by the number of issued shares.

(3) If an investment fund, which is a joint-stock company with variable capital, creates a sub-fund, the current value of an investment share is determined on the basis of the fund capital of the sub-fund.

(4) If there are special rights attached to investment shares issued by the investment fund, the current value of investment share is determined on the basis of the fund capital of this fund or its sub-fund allotted to respective types of investment shares according to the ratio determined by calculation referred to in the statute.

(5) Section 190 (5) shall apply *mutatis mutandis* to an investment share.

(6) For the purposes of this Act, the sub-fund's fund capital is the value of the sub-fund's assets less the value of the sub-fund's debt.

#### Section 192

The manner of determination of the current value of a share in the investment fund which is not represented by a unit certificate nor an investment share is defined in the statute of this fund.

#### Section 193

(1) The current value of a unit certificate, an investment share or another share in the investment fund is calculated within the time-limit in a statute.

(2) This time-limit must not be longer than

- (a) 2 weeks, in case of a UCITS fund,
- (b) 1 month in case of a retail AIF which does not invest in real estate or in shareholdings in a real estate company,
- (c) 1 year in case of a qualified investors' fund which does not invest in real estate or shareholdings in a real estate company, and

(d) 2 years, in case of an investment fund that invests in real estate or shareholdings in a real estate company.

(3) The administrator is not obliged to compensate the damage caused by incorrect calculation of the current value if:

- a) the amount of the damage is negligible and the efficiently incurred costs of reimbursement would manifestly exceed the amount of the reimbursement, or
- b) the deviation from the correct calculation of the current value does not exceed
  1. 0,25 % of the value of the fund's capital of an investment fund, which invests as a money market fund,
  2. 0,5 % of the value of the fund's capital of other investment funds.

(4) An administrator that is not an internally managed investment fund may compensate the damage caused by incorrect calculation of the current value from the investment fund's assets, if the investment fund has enriched itself as a result of incorrect determination of the current value and only up to the amount of such enrichment.

(5) The current value is not calculated within the time-limit pursuant to Section 130 (2) and Section 133.

### **Evaluation of assets and debts of the investment fund**

#### **Section 194**

A person who evaluates the assets and debts of the investment fund,

- (a) uses the procedures for evaluation of the assets and debts, which always include procedures for evaluation with respect to an investment strategy of the investment fund, and
- (b) must be impartial and independent of the person for which he evaluates.

#### **Section 195**

The manager of an investment fund may evaluate the assets and debts of this fund, if it has created organisational requirements for impartiality and independence according to Section 194 (b) comprising management of conflicts of interests including their investigation and prevention.

#### **Section 196**

(1) Investment fund's assets and debts from the investment activity are evaluated by real value according to international accounting standards regulated by EU law<sup>10)</sup>, provided that:

- (a) it is possible to use average price between the best binding supply and demand (mid price), for determination of the real value of a bond or a similar security or a book-entry security representing the right to repay the amount owed, and
- (b) it is possible to use the value announced on a European regulated market or on a foreign market, which is similar to the regulated market, and which was announced as of the moment no later than the moment of evaluation and the most approximating moment of evaluation, for determination of the real value of a share or of a similar security or a book-entry security representing a share in a business company or other legal person.

(2) The CNB shall determine, by regulation, the procedures for determining the real value of the assets and debts of the investment fund to the extent specified in Subsection (1).

## Section 197

(1) The administrator of an investment fund may delegate the evaluation of the assets and debts to another only if,

- (a) the person to be delegated is independent of
  1. this administrator,
  2. the investment fund manager, which assets and debts shall be valued,
  3. an investment fund which assets and debts shall be valued, and
  4. another person with a close connection to the persons referred to in points 1 to 3 and
- (b) the delegated person provides sufficient professional assurances that he is capable of evaluation of the assets and debts of an investment fund in compliance with other relevant legal regulations regulating evaluation of the assets and debts and with the statute of the investment fund.

(2) The person, to whom the administrator of an investment fund has delegated the evaluation of the assets and debts of this fund, must not delegate the performance of this activity or an act or acts from this activity to another; if it occurs, it will not be taken account of.

(3) The person, to whom the administrator of an investment fund intends to delegate or has delegated the evaluation of the assets and debts of this fund, is presumed to be independent as under Subsection 1 (a), if he is not

- (a) a managing person or a worker of this administrator, or
- (b) a unitholder, beneficiary, founder, shareholder or a silent partner of the investment fund, whose assets or debts he is to evaluate, and in the case of a trust also a person, who has increased the assets of the investment fund of which assets and debts, which he shall evaluate, by way of a contract.

## Section 198

(1) The administrator of an investment fund may delegate the evaluation of the assets and debts of this fund, only if the depository has created organisational requirements

- (a) for proper, self-contained and independent control of these activities within the performance of the activity of a depository and
- (b) for impartiality and independence according to Section 194 (b) comprising management of conflicts of interests including their investigation and prevention.

(2) The provisions of Section 197 is not prejudiced by Subsection (1), Section 197 (1) (a) and Section 197 (3) shall not apply.

## Section 199

The administrator of a retail AIF or a qualified investors' fund whose manager is authorised to exceed the relevant threshold may delegate the evaluation of the assets and debts of this fund to another, only if the administrator is at the same time the manager of this fund.

## Section 200

(1) The evaluation of the assets and debts of an investment fund, whose manager is authorised to exceed the relevant threshold, is further regulated in Articles 67 to 74 of Commission Delegated Regulation (EU) No 231/2013.

(2) The provisions of Sections 50 to 52 are not prejudiced by Sections 197 to 199.

## Section 201

(1) Financial instruments in the assets of the investment fund shall be evaluated within the period specified in the statute. Section 193 (2) and (3) shall apply *mutatis mutandis*.

(2) The evaluation of the financial instruments according to Subsection (1) is to be made as of the day, as of which the current value of a unit certificate, an investment share or another share in the investment fund, is calculated.

## Section 202

(1) Assets and debts of an investment fund not referred to in Section 201 (1) shall be evaluated within the time limits specified in the statute; these time limits shall not exceed one year.

(2) Section 201 (2) shall apply *mutatis mutandis* to the evaluation of assets and debts of an investment fund not referred to in Section 201 (1).

## Relation to other legal regulations

### Section 203

(1) Provisions of an act regulating legal relations of business companies and cooperatives concerning preference shares and a forced transfer of subscribed securities shall not apply to an investment fund.

(2) Any person gaining a share in the voting rights of an investment fund shall not be obliged to make a takeover bid under the law governing the takeover bids. In this context, no obligations arise to this or any other person, which are otherwise imposed on the making of the takeover bid by the law governing the takeover bids.

(3) If this Act or another legal regulation implementing it provide for otherwise than what follows from the provision of the Civil Code on the administration of the assets or another, this Act or another legal regulation implementing it shall apply.

### Section 204

(1) For an investment fund which is an EuVECA or an EuSEF, and for a legal person who is to become an EuVECA or an EuSEF, the provisions of this Act or other legal regulation shall apply to the extent stipulated by the EUVECA-R and the directly applicable EU regulation governing European social entrepreneurship funds (hereinafter referred to as "**EuSEF-R**").

(2) For an investment fund that is an ELTIF and for a legal person that is to become an ELTIF, the provisions of this Act or other legal regulation shall apply to the extent stipulated by the directly applicable EU regulation on European long-term investment funds<sup>18)</sup> (hereinafter referred to as "**ELTIF-R**").

(3) For an investment fund that is a money market fund and for a legal person that is to become a money market fund, the provisions of this Act or other legal regulation shall apply to the extent stipulated by the directly applicable EU regulation on money market funds<sup>19)</sup>.

**PART SEVEN**  
**RETAIL INVESTMENT FUNDS**

**TITLE I**

**BASIC PROVISIONS**

**Section 205**

(1) Financial means must not be collected in a retail investment fund otherwise than in the manner referred to in Section 93.

(2) It is prohibited to collect things whose value can be expressed in monetary terms from the public into a retail investment fund.

**Section 206**

(1) A retail investment fund must not issue warrants. Such securities and book-entry securities must not be issued even on the account of a retail investment fund.

(2) A retail investment fund may issue a bond, a security or a book-entry security, to which is attached the right of payment of an outstanding amount only under conditions set for the reception of the credit on behalf of the fund. This applies also in the case when these securities or book-entry securities are issued on the account of a retail investment fund.

(3) A retail investment fund shall not be a party to a silent partnership agreement.

**Section 207**

(1) It is prohibited to change the investment strategy of a retail investment fund to the extent set out in the Section 93 (3) (a) to (i), except in case of a change

- (a) caused directly by a change in the legislation,
- (b) caused by a change in the statute of a retail investment fund, if this change does not lead to a significantly different way of this fund's investing,
- (c) caused by a change of the statute of a retail investment fund, allowing it to invest as a feeder fund, or
- (d) caused by a final and conclusive decision of the CNB to limit the scope of the investment strategy [Section 549 (1) and (2)].

(2) The administrator of this fund shall disclose information on the change in the investment strategy and the right to redeem without deduction, if the statute of a retail investment fund pursuant to Subsection (1) (b) was changed. Section 211 shall apply mutatis mutandis to the change of the statute under the first sentence. The information under the first sentence shall be provided by the administrator of the fund at the same time as their publication, to the unitholders or shareholders of such fund.

**Section 208**

**Fund capital of the retail investment fund**

(1) Fund capital of a retail investment fund must, within 6 months from the day when the investment fund has come to its existence, reach the amount corresponding to at least EUR 1 250 000.

(2) The manager shall take, without undue delay, the necessary measures to remedy the situation or decide on dissolution of the fund, if the average amount of the retail investment fund's fund capital has not exceeded for the last 6 months the amount referred to in Subsection (1).

(3) A court shall, on the proposal of the CNB or the person having a legitimate interest, decide on dissolution of the retail investment fund, which has the legal form of a joint stock company, and order the liquidation of such company, if its fund capital does not amount to at least the amount specified in Subsection (1). The court provides the retail investment fund with a reasonable period of time to rectify the situation prior to the ruling.

## Section 209

### **Determination of consideration for management**

Consideration for management of a retail investment fund is calculated

- (a) as a share in the average value of the fund capital of the investment fund, or its part, for an accounting period,
- (b) according to the performance of the investment fund above a benchmark that is used to compare the performance,
- (c) according to the year-on-year growth of the value of the fund capital of the fund attributable to 1 unit certificate, 1 investment share or another share in the investment fund,
- (d) as a share in the economic results of the investment fund or its part before tax, or
- (e) as a combination of methods described in (a) to (d).

## Section 210

### **Excluded costs**

It is not allowed to include in the costs of a retail investment fund

- (a) fines or other asset sanctions imposed on its manager, administrator, depository, prime broker, auditor or other person providing services for that fund,
- (b) the cost of producing a promotional communication and the cost of marketing of investments in the fund, or
- (c) administrative costs and legal and advisory costs relating to the conversion or other disposal of assets relating to the fund (Part eleven).

## Section 211

### **Redemption of a unit certificate and investment share without deduction**

(1) If it has been decided on the increase of consideration for management or the increase of exit fee above the level referred to in the statute of a retail investment fund, the owners of unit certificate or owners of investment shares, to whom the decision on the increase of consideration or fee relates, are entitled to have their unit certificates or investment shares redeemed without any deduction; it is allowed to deduct an amount corresponding to reasonable expenses relating to redemption of this unit certificate or this investment share.

(2) The time limit for exercise of the right of redemption according to Subsection (1) must be specified in such a manner that it is at least 30 days from the day of publication of the information about increase of consideration or fee; the right of redemption according to Subsection (1) ceases to exist upon the expiry of this deadline. The information must also contain the expiration date of the time limit to exercise the right of redemption.

## Section 212

### **Change in the competence upon approving financial statement, distribution of profit and payment of loss**

If the articles of association of a joint stock company, which is a retail investment fund, so provide, the approval of financial statement of this fund, as well as the decision on distribution of profit or other revenues from the assets of the fund and the decision on payment of loss arising from management of the fund falls within the competence of a governing or a supervisory authority of the manager of the fund; another body of the retail investment fund, which is otherwise competent to such a decision according to a legal regulation, does not decide in this case.

## Section 213

### **Disclosure of non-approval of financial statement**

If the competent body does not approve, within the specified time limit, the financial statement of a retail investment fund, or if a court decides that a legal act of the competent body, which approved the financial statements, is invalid, the manager of the fund shall disclose such a fact, including the way of settlement of concerns of its body or court, on the fund's website.

## Section 214

### **Loss payment**

If a retail investment fund reports loss for an accounting period, the competent body decides on payment of loss from the assets of the fund when approving of the financial statement for the accounting period during which the loss occurred.

## TITLE II

### INVESTING AND MANAGEMENT TECHNIQUES

## Section 215

(1) The manager of a retail investment fund shall, in managing this fund, within the framework of the statute of this fund, introduce maintain and apply

- (a) rules for the composition of the fund's assets, consisting in defining things, which can be acquired into the fortune of the fund, and investment limits that must be complied with in relation to these things, including investment limits for copying the composition of a stock index and similar securities representing a share in a business company or another legal person, or bond index and similar securities representing a right for payment of an outstanding amount, or another index,
- (b) rules for accepting credit or loan on the account of this fund,
- (c) rules for the use of the assets of the fund for providing credit, loan or a gift, for securing debt of another person or for payment of a debt, which is not related to the management of the fund, including whether it is possible to use the assets of the fund to provide credit or loan, which is not related to its management, and including whether it is possible to use the assets of the fund for providing a gift, for securing a debt of another person or for payment of a debt, which is not related to its management,
- (d) rules for entering into contract of sale of things on the account of the fund, which are not part of the assets of the fund or which have been temporarily left to the fund, including whether it is possible to enter into contracts of sale of the things on account of the fund, which are not part of the asset of the fund or which have been temporarily left to the fund,

- (e) techniques to manage this fund,
- (f) rules for the use of techniques of the management of this fund, including the rules for negotiating repo trades with the use of assets of the fund and rules for investment in relation to the negotiated repo trades,
- (g) rules for reduction of risk arising from the use of derivatives, and in case of a retail AIF using leverage, also limits for the utilisation rate of leverage,
- (h) rules for calculation of the total exposure of the fund using the standard liability method and the method of measuring value-at-risk, classified according to the model of absolute risk value and relative risk value, or possibly using other advanced method of risk measurement, and
- (i) limits of total exposure in the case of methods referred to in point (h).

(2) The government shall lay down a regulation with respect to a UCITS fund, a retail AIF, with a distinction of whether it invests in real estate and shareholding in real estate companies that shall contain the qualitative requirements for

- (a) the rules referred to in Subsection (1) (a) to (d) and (f) to (h), including whether it is possible
  1. to use the assets of a retail investment fund to provide credit or loan not related to its management,
  2. to use the assets of a retail investment fund to provide a gift, secure a debt of another person or to pay a debt unrelated to its management, and
  3. to enter, on the account of a retail investment fund, into contracts for the sale of things, which are not part of the assets of the fund or that have been temporarily left to the fund,
- (b) the techniques referred to in Subsection (1) (e) and
- (c) the limits of total exposure referred to in Subsection (1) (i).

(3) It is at variance with this Act, if the manager of a retail investment fund does not introduce, maintain or apply the rules, techniques or limits pursuant to Subsection (1) as set out in this Act or the government regulation governing the investment of investment funds and techniques for their management.

(4) A repo trade for the purposes of this Act is considered to be a sale or another transfer of a thing with a simultaneously agreed repurchase or another reverse transfer and a purchase or another transfer of a thing with a simultaneously agreed reverse sale or another reverse transfer.

(5) For the purposes of calculating the investment limits, limits of total exposure and other limits resulting from the statute of a retail investment fund or a government regulation regulating the investment of investment funds and techniques for their management, a bond, a security or a book-entry security to which the right to repay the amount owed is linked, issued by the retail investment fund, is regarded as a loan received on the amount of that fund. The second sentence of Section 206 (2) shall apply *mutatis mutandis*.

## Section 216

(1) In case of non-compliance of the composition of the assets of a retail investment fund with the rules for the composition of the assets of this fund, which have occurred independently of the will of the manager of this fund, the manager of this fund must without undue delay restore compliance of the composition of the assets of this fund with these rules; he takes into account the interests of unitholders or of owners of investment shares of this fund.

(2) In relation to the exercise of a priority right for subscription of investment securities or money-market instruments, which the retail investment fund has or will have in its assets, the compliance of the composition of the assets of the fund with the rules for composition of the assets of the fund does not have to be observed; the manager of the fund must ensure without undue delay after exercising this priority right the compliance of the composition of the assets of this fund with these rules.

*Section 217*

*Cancelled.*

Section 218

The management company of a retail AIF or a comparable foreign investment fund, using the leverage, shall certify to the CNB, upon its request, the proportionality of limits determined for the utilisation rate of leverage and how it ensures their compliance.

**TITLE III**

**MAKING AVAILABLE OF INFORMATION**

**Chapter 1**

**Statute**

Section 219

The statute of the retail investment fund is a document that contains the investment strategy of the retail investment fund, a description of the risks associated with the investment of the fund, and other information necessary for investors to make an informed assessment of the investment, prepared in the form that is intelligible to an ordinary investor.

Section 220

(1) The statute of a retail investment fund includes

- (a) information necessary for the identification of the manager, administrator and depository of the retail investment fund or where applicable, information necessary for the identification of the promoter, if established,
- (b) information necessary for the identification of the retail investment fund,
- (c) an investment strategy, including investment limits,
- (d) the risk profile of the retail investment fund,
- (e) information about historical performance of the retail investment fund,
- (f) principles for the management of the retail investment fund,
- (g) information about the payment of a share in profit or revenues of the retail investment fund,
- (h) information related to unit certificates or shares issued by the retail investment fund,
- (i) information on fees charged to investors and costs paid out of the assets of the retail investment fund,
- (j) information on the principles of remuneration at least on the fund's website,
- (k) information about the possibility of delegation of another person to perform an individual activity, which is included in the management or administration of an investment fund or a foreign investment fund, and, in case of delegation of another, person to perform individual activity, which is included in the management or administration of an investment fund or a foreign investment fund, the information about the delegated person, and
- (l) other information necessary for investors to make an informed investment assessment, including information pursuant to Article 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council.

(2) If the nature of certain information excludes its indication in the statute, the information that is the closest to the required information by its substance will be indicated in the statute.

(3) The CNB shall lay down in the regulation the requirements regarding the content and structure of the retail investment fund's statute within the scope of Subsection (1).

## Section 221

The information referred to in the retail investment fund's statute must be kept up-to-date.

## Section 222

### **Publication of the statute and its amedments**

(1) The statute of a retail investment fund and any change thereof shall be published without undue delay on the website of the fund.

(2) The publication of an amedment of the statute of a retail investment fund is executed by way of publishing its new consolidated full text.

## Section 223

### **Simultaneous publication of the articles of association**

(1) In case of a retail investment fund, which is a joint stock company, its articles of association are published simultaneously with its statute.

(2) The articles of association does not have to be published, if the statute of the retail investment fund contains information

- (a) that the articles of association will be provided to an investor upon his request, or
- (b) about the place where it is possible to inspect the articles of association, while this information is provided in respect of every member state, in which the securities or book-entry securities, issued by the retail investment fund, are publicly marketed.

## Section 224

### **Provision of the statute to an investor upon his request**

(1) The administrator of the retail investment fund shall provide to every investor, at its request free of charge, the current statute of this fund.

(2) In case of a feeder fund, the administrator of this fund shall provide to the investor, at its request free of charge, eventhe current statute or a comparable document of its master fund.

## Section 225

(1) The statutes of a retail investment fund shall be provided in paper form.

(2) Under the conditions laid down in a directly applicable EU regulation governing the key investor information document<sup>11)</sup>, the statute of a UCITS fund may be, instead of a paper form

- (a) provided to an investor in a carrier of information other than paper, or
- (b) published only on the website of the fund.

(3) Under the conditions set out by the government in its regulation, the statute of a retail AIF may be, instead of a paper form,

- (a) provided to an investor in a carrier of information other than paper form, and
- (b) published only on the internet pages of this fund.

(4) The administrator of a retail investment fund shall provide to each investor the statute of a retail investment fund always in paper form upon the investor's request.

## Section 226

If the investor so requests, the administrator of the retail investment fund shall, in addition to the information specified in the retail investment fund, provide information about

- (a) quantitative restrictions applicable in managing the risks related to investments of this fund,
- (b) techniques applied to the management of that fund,
- (c) developments of the main risks associated with the investments of this fund, and
- (d) the development of revenues of individual types of things, which may be acquired in the assets of the fund.

## Chapter 2

### **The key investor information document**

#### Section 227

The key investor information document is a document that contains brief basic characteristics of a retail investment fund necessary to understand the nature and the risks associated with investing in the fund, processed in a form intelligible for an ordinary investor.

#### Section 228

(1) The information contained in the key investor information document must be continuously updated.

(2) The administrator shall disclose the key investor information document of a retail investment fund without undue delay after its execution on this investment fund's website.

#### Section 229

### **General requirements for the key investor information document**

#### (1) The key investor information document

- (a) must not contain information which is unclear, false, misleading or deceptive,
- (b) must be in compliance with information referred to in the statute of a retail investment fund, and
- (c) must be intelligible without the necessity of making oneself familiar with other published documents or otherwise provided documents, which relate to the retail investment fund.

(2) An administrator of a retail investment fund shall compensate to an investor of this fund the harm incurred by him in respect of the fact that the information contained in the key investor information document is unclear, false, misleading or deceptive or are not in compliance with the information referred to in the statute of this fund; the administrator does not compensate a harm incurred by the investor by other inaccurateness or incompleteness of information contained in the key investor information document. There is an express warning in this respect in the key investor information document.

## Section 230

### **Special requirements for key investor information document**

(1) The essentials, structure, form and requirements for the language expression of the key investor information document of the UCITS fund, as well as the conditions and manner of its continuous updating and the time limits for its publication, are defined in a directly applicable EU regulation governing the key investor information document<sup>11)</sup>.

(2) The government lays down in a regulation the essentials, structure, form and requirements for language expression of the key investor information document of a retail AIF, as well as the conditions and manner of continuous updating and time limits for its publication.

(3) The key investor information document of the UCITS fund must also contain the link to website containing information about the principles of remuneration and the communication that these information will be provided upon request, free of charge in paper form. These information must contain at least the description of the calculation of remuneration and the identity of person responsible to decide on the remuneration, including the composition of the committee, if it exists.

## Section 231

### **Provision of the key investor information document to the investor upon request**

The administrator of a retail investment fund provides every investor with an updated key investor information document, upon the investor's request, free of charge, and well in advance before making an investment.

## Section 232

(1) The Administrator shall provide the key investor information document in paper form.

(2) The key investor information document of a UCITS fund may, under conditions defined by a directly applicable EU regulation governing key investor information document<sup>11)</sup>, be provided to the investor instead of a paper form

- (a) in a carrier of information other than physical form, or
- (b) only on the website of this fund.

(3) The government shall lay down in the regulation the conditions under which the key investor information document of a retail AIF may be provided to the investor instead of a paper form

- (a) in a carrier of information other than paper form, and
- (b) only on the website of this fund.

(4) The administrator of a retail investment fund shall provide each investor with a key investor information document in a paper form, if the investor so requests.

## Chapter 3

### **Annual report**

## Section 233

(1) The administrator of a retail investment fund shall publish the annual report of the fund no later than 4 months after the end of the accounting period of this investment fund.

(2) The administrator of a retail investment fund shall provide to each shareholder or unit-holder with the most recently published annual report of this fund in a paper form if the shareholder or the unitholder so requests. In case of the most recently published annual report of a master fund, the administrator will follow the same procedure, as long as the retail investment fund is a feeder fund.

(3) Subsections (1) and (2) shall not apply to the administrator of a retail investment fund whose manager is authorised to exceed the relevant threshold and for which the annual report is published under the law regulating the capital market business. In this case, it shall be sufficient if the administrator provides to each investor at its request the information required otherwise under Subsection (2) which is not contained in the annual report of such fund published under the law governing the capital market business. These information may be provided separately or in addition to the annual report.

## Section 234

### **Special requirements of the annual report**

(1) The annual report of the retail investment fund shall also contain

- (a) an audited financial statement and full text of the auditor's report,
- (b) information on the activities of its manager in relation to the fund's assets in the accounting period,
- (c) information on the total number of shares or unit certificates issued by the fund that are in circulation as of the end of the accounting period,
- (d) information on the total amount of shares or unit certificates of the fund issued and redeemed within the accounting period,
- (e) information about the fund capital per share of this fund as of the end of the accounting period,
- (f) information on the composition and changes in the composition of the fund's assets,
- (g) information on the development of the fund's assets,
- (h) a comparison of the total fund capital and the fund capital per share or unit certificate for 3 previous accounting periods, while the compared values always relate to the end of an accounting period, (i) information about the final volume of commitments relating to the techniques, which are used by the manager to manage the fund as of the end of the accounting period, with distinction whether repo trades or derivatives are concerned, and
- (j) other significant information, which will ensure that the annual report will provide investors with a true and fair picture of the financial situation, business activities and financial results of the manager of the fund in relation to the assets of the fund for the previous accounting period, including information pursuant to Article 13 of Regulation (EU) 2015/2365 of the European Parliament and of the Council.

(2) The annual report of the retail AIF shall also contain

- (a) information on significant changes, that occurred during the accounting period, of the information provided in the investment fund's statute,
- (b) information about the salaries, payments and other similar incomes of the workers and managing persons, which may be considered to be a remuneration paid by the manager of an investment fund to his workers or managing persons in the accounting period, divided into fixed and variable component, information about the number of workers and managing persons of the manager of this fund, and information about potential remunerations for the appreciation of the capital, which were paid by the investment fund or its manager,
- (c) information about the salaries, payments and other similar incomes of the workers or managing persons, which may be considered to be a remuneration paid by the manager of an investment fund to those of his workers or managing persons, whose activity has a significant impact on the risk profile of this fund, and

(d) information referred to in Section 34 (2), if a manager referred to in Section 34 (1) fails to fulfill the obligations laid down in Section 34 (2) or Section 36 (3); the manager of a retail AIF shall include this information in the annual report of the retail AIF, managed by this manager, the assets of which a share in the voting rights is attached.

(3) An annual report of a retail AIF investing in real estate or shareholdings in a real estate company shall also include

- (a) information about the real estate referred to in Section 267 (2) (a) and (c) to (g) in respect of every real estate in the assets of the fund,
- (b) the purpose for which the real estate was acquired into the assets of the fund and, in case of a change in the purpose, the reason for such a change and the impacts of this change on the fund,
- (c) information necessary for the identification of the person, which administers the real estate,
- (d) the day as of which the report of an expert or a member of the expert committee according to Section 266 has been executed,
- (e) information necessary for the identification of the expert and the member of the expert committee who has evaluated the real estate according to Section 266,
- (f) the method of evaluation of the real estate,
- (g) the description of the criteria, on the basis of which the price of the real estate was determined, in the case that real estate was evaluated using the comparative method,
- (h) information necessary for the identification of the real estate company, in which the fund has a shareholding,
- (i) the number of real estates in the assets of the real estate company in which the fund has a share,
- (j) information necessary for the identification of the real estate in the assets of the real estate company in which the fund has a shareholding, to the extent of information referred to in (a) to (e),
- (k) basic information about the members of the expert committee,
- (l) information about a significant change in the expected development of cash flow connected with the possession of real estate or with shareholdings in real estate companies,
- (m) information about an intended sale of the real estate or the shareholding in a real estate company within 2 years from the acquisition of ownership rights to the real estate, or before the expiration of the expected time period of the investment,
- (n) information about the intention to change the investment strategy,
- (o) a description of the reasons for the failure to comply with the investment limits if it happened in the decisive accounting period, and
- (p) other significant information relating to the real estate or the real estate company, which will ensure that the annual report will provide investors with a true and fair picture of the financial situation, business activities and financial results of the manager of the fund in relation to the assets of the fund for the previous accounting period.

(4) The annual report of a feeder fund further contains

- (a) information about the manner in which an investor may obtain the annual report of the master fund of this fund, and
- (b) information about what deductions, surcharges or fees will be paid in relation to the investments of the feeder fund paid from its assets and whether a discount or a refund is applicable to them.

(5) The annual report of the UCITS fund further contains information referred to in Subsection (2) (a) to (c) and other significant information on renumeration.

(6) The requirements for the content and structure of the annual report of the retail AIF, which is managed by a manager authorized to exceed the relevant threshold, are further defined in Articles 103 to 107 of Commission Delegated Regulation (EU) No 231/2013.

(7) The CNB shall lay down in a regulation the requirements for the content of the annual report within the scope of Subsections (1) to (5) to the extent not covered by the directly applicable EU regulation implementing the AIFMD<sup>6</sup>.

### **Auditor's report**

#### **Section 235**

The auditor is in the auditor's report obligated to comment on the compliance of the annual report of a retail investment fund with the financial statement.

#### **Section 236**

(1) Auditor's report of a master fund will take into account the findings of the auditor's report of a feeder fund.

(2) If the accounting period of the feeder fund does not correspond to the accounting period of the master fund, the auditor of the master fund will draw up an additional report as of the day of the financial statement of the feeder fund; this additional report will be included in the auditor's report of the feeder fund.

(3) Part of the auditor's report of the feeder fund is information about the discrepancies of the master fund, which are highlighted in the auditor's report of the master fund, and the explanation of their impact on the feeder fund.

### **Chapter 4**

#### **Semi-annual report**

#### **Section 237**

(1) The administrator of a retail investment fund shall publish, no later than within two months after the lapse of first six months of an accounting period, a semi-annual report of this fund.

(2) The administrator of a retail investment fund shall provide to each shareholder or unitholder with the last published semi-annual report of this fund in a paper form, if the shareholder or unitholder so request. The administrator follows the same procedure regarding the last published semi-annual report, if the retail investment fund is a feeder fund.

#### **Section 238**

#### **Special requirements for the semi-annual report**

(1) The semi-annual report of a retail investment fund shall also contain a balance sheet (balance) and the information specified in Section 234 (1) (c), (e), (f) and (j).

(2) The semi-annual report of a retail AIF that invests in real estate or a shareholdings in a real estate company also contains the information specified in Section 234 (3) (a) to (c), (f), (h) and (p).

(3) The semi-annual report of the feeder fund also contains information specified in Section 234 (4) (a).

(4) The CNB shall lay down in the regulation the requirements for the content of the semi-annual report of the retail investment fund within the scope of Subsections (1) to (3).

## Chapter 5

### **Further information published or otherwise made available in case of marketing investments**

#### Section 239

##### **Information published in respect of a retail investment fund redeeming securities or book-entry securities issued by it and in respect of a comparable foreign investment fund**

(1) The administrator of the retail investment fund and the administrator of a comparable foreign investment fund, in the case that investments into this fund are publicly marketed in the Czech Republic, shall publish

- (a) information about the amount for which the securities or book-entry securities issued by this fund are issued or redeemed, at least once within the time-limit pursuant to Section 193 the current value of a unit certificate, an investment share or another share in the investment fund and every time the securities or book-entry securities issued by this fund are issued or redeemed;
- (b) information about the number of issued and redeemed securities or book-entry securities for every calendar month, and
- (c) information about the composition of the assets in this fund as of the last day of the month, for every calendar month.

(2) Subsection (1) shall not apply to the administrator of a retail AIF, which is not an open-ended mutual fund or a joint stock company with variable capital and an administrator of a comparable foreign investment fund, in case of investments into this fund marketed in the Czech Republic.

#### Section 240

##### **Published information on a retail investment fund not redeeming securities or book-entry securities issued by it and on a comparable foreign investment fund**

An administrator of a retail investment fund not redeeming securities or book-entry securities issued by it or a comparable foreign investment fund in the case of investment into this fund being marketed publicly, publishes on the website of this fund without undue delay after the lapse of the relevant period publicly

- (a) information about the current value of the fund capital of this fund and about the current value of securities or book-entry securities issued by it, at least once within the time-limit pursuant to Section 193, and
- (b) information about the composition of the assets of this fund as of the last day of the month, for every calendar month.

#### Section 241

##### **Informing investors of a retail AIF managed by the manager authorised to exceed the relevant threshold**

(1) Investments into a retail AIF or into a comparable foreign investment fund may be marketed in the Czech Republic if the following information is available to investors prior to their investment:

- (a) the investment strategy of the fund, in particular
  1. main types of things that may be acquired in the fund's assets,
  2. investment limits, which must be followed in relation to the things according to point 1.,

3. information about the techniques for managing the fund and about the conditions for their usage, including information pursuant to Article 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council,
- (b) information about the conditions for the use of leverage, including information about the types of transactions, which may be entered into using the leverage, about the counterparties of these transactions, about risks connected with the use of leverage, and about possible limits for the utilisation rate of leverage,
- (c) information about agreements assuming the provision of a financial instrument from the assets of this fund as financial collateral or a comparable security according to the laws of another state,
- (d) information about the home state of the master fund, in case of a feeder fund, and information about the home states of investment funds or foreign investment funds, if it invests in securities or book-entry securities issued by such a fund, if the investment in securities or book-entry securities issued by an investment fund or a foreign investment fund exceeds 49 % of the value of its assets,
- (e) information about the conditions under which a change of investment strategy of this fund may take place and about the manner in which the change is to be realized,
- (f) information about the main legal impacts relating to the contractual obligation of the investor regarding his investment in the fund, especially information about
  1. court's jurisdiction for the settlement of disputes arising from a particular contract,
  2. governing law for such a contractual relationship,
  3. the existence or a non-existence of directly applicable EU legislation or international treaties governing the recognition and enforcement of judicial decisions in the state where the fund has its registered office in case of a foreign investment fund comparable to a retail AIF,
- (g) information necessary for the identification of the manager, administrator, depository, prime broker and auditor, as well as the description of activities of these persons in relation to the fund and basic rights of the investor,
- (h) information about the fulfillment of requirements referred to in Section 32,
- (i) information about the activity, included in the management or administration of an investment fund or a foreign investment fund, which has been delegated to another, and the description of activities of a depository, which have been delegated to another in accordance with Section 78, including information necessary for the identification of the delegated person and information about potential conflicts of interests arising from the performance of the activities delegated to another,
- (j) information about the procedures for the evaluation of the assets and debts of this fund and the manner of its evaluation, including the manner of evaluation of things, whose evaluation is difficult,
- (k) information about the risk management of insufficient liquidity of this fund, including the description of redeeming securities and book-entry securities issued by this fund under regular and exceptional circumstances and in cases of already filed applications for redemption,
- (l) information about all deductions, surcharges and fees and costs of the fund, which are directly or indirectly borne by the investor, and information about their maximal amount,
- (m) information about whether, in the case that an investor obtains a special advantage or a right to a special advantage, other investors also have this advantage or right, the description of this special advantage or this right to a special advantage and a list of investors who will obtain this advantage or right, including the list of legal and economic ties of these investors to this fund or to the manager or to the administrator of this fund,
- (n) the latest annual report of this fund, meeting the requirements of Article 22 of the AIFMD<sup>5)</sup> and of Article 13 of Regulation (EU) 2015/2365 of the European Parliament and of the Council,
- (o) procedures and conditions for the issuing and redeeming of securities or book-entry securities issued by the fund,
- (p) information about the current value of the fund capital of this fund, or the current market price or current value of securities or book-entry securities issued by this fund,
- (q) information about the historical performance of the fund, if available,
- (r) the description of basic services performed by the prime broker for this fund, the description of the manner in which potential conflicts of interest arising from the services provided by the prime broker will be dealt with, and information about the potential transfer of the duty to compensate harm of the prime broker, which would otherwise apply to the prime broker, to another person,

- (s) information about the provisions of a depository agreement that allow the transfer or other use of the assets of this fund by the depository,
- (t) information about the manner and time of making the information referred in Subsections (3) and (4) available, and
- (u) information about whether the depository agreed with the delegated person according to Section 82 (2) (b) on the compensation of loss of the financial instruments by the delegated person as well as information about the change and nature of the change of this agreement.

(2) The data referred to in Subsection (1) must be continuously updated.

(3) If the investments in a retail AIF or in a comparable foreign investment fund, whose manager is allowed to exceed the relevant threshold, are marketed in the Czech Republic, the investors are further provided with the information about

- (a) a share in assets, which is subject to special measures due to its low liquidity, to the total assets of the concerned fund, this information shall be expressed in percentage,
- (b) new measure adopted for the risk management of the insufficient liquidity of the fund and
- (c) the risk profile of the fund and the risk management system applied by the manager.

(4) If the investments in a retail AIF or in a comparable foreign investment fund that invests using the leverage are offered in the Czech Republic, the investors are further provided with the information about:

- (a) changes in utilisation rate of leverage, guaranties provided in relation to the leverage usage as well as every other change relating to the authorization for further usage of provided financial collateral or a comparable security in accordance with law of a foreign state and
- (b) a level of leverage usage by this fund.

(5) The time and manner of making the information under Subsections (3) and (4) available is determined in Articles 108 and 109 of Commission Delegated Regulation (EU) No 231/2013<sup>6)</sup>.

## Chapter 6

### **Promotional communication concerning retail investment fund and a comparable foreign investment fund**

#### Section 242

A promotional communication concerning retail investment fund and a comparable foreign investment fund

- (a) must not use unclear, false, misleading or deceptive information and it must be apparent from its content and form that it is a promotional communication,
- (b) must be clearly distinguishable and appropriately divided from another communication, if the promotional communication is being disseminated together with another communication,
- (c) must not contain information denying or diminishing the significance of information referred to in the statute, key investor information document or in a comparable document of this fund, and
- (d) must contain information about the manner and language in which the statute or key investor information document of this retail investment fund or a comparable document may be obtained, if a foreign investment fund comparable with the retail investment fund is concerned.

## Section 243

(1) The promotional communication of a retail investment fund and a comparable foreign investment fund from whose investment strategy follows that the value of a security or a book-entry security issued by the fund may be characterised with a significant fluctuation must expressly warn about this fact.

(2) The promotional communication of a retail investment fund or a comparable investment fund, which does not invest mostly in investment securities or money market instruments or which copies the composition of a stock or bond index or another index or monitors a quantitatively expressed financial indicator (benchmark), must contain a reference to the investment strategy referred to in the statute of this fund.

## Section 244

The promotional communication of a feeder fund contains information that it invests at least 85 per cent of assets in securities or book-entry securities issued by the master fund and a name or designation of this master fund.

## TITLE IV

### STRUCTURE OF A MASTER FUND AND FEEDER FUNDS

#### Chapter 1

##### Basic provisions

## Section 245

##### Master fund

(1) A master fund is a retail investment fund which issued securities and book-entry securities into which the feeder fund invests at least 85 % of the value of its assets.

(2) If this Act or another legal regulation in relation to the master fund invokes the feeder fund, it further means a comparable foreign investment fund, unless this Act or another legal regulation provides otherwise.

## Section 246

##### Feeder fund

(1) A feeder fund is a retail investment fund which invests at least 85 % of the value of its assets in securities and book-entry securities issued by one master fund.

(2) If this Act or another legal regulation in relation to the feeder fund invokes its master fund, it further means a comparable foreign investment fund, unless this Act or another legal regulation provides otherwise.

## Section 247

(1) In case of a retail investment fund, the master fund and its feeder fund may only be an open-ended mutual fund or a joint stock company with variable capital.

(2) Only a UCITS fund or a comparable foreign investment fund may be the master fund in case of a UCITS fund which is a feeder fund.

(3) Provisions of this Act regulating the structure of a master fund and feeder funds shall, in the case that the master fund or feeder fund create sub-funds or, in case of a foreign investment fund, similar facilities of the foreign investment fund, apply to the sub-fund or the similar facility of this fund.

## Section 248

### **Conditions for the possibility to invest as a feeder fund and the basic obligations associated with it**

(1) A manager of a feeder fund may invest up to 100 % of the value of the fund's assets in securities or book-entry securities issued by its master fund,

- (a) if it has agreed with a manager of the master fund and the administrator of the master fund on the facts pursuant to Section 251 to 255,
- (b) if a cooperation between the depository of the feeder fund and the depository of the master fund is ensured for the purpose of a proper performance of obligations of both depositories. This is not required if both have the same depository,
- (c) if the cooperation between an auditor of a feeder fund and an auditor of a master fund for the purpose of proper performance of obligations of both auditors is ensured; this is not required if both funds have the same auditor,
- (d) if the master fund does not invest as a feeder fund,
- (e) if the master fund does not invest in securities or book-entry securities issued by feeder funds,
- (f) if the feeder fund's statute has been changed so that it enables to invest as a feeder fund,
- (g) in the case of a master fund which is a foreign investment fund comparable to a retail AIF, if the securities or book-entry securities issued by the master fund may be publicly marketed in the Czech republic, and
- (h) if the time limit under Section 250 (2) has expired.

(2) A manager of a feeder fund shall control the performance of the activity of the master fund's manager in whose securities or book-entry securities it invests the assets of the feeder fund.

(3) During the control according to Subsection (2), the manager of the feeder fund relies on information and documents provided by the manager, depository and auditor of the master fund, if the manager does not have a reasonable doubt about its correctness.

## Section 249

### **Notice of commencement of activity as a feeder fund**

(1) If the statute of a retail investment fund was amended so that it enables this fund to invest as a feeder fund or in another master fund than so far, the administrator of this fund publishes a notice which contains

- (a) a statement that the statute of the fund has been amended in this manner,
- (b) information on where to find an updated key investor information document of this fund or an updated key investor information document or an updated comparable document of the master fund,
- (c) information about the day as of which the excess of limit concerning securities and book-entry securities issued by an investment fund or a foreign investment fund is expected, which follows from a legal regulation regulating investments of the investment fund and techniques for its management, and
- (d) information about the conditions under which the issued unit certificates or investment shares issued by it may be purchased in connection with the publication of this notice.

(2) The statement and the information specified in the notice pursuant to Subsection (1), together with their publication, shall also be provided by the administrator of the feeder fund to its unitholders and shareholders.

## Section 250

### **Rights of unitholders and shareholders relating to notice of commencement of activity as a feeder fund**

(1) Upon publication of the notice according to Section 249 (1), the unitholders and shareholders of this feeder fund have a right to have the unit certificates and investment shares, issued by such feeder fund, redeemed without deduction; it is possible to deduce only the amount corresponding to reasonable expenses connected with this redemption of this security or book-entry security.

(2) The right of redemption according to Subsection (1) extinguishes upon the expiration of 30 days from the day of publication of the notice according to Section 249 (1); the manager of the concerned feeder fund may provide a longer period, in such a case such right extinguishes upon expiration of this period.

## Chapter 2

### **Agreement of managers and administrators of feeder fund and master fund**

## Section 251

(1) The manager and the administrator of a feeder fund and the manager and the administrator of a master fund shall agree on the rules of conduct between them.

(2) The agreement according to Subsection (1) is not required if both funds have the same manager and the same administrator; in such a case, it is sufficient to regulate the matters, which would otherwise be regulated in the rules of conduct between the managers and the administrators, by an internal regulation of this manager and this administrator, and the manager, as well as the administrator, introduce and maintain the procedures for managing the conflicts of interests between the master fund and the feeder fund.

(3) The administrator of the feeder fund provides, upon request and free of charge, a unitholder and a shareholder of the feeder fund with a copy of the agreement according to Subsection (1). The administrator has the same obligation in relation to a person in a comparable position as a unitholder and a shareholder, in case of a feeder fund which is a foreign investment fund.

## Section 252

If the agreement according to Section 251 (1) so provides, the securities or the book-entry securities issued by the master fund may be given to the assets of the feeder fund in exchange for the things in the assets of the master fund, and securities or book-entry securities issued by the master fund may be redeemed from the feeder fund by means of an exchange for things in the assets of the master fund.

## Section 253

(1) Pecuniary performances acquired in connection with investments in investment shares or unit certificates of the master fund on the account of a feeder fund or a person acting on behalf of the manager of a feeder fund in connection with the management of this fund, are an income of this feeder fund.

(2) Neither the manager nor the administrator of a master fund must use any deductions, surcharges or fees for acquisition and alienation of the securities or book-entry securities issued by the master fund.

## Section 254

### **Governing law**

(1) If the home state of a feeder fund and a master fund is the Czech Republic, the provisions of the agreement between the parties according to Section 251 are governed by Czech law.

(2) Unless it is a case according to Subsection (1), the parties of the agreement according to Section 251 (1) shall determine, whether the provisions of this agreement are governed by the law of the home state of the feeder fund or the master fund.

## Section 255

### **Requirements of the agreement**

(1) In the agreement referred to in Section 251 (1), the parties shall at least agree on

- (a) what securities or book-entry securities issued by the master fund may the feeder fund invest in,
- (b) what deductions, surcharges or fees in relation to investments of the feeder fund will be paid from its assets and whether a discount or refund will be applied with respect to them,
- (c) the terms of the exchange according to Section 252,
- (d) periodicity and time-limits for transfer of information during the cooperation in evaluating the assets and debts of the master fund and feeder fund, calculation of the current value of securities or book-entry securities issued by the master fund or the feeder fund and publication of information on the current value,
- (e) the rules of cooperation in ensuring the issuing and redeeming of securities or book-entry securities issued by the master fund, including securing the compliance with the rules of such cooperation, if the performance of the activity has been delegated to another,
- (f) the measures ensuring the time consistency of publication of the current value of securities or book-entry securities issued by the master fund or the feeder fund in order to prevent the price arbitrage,
- (g) the method of determination of the conversion currency rate in relation to the issuing and redeeming of securities or book-entry securities issued by the master fund, if the master fund and the feeder fund do not bookkeeping in the same currency,
- (h) time-limits for issuing and redeeming securities or book-entry securities issued by the master fund; and, if possible, terms under which an appropriate non-pecuniary performance will be provided into the assets of the feeder fund instead of financial means for redemption of securities or book-entry securities issued by the master fund,
- (i) rules for handling complaints and claims of the unitholders, shareholders and persons in a comparable position as a unitholder or a shareholder, in case of a master fund or a feeder fund, which are a foreign investment fund,
- (j) terms under which the manager of the feeder fund and the administrator of the feeder fund will not exercise special rights attached or related to the security or book-entry security issued by the master fund or following from the statute of the master fund, if applicable,
- (k) the manner of ensuring the cooperation in drawing up the auditor's report of the master fund and the auditor's report of the feeder fund if the accounting period of the feeder fund matches the accounting period of the master fund, or how the cooperation in drawing up the auditor's report of the master fund and the auditor's report of the feeder fund and the additional report according to Section 236 (1) is ensured, if the accounting period of the feeder fund does not match the accounting period of the master fund,

- (l) time-limits for handing over an updated statute, memorandum of association and the key investor information document of the master fund and of the feeder fund, as well as comparable documents if a foreign investment fund is concerned, and the manner of their handing over,
- (m) time-limits for handing over information on delegation of the performance of an individual activity, which is included in the management of a master fund or which is included in the administration of a master fund, to another, and the manner of the handing over,
- (n) time-limits for handing over the copies of their internal regulations, especially regulations regulating the system of risk management and compliance, and the manner of their handing over,
- (o) time-limits for handing over the information on a breach of legal regulations, the statute or a comparable document of the master fund, the statute or a comparable document of the feeder fund, and this agreement, and the manner of their handing over,
- (p) time-limits for handing over the information about the open positions of the master fund of financial derivatives which enables the feeder fund to calculate its open position of financial derivatives, and the manner of their handing over,
- (q) time-limits for handing over the information about the fact that the issuing and redeeming of securities or book-entry securities issued by the master fund or the feeder fund has been suspended, and that it was resumed, and the manner of their handing over,
- (r) time-limits for handing over the information about an error in the evaluation of the assets or debts of the master fund, and the manner of their handing over, as well as time-limits for handing over the information on rectification of the error, and the manner of their handing over,
- (s) time-limits for handing over the information on a proposed amendment to the statute or a comparable document of the master fund, its memorandum of association and the key investor information document or a comparable document, as well as the information that the proposed amendment came into force, and the manner of their sharing; such a provision is not required if these time-limits correspond to the time-limits within which this information is made available to the investors,
- (t) time-limits for handing over the information on a planned and proposed transformation of the master fund or the feeder fund, and the manner of their handing over,
- (u) deadlines for transmitting information that the Management or Feeder fund has ceased or ceases to meet the conditions required by this Act or comparable provisions of the law of a foreign state for the Master fund or the Feeder fund and the method of their transmission,
- (v) deadlines for forwarding information on proposed changes to a person who
  - 1. is the depository of the master fund or feeder fund,
  - 2. is the auditor of the master fund or feeder fund,
  - 3. is the management of a master fund or feeder fund,
  - 4. is the administrator of the master fund or feeder fund,
  - 5. has been entrusted with the performance of an individual activity, including the management of a master fund or a feeder fund, and
  - 6. has been entrusted with the performance of an individual activity, including the administration of a master fund or a feeder fund,As well as that the change in the person referred to in points 1 to 6 has become effective and the method of transfer thereof, and
- (w) deadlines for forwarding information on the proposed amendments to this Agreement and the method of forwarding them.

(2) The agreement pursuant to Section 251 (1) obliges the management company to inform the management of the feeder fund, feeder fund Administrator, depository of the Feeder fund and the CNB, or the relevant supervisory authority of another EU member state, of all information required by this Act, By its implementing authority and the statute or the social contract of the feeder fund.

(3) The agreement referred to in Section 251 (1) shall specify the law applicable to its arrangements.

## Section 256

The manager of a feeder fund hand over, without undue delay, to a depository of this feeder fund information on the master fund, which may be reasonably presumed that are necessary for the proper performance of the activity of the depository.

## Chapter 3

### **Agreement of the depositories of a feeder fund and a master fund**

#### Section 257

(1) The depository of the Feeder fund and the depository of the Master fund shall agree on the rules of conduct between them.

(2) The agreement according to Subsection (1) is not required, if both funds have the same depository; in such a case it is sufficient to regulate the matters which would otherwise be regulated by the rules of conduct between them by an internal regulation of this depository.

(3) The fulfillment of the requirements arising from the agreement pursuant to Subsection (1) does not violate a contractual or legislative obligation of confidentiality in the field of disposing of confidential information or personal data.

#### Section 258

### **Governing law**

(1) Provisions of the agreement according to Section 257 (1) are governed by the law which governs the agreement according to Section 251 (1).

(2) If an internal regulation according to Section 251 (2) regulates the matters which would otherwise be regulated by the rules of conduct between the managers and the administrators, the parties will determine in the agreement according to Section 257 (1) whether its provisions are governed by the laws of the home state of the feeder fund or the master fund.

#### Section 259

### **Requirements of the agreement**

(1) In the agreement pursuant to Section 257 (1), the parties at least agree on

- (a) the manner of mutual communication, including the manner whereby the record keeping about this communication is ensured, and the manner of protection of confidential information and personal data, whereas they will determine,
  1. the types of information and personal data and documents which they will mutually provide to each other, including a reference to the types of information and personal data and documents they will provide upon a request and which will be provided without request, and
  2. time-limits for the reciprocal handing over of information and personal data and the manner of their handing over,
- (b) rules allowing the depository to fulfil controlling obligations ensuing from this Act,
- (c) types of breaches of obligations by a manager or an administrator of a master fund about which the depository of the master fund informs the depository of the feeder fund, as well as time-limits for handing over such information and the manner of their handing over, and
- (d) crisis situations about which they will notify each other, time-limits for mutual handing over of information relating to the crisis situations and the manner of their handing over.

(2) The agreement pursuant to Section 257 (1) shall specify the law which governs its provisions.

#### Section 260

(1) The agreement pursuant to Section 257 (1) obliges the depository of the master fund to inform, without undue delay, the management of the feeder fund, the depository of the feeder fund and the CNB or the competent supervisory authority of another EU member state, about the situation, that the manager of the master fund whose depository it is, has breached the obligation ensuing from this Act, a legal regulation implementing it, the statute or a depository agreement, or about the situation which could have an adverse influence on the management of the feeder fund.

(2) The depository of the master fund shall inform the depository of the feeder fund, especially in cases where it finds out

- (a) errors in valuation of the assets and liabilities of the master fund,
- (b) errors in the exchange or redemption of unit certificates or investment shares, or errors in the applications filed by the feeder fund relating to redemption or alienation of unit certificates or investment shares issued by the master fund,
- (c) errors in the payment of a share in the revenue of the asset management of the master fund, in the projection of an amount which would otherwise correspond to the paid share in the revenue of the asset management of the master fund in the current value of unit certificates issued by the fund or of investment shares issued by it, or in the calculation of a relating withholding tax,
- (d) a breach of the investment strategy of the master fund, or
- (e) a breach of investment limits and limits for accepting or providing credits and loans.

### Chapter 4

#### Agreement of the auditors of a feeder fund and a master fund

#### Section 261

(1) The auditor of the feeder fund and the auditor of the master fund shall agree on the rules of conduct between them.

(2) The agreement according to Subsection (1) is not required, if both funds have the same auditor; in such a case it is sufficient to regulate the matters which would otherwise be regulated by the rules of conduct between them by an internal regulation of this auditor.

(3) The fulfillment of the requirements arising from the agreement pursuant to Subsection (1) does not violate a contractual or legislative obligation of confidentiality in the field of disposing of confidential information or personal data.

#### Section 262

#### Governing law

(1) Provisions of the agreement according to Section 261 (1) are governed by the law which governs the agreement according to Section 251 (1).

(2) If an internal regulation according to Section 251 (2) regulates the matters which would otherwise be regulated by the rules of conduct between the managers and the administrators, the parties will determine in the agreement according to Section 261 (1) whether its provisions are governed by the laws of the home state of the feeder fund or the master fund.

## Section 263

### Requirements of the agreement

(1) In the agreement according to Section 261 (1), the Parties agree at least on

- (a) the types of information and documents which they will mutually provide to each other, with reference to the types of information and documents they will provide upon a request and which will be provided without request, and
- (b) time-limits for mutual sharing of information and documents, and the manner of their sharing,
- (c) the manner of ensuring the cooperation in drawing up the auditor's report of the master fund and the auditor's report of the feeder fund, including time-limits for the provision of the auditor's report of the master fund and the manner of its provision, if the accounting period of the feeder fund matches the accounting period of the master fund, or how the cooperation in drawing up the auditor's report of the master fund and the auditor's report of the feeder fund and the additional report according to Section 236 (2) is ensured, including time-limit for the provision of the auditor's additional report according to Section 236 (2), or draft of his additional report and the manner of its provision, if the accounting period of the feeder fund does not match the accounting period of the master fund
- (d) what findings or types of findings in the auditor's report may be considered as discrepancy, and
- (e) a time-limit for processing of the application for cooperation submitted by one auditor to the other, including a request for additional information relating to the discrepancy referred to in the auditor's report of the master fund.

(2) The agreement according to Section 261 (1) shall specify the law which governs its provisions.

## Chapter 5

### Special information duties of the CNB towards a manager of a feeder investment fund

## Section 264

The CNB informs the manager of a feeder fund, which is a retail investment fund, about every detected breach of duties of the manager of the master fund, about every imposed fine, remedial measure or another measure according to this Act or another legal regulation imposed by the CNB on the manager of the master fund, depository of the master fund, along with stating a reason for imposing this measure or fine, and further informs about every imposed disciplinary measure which was imposed on the auditor of the master fund by the Chamber of Auditors of the Czech Republic.

## TITLE V

### EVALUATION OF REAL ESTATE

## Section 265

The real estate that a manager of a retail investment fund intends to acquire in the assets of this fund or to sell it from the assets of the fund shall be evaluated according to the purpose of its operation or its further resale and taking into consideration

- (a) its permanent or long-term sustainable features,
- (b) revenues achieved by proper management of it,
- (c) its defects,
- (d) the absolute and relative property rights attached to it, and
- (e) the local conditions of the real property market and its expected development.

## Section 266

(1) A real estate referred to in Section 265 (1) shall be evaluated by two persons which are members of the experts' committee of the manager of the concerned fund or by an independent expert in the field of evaluation of real estate according to an act regulating the experts. The expert is chosen by the manager.

(2) The expert is presumed to be independent in relation to the retail investment fund which invests in real estate and shareholding in a real estate company, if the expert is not

- (a) a managing person or a worker of the manager of this fund,
- (b) a managing person or a worker of the real estate company, in which the fund has a shareholding,
- (c) a managing person or a worker of a person, which is a member of the concern, whose member is the manager of this fund, or
- (d) a unitholder or a shareholder of this fund.

## Section 267

### **Opinion of an expert or member of the experts' committee**

(1) The day of acquisition or deprivation of the right of ownership to real estate must not occur later than six months from the day as of which the expert's opinion and the opinion of a member of the experts' committee referred to in Subsection (2) has been executed.

(2) The opinion of the expert or member of the experts' committee shall include

- (a) the data necessary to identify the real estate,
- (b) the price of a real estate determined by an expert or a member of the experts' committee,
- (c) the manner of the current use of the real estate and the degree of its occupation,
- (d) a brief description of the real estate,
- (e) a description of defects of the real estate,
- (f) basic information on absolute and relative property rights relating to real estates,
- (g) the technical condition of the real estate,
- (h) the last known and estimated future net profit of the real estate, along with a statement of the future use of the real estate,
- (i) a description of permanent features and features sustainable in long term,
- (j) a description of the local conditions of the real estate market and its projected development, and
- (k) further material information that may affect the cost of the real estate.

## Section 268

### **Experts' committee**

(1) A manager of a retail investment fund, which, according to its statute, invests in real estate or in shareholdings in a real estate company, sets up an experts' committee as its body.

(2) The experts' committee shall consist of at least three members, the number of members shall be odd and the members are appointed and dismissed by the manager.

(3) The overall term of office of a particular member of the experts' committee must not exceed three years while the same person may be appointed on the experts' committee of the same retail investment fund after 3 years from the day of termination of its previous membership at the earliest.

(4) A member of the experts' committee may only be an individual who is independent, trustworthy and professionally capable and is experienced in the evaluation of real estate. A person, who does not meet the conditions mentioned or in respect of whom there is an impediment to exercise the office will not become a member of the experts' committee, even if the manager has so decided. If a member of the experts' committee ceases to meet these conditions, his office is terminated.

## Section 269

### **Competence of the experts' committee**

#### (1) The experts' committee

- (a) monitors the state, use and other facts which may affect the value of a real estate in the assets of a retail investment fund and a real estate in the assets of a real estate company, in which this fund has shareholdings,
- (b) assesses the evaluation of the real estate in the assets of this fund or in the assets of a real estate company, in which the fund has a shareholding, before making a legal act, with respect to which the valuation is performed,
- (C) procures at least twice a year for the purposes of determination of the current value of a unit certificate or an investment share the determination of the value of real estate in the assets of this fund and the real estate in the assets of a company in which the fund has a shareholding, and
- (d) procures at least twice a year for the purposes of determination of the current value of a unit certificate or an investment share, the determination of the value of shareholding of this fund in a real estate company.

(2) A member of the experts' committee exercises office with due professional care, conducts the performance of office properly and prudently and is liable to the manager and shareholders or unitholders of the concerned collective investment fund for harm which he has caused by way of breaching his duties or unprofessional performance of its office.

## Section 270

### **Conduct of experts' committee**

(1) The experts' committee relies on the purchase price or the last expert's opinion or the opinion of a member of the experts' committee with respect to monitoring and determining the value of the real estate in the assets of a retail investment fund or a real estate company, in which this fund has a shareholding.

(2) The experts' committee may, in reasonable cases, recommend to the manager of the retail investment fund to ensure a new evaluation of the real estate by one independent expert.

## Section 271

### **Independence of a member of the experts' committee**

A member of the experts' committee is presumed to be independent in relation to a retail investment fund which invests in real estate or in shareholdings in a real estate company, if he meets the requirements according to Section 266 (2) *mutatis mutandis*.

## **PART EIGHT**

### **QUALIFIED INVESTORS' FUNDS**

#### TITLE I

##### BASIC PROVISION

###### Section 272

###### **Qualified investor**

(1) A share in a qualified investors' fund may be contractually acquired only by, and in the case of a trust by a founder of a qualified investors' fund or a person who increases the assets of a qualified investors' fund by a contract, as well as a silent partner of a qualified investors' fund may only be,

- (a) a person referred to in Section 2a (1) of the Act governing the capital market business,
- (b) a person referred to in Section 2a (2) of the Act governing the capital market business,
- (c) a manager or a comparable foreign person on the account of an investment fund or a foreign investment fund which it manages,
- (d) a pension company on the account of a subscriber's fund, a pension fund or a transformed fund, which it manages,
- (e) a person performing an activity pursuant to Section 2 (b),
- (f) a legal person subject to a central administrative body,
- (g) a person who, according to a law governing a capital market business or the law of another EU member state, is considered in relation to investments in a particular qualified investors' fund to be a client, who is a professional client,
- (h) a person who has made a declaration that it is aware of the risks associated with investing in this qualified investors' fund, and such person is a unitholder, a founder or a shareholder of another qualified investors' fund or a comparable foreign investment fund, which is managed by the same manager as this fund and whose administration is performed by the same administrator as the administration of this fund, and the amount of paid-up contribution or paid up investment in these other funds as well as the assets managed under Section 11 (1) (c) if it is managed by the same manager as that fund corresponds in total to the amount of at least
  1. EUR 125 000 or
  2. CZK 1 000 000 if the manager or the administrator of this qualified investors' fund, or the person authorised by him, confirms in writing that on the basis of information obtained from the person who invests, *mutatis mutandis* to the provision of the main investment service referred to in Section 4 (2) (d) or (e) of the Act on Capital Market Business, it is reasonable to believe that this investment corresponds to the person's, who invests, financial background, investment objectives and the expert knowledge and experience in the area of such person's investments.
- (i) a person who has made a declaration about being aware of the risks involved in the investment in this qualified investor fund and whose amount of paid-up contribution or paid-up investment in this fund corresponds in total to the amount of at least
  1. EUR 125 000 or
  2. CZK 1 000 000 if the manager or the administrator of this qualified investors' fund, or the person authorised by him, confirms in writing that on the basis of information obtained from the person who invests, *mutatis mutandis* to the provision of the main investment service referred to in Section 4 (2) (d) or (e) of the Act on Capital Market Business, it is reasonable to believe that this investment corresponds to the person's, who invests, financial background, investment objectives and the expert knowledge and experience in the area of such person's investments.

(2) The person referred to in Subsection (1) is a qualified investor. The restrictions under Subsection (1) shall not apply to the managing person of the concerned qualified investors' fund and to the founders' shares.

(3) If a person has acquired a share in a qualified investors' fund, contrary to Subsection (1), or the person has become the founder or silent partner of a qualified investors' fund or the person increases the assets of the qualified investors' fund by a contract, contrary to Subsection (1), it shall not be taken into account.

(4) The declaration referred to in Subsection (1) (h) and (i) must be made in writing and separately, not as part of the conditions governing the agreement between the parties.

(5) It is forbidden that the amount of the contribution or an investment as a result of the actions of a qualified investor falls below the minimum amount set out in Subsection (1) (h) or (i). The ability of a qualified investor to cease to be a qualified investor of a qualified investors' fund is not affected by it.

(6) A court dissolves, upon an application of the CNB or the person having a legitimate interest, a qualified investors' fund and orders its liquidation if the fund does not meet a requirement necessary according to Subsection (1). Prior to the decision, the court provides the qualified investors' fund with a reasonable period of time to rectify the situation.

### Section 273

(1) Section 272 (1) and (6) shall not apply to a qualified investors' fund which is an EuVECA-R, an EuSEF or an ELTIF.

(2) A court dissolves, upon an application of the CNB or the person having a legitimate interest, a qualified investors' fund which is an EuVECA<sup>7)</sup> and orders its liquidation if its unitholder, founder, shareholder or silent partner and, in case of a trust also the one who increased its assets by contract, the presumption required under Article 6 (a) of the EUVECA-R. Prior to the decision, the court will provide a reasonable time for the qualified investors' fund to rectify the situation.

(3) Upon an application of the CNB or the person having a legitimate interest, the court dissolves the qualified investors' fund, which is an EuSEF and orders its liquidation if its unitholder, founder, shareholder or silent partner fails, and in case of a trust also the person who increased its assets by contract, the presumption required under Article 6 of the EuSEF-R. Prior to the decision, the court will provide a reasonable time for the qualified investors' fund to rectify the situation.

(4) Upon an application of the CNB or the person with a legitimate interest, the court dissolves the qualified investors' fund, which is an ELTIF and order its liquidation if its unitholder, founder, shareholder or silent partner fails to comply and in case of the trust, also the one who increased its assets by contract, the presumption required under Article 30 (3) of the ELTIF-R. Prior to the decision, the court will provide a reasonable time for the qualified investors' fund to rectify the situation.

### Section 274

#### **Contributions and Investments**

(1) Nobody may be relieved from a duty to provide an object of contribution or a duty to invest in the minimum amount or an amount defined in the statute of a qualified investors' fund; if it happens, it will not be taken into account.

(2) Each of the contributions and investments is to be paid up at least in the minimum amount prior to the filing of an application for registration of a qualified investors' fund in the Commercial register or prior to the coming into existence of a qualified investors' fund having the legal form of a trust or a mutual fund.

## Section 275

### **Fulfilling the duty of contribution in parts**

(1) If the memorandum of association of a qualified investors' fund provides so, a shareholder fulfils his duty of contribution in parts.

(2) The duty of contribution according to Subsection (1) shall be fulfilled within the time-limit and to the extent determined in a written notice by the statutory body.

(3) The notice will be notified to a shareholder at least 10 days prior to the day when the particular part of the contribution becomes due.

(4) A shareholder who is in default with fulfilling the duty of contribution according to Subsection (1), must not, apart from the consequences accompanied with the default of fulfilling the duty of contribution of a shareholder, provided by the act regulating legal relations of business companies and cooperatives, unless the memorandum of association provides otherwise, exercise voting rights and is obligated to compensate to the company all monetary considerations, which it has received from the company.

(5) Section 150 (1) and Section 344 (1) of the act regulating legal relations of business companies and cooperatives shall not apply in case of the qualified investors' fund.

## Section 276

### **Remuneration of a member of the statutory body and compensation of the necessary expenses of a member of the statutory body or shareholder**

(1) Apart from the right of compensation of expenses according to an act regulating legal relations of business companies and cooperatives, incurred by the statutory body or its member or a shareholder, in case of expenses incurred in procuring matters of a fund and which they could reasonably consider as necessary, the member of the statutory body of a qualified investors' fund has a right of remuneration.

(2) The memorandum of association of a qualified investors' fund also contains

- (a) the manner of determination of the remuneration of a member of the statutory body of this fund and conditions and extent of payment of the remuneration from the assets of the fund, as well as whether advance payments on the remuneration may be provided to the member of the statutory body, including repeated payments, and
- (b) the manner of determination of expenses incurred by a member of the statutory body or by a shareholder of this fund in procuring matters of the fund and which it could reasonably consider as necessary, the highest possible amount of such expenses and conditions and extent of payment of such expenses from the assets of the fund, as well as whether advance payments on such expenses may be provided to the member of the statutory body, including repeated payments.

(3) The supreme body of the qualified investors' fund may, depending on the circumstances, increase or decrease the remuneration of a member of the fund's statutory body. The reason for the reduction of the remuneration is in particular the fact that this member of the statutory body has breached one of its obligations.

## Section 277

### **Amendments to the memorandum of association**

(1) If shareholders of a qualified investors' fund do not agree in the memorandum of association otherwise, or if this Act does not provide otherwise, the consent of all shareholders who are members of the statutory body or the statutory body of the manager is sufficient to amend the memorandum of association. If the amendment of the memorandum of association adversely encroaches on the rights of a shareholder, a consent of such shareholder is required for such amendment to the memorandum of association.

(2) The memorandum of association may be amended by an unilateral act of the statutory body of the manager, if this Act provides so and, unless the memorandum of association prohibits it, if it concerns an amendment directly caused by a change in legislation, correction of spelling and printing errors or if it concerns an amendment which logically follows from the content of the memorandum of association.

## Section 278

### **Right to refuse to provide information**

(1) The right of a unitholder or shareholder to inspect all the documents of a qualified investors' fund and to control information contained therein may be rejected entirely or partially, only if

- (a) providing the information could harm the qualified investors' fund or the persons, in which the fund invests,
- (b) the information concerns information which is considered internal or classified information according to another legal regulation,
- (c) the information is part of the trade secrets of a qualified investors' fund,
- (d) providing the information would lead to a criminal or administrative liability of the manager, depository, prime broker or qualified investors' fund, or
- (e) the required information is publicly available.

(2) In the event of a dispute, a court decides upon an application of a shareholder or a unitholder whether there is a duty to provide information; or by an arbitrator or by a permanent arbitration court determined in the memorandum of association; the right exercised at the court, the arbitrator or the permanent arbitration court after one month from the day of providing the information, will not be taken into account.

## Section 279

### **Non-competition and other prohibited actions**

(1) The managing person of the manager of the qualified investors' fund must not

- (a) carry out business in the area of the business activity of this fund without consent of the shareholders or controlling body of the manager, even for the benefit of other persons, or procure deals of the fund for another,
- (b) acquire or increase, without the consent of the shareholders or controlling body of the manager, a direct or indirect share in the registered capital or voting rights in the person which has issued securities or book-entry securities to which this fund invests, or in the person to the shareholdings of which the fund invests,

- (c) use information about an investment opportunity which it considers suitable for an investment of this fund, in a way that the managing person, on the basis of such information before the respective investment of the fund takes place, on its own account or on the account of another person,
  1. has acquired or disposed of a thing to which the investment opportunity pertains, or has acquired or disposed of another thing the value of which relates to the proprietary value to which the investment opportunity pertains, or
  2. has made, directly or indirectly, a recommendation to another person to acquire or dispose of a proprietary value to which the investment opportunity pertains, or another thing the value of which relates to the thing to which the investment opportunity pertains, and
- (d) without the consent of the shareholders or controlling body of the manager accept credit or loan from this fund or to provide on behalf of this fund credit or loan to a person constituting a concern with a member of the statutory body of the manager or to a person close to the member of the statutory body.

(2) If the managing person of the manager of a qualified investors' fund learns that the person with which it constitutes a concern or a close person has acted in a way referred to in Subsection (1), it informs of that, without undue delay, the shareholders or controlling body of that manager.

(3) The memorandum of association may regulate the ban on competition pursuant to Subsection (1) (a), (b) and (d) differently; The majority of three quarters of the shareholders are required to give the consent pursuant to Subsection (1) (a) or to amend the memorandum of association in which the condition laid down in Subsection (1) (a) is regulated differently.

### **Fund capital of a qualified investors' fund**

#### **Section 280**

The fund capital of a qualified investors' fund must within 12 months from the day of the coming into existence of the investment fund reach at least the amount corresponding to EUR 1 250 000, unless it is the case referred to in Section 281.

#### **Section 281**

The fund capital of a qualified investors' fund, which according to its statute invests more than 90% of the value of the fund's assets in securities or book-entry securities representing a share in a business company or another legal person, in shareholdings in business companies or other legal persons or in intellectual property, must within the time-limit determined in the statute and, if it is relevant due to the nature of its form, in the memorandum of association, reach at least the amount corresponding to EUR 1 000 000.

#### **Section 282**

(1) If the average amount of the fund capital of a qualified investors' fund does not reach for the period of last six months the amounts specified in Section 280 or 281, its manager shall, without undue delay, take effective measure to remedy the situation or decide on the dissolution of the qualified investors' fund.

(2) Upon an application of the CNB or the person having a legitimate interest, the court shall dissolve the qualified investors' fund with legal personality and order its liquidation, if the fund capital of such qualified investors' fund does not reach at least the amounts specified in Section 280 or 281. The court shall, before a decision, of the qualified investors' fund of will provide a reasonable period of time to rectify the situation.

## Section 283

### **Right of pre-emption in the case of judicial enforcement of a decision and execution**

(1) In the case of judicial enforcement of a decision by sale of a unit certificate, an investment certificate, a common share certificate, a share

are, which is not founders' share, share of a shareholder in a limited liability company, limited partnership or European company, a share in a cooperative, or in the case of issue of an execution order for sale of such a security, a book-entry security or a share, the remaining unitholders, who are the owners of the same type of the unit certificate, or shareholders, who are the owners of the same type of the investment certificate, common share certificate or share, which is not founders' share, or of the same type of share, have a right of pre-emption to the securities, book-entry securities or shares which are the subject-matter of the judicial enforcement of the decision or the execution order.

(2) In the case of judicial enforcement of a decision by sale of founder's share or in the case of issue of an execution order to sale founder's share, the owners of the founder's shares have a right of pre-emption according to Section 160.

(3) Subsections (1) and (2) shall apply only to a qualified investors' fund unless another legal regulation provides otherwise.

## Section 283a

For a qualified investors' fund, Section 212 to 214 shall apply *mutatis mutandis*. Where these provisions invoke disclosure on the fund's website, other disclosures to investors is sufficient.

## TITLE II

### INVESTING AND MANAGEMENT TECHNIQUES

## Section 284

(1) The manager of a qualified investors' fund, when managing this fund, introduces within the framework of the statute of this fund, and maintains and applies

- (a) rules for the composition of the assets of the fund consisting in defining things, which may be acquired in the fortune of the fund, and investment limits, which must be observed with respect to these things, including, if applicable, investment limits for copying the composition of an index
- (b) rules for accepting credit or loan on the account of this fund,
- (c) rules for the use of the assets of this fund to provide credit, loan or gift, to secure a debt of another person or to pay a debt not associated with the management of the fund, including whether the asset of the fund may be used for provision of credit or loan not associated with its management, and including whether the asset of this fund may be used for provision of a gift, for securing a debt of another person or for paying a debt not associated with its management,
- (d) rules for concluding contracts for the sale of things on the account of this fund, which this fund does not have in its assets or which have been provided to the fund for a certain period of time, including whether it is possible to conclude, on the account of this fund, contracts for the sale of assets, which this fund does not have in its assets or which have been provided to the fund for a certain period of time,
- (e) techniques to manage this fund,
- (f) rules of using management techniques of this fund, including rules for negotiating repo trades using the assets of this fund and rules for investing in connection with the negotiated repo trades,
- (g) rules for reducing risk ensuing from using derivatives and, if it uses leverage, rules for degree of the use of leverage,

- (h) rules for calculation of the total exposure of the fund using the standard liability method and the method of measuring value-at-risk, classified according to the model of absolute risk value and relative risk value, or possibly using another advanced method of risk measurement, and
- (i) limits of total exposure in the case of methods under (h).

(2) The government may by way of a regulation lay down requirements for the qualitative criteria of rules pursuant to Subsection 1 (a) to (d) and (f) to (h), techniques pursuant to Subsection (1) (e) and limits of total exposures pursuant to Subsection 1 (i).

(3) Section 265 shall apply *mutatis mutandis* to investments into real estate by a qualified investors' fund.

(4) It is at variance with this Act that the managers of a qualified investors' fund does not introduce, maintain or apply rules, techniques or limits in a way provided by this Act or government regulation on investing of investment funds and on their management techniques.

### *Section 285*

(1) If the composition of the assets of a qualified investors' fund occurs to be at variance with the rules for the composition of the assets of this fund independently of the will of the manager of this fund, the manager of this fund must restore without undue delay the compliance of the composition of the assets of this fund with those rules; he must take into consideration interests of the unitholders, shareholders or beneficiaries of this fund.

(2) Compliance of the composition of the assets of a qualified investors' fund with the rules for composition of the assets of this fund does not have to be observed in connection with the exercise of the priority right of subscription of investment securities or money market instruments, which the fund has or should have in its assets; the manager of this fund must restore without undue delay after the exercise of this priority right the compliance of the composition of the assets of the fund with those rules.

### *Section 286*

*Cancelled.*

### *Section 287*

The manager of a qualified investors' fund or of a comparable foreign investment fund authorised to exceed the relevant threshold, if it uses the leverage, proves to the CNB upon its request the adequacy of limits, which the manager has determined with respect to the degree of the use of leverage as well as the manner in which it ensures their observance.

## TITLE III

### MAKING INFORMATION AVAILABLE

#### **Chapter 1**

##### **Statute**

###### Section 288

The statute of a qualified investors' fund is a document that contains an investment strategy of the qualified investors' fund, a description of risk accompanied with the investment activity of this fund and other information necessary for the investors to make a well-informed assessment of an investment.

###### Section 289

Information referred to in the statute of a qualified investors' fund must be continuously updated.

#### **Chapter 2**

##### **Annual report**

###### Section 290

(1) The administrator of a qualified investors' fund, whose manager is authorised to exceed the relevant threshold, draws up no later than in four months after the expiration of an accounting period an annual report of this fund

(2) The administrator of a qualified investors' fund, whose manager is authorised to exceed the relevant threshold, provides each of the shareholder or a unitholder with the latest drawn up of an annual report of this fund in a paper form, if the shareholder or the unitholder require so.

(3) The Subsections (1) and (2) and Section 291 shall not apply for the administrator of a qualified investors' fund, whose manager is authorised to exceed the relevant threshold, and whose annual report is published according to an act regulating business activities on the capital market. In such a case, it is sufficient to provide each investor upon its request with information referred to in Section 291, which is not included in the annual report of this fund. This information may be provided separately, or as a supplement to the annual report.

###### Section 291

##### **Special requirements of the annual report**

(1) The Section 234 (1) (a), (b) and (j) and Section 234 (2) and (5) shall apply *mutatis mutandis* for the annual report of the qualified investors' fund, a manager of which is authorised to exceed the relevant threshold.

(2) Article 12 of the EUVECA-R shall apply *mutatis mutandis* for the annual report of a qualified investors' fund whose management is not authorised to exceed the relevant threshold.

(3) The CNB shall lay down the requirements for the content of the annual report within the scope of Subsection (1) to the extent not covered by a directly applicable EU regulation implementing the AIFMD<sup>6</sup>.

Section 292

**Auditor's report**

An auditor is obligated to comment on compliance of the annual report of the qualified investors' fund, whose manager is authorised to exceed a relevant threshold, with a financial statement.

**Chapter 3**

**Informing investors of a qualified investors' fund**

Section 293

(1) Section 241 applies *mutatis mutandis* to informing about investments marketed in a qualified investors' fund or a comparable foreign investment fund in the Czech Republic, whose manager is authorised to exceed a relevant threshold.

(2) Article 13 of the EUVECA-R shall apply *mutatis mutandis* to informing about investments marketed in a qualified investors' fund or a comparable foreign investment fund in the Czech Republic, whose manager is not authorised to exceed a relevant threshold.

(3) The data pursuant to Subsections (1) and (2) shall be made available at least in Czech, Slovak or English language.

**PART NINE**

**MARKETING OF INVESTMENTS**

**TITLE I**

**BASIC PROVISIONS**

Section 294

**Marketing of investments**

(1) Marketing of investments in an investment fund or a foreign investment fund is

- (a) marketing of unit certificates or comparable securities or book-entry securities issued under the law of a foreign state or of subscribed securities issued by an investment fund or a foreign investment fund, or
- (b) marketing of another possibility to become a unitholder, a beneficiary, a founder, a shareholder or a silent partner of an investment fund or a foreign investment fund, or in the case of a trust or a comparable facility a person, who increases the assets of this fund by a contract.

(2) The marketing of investments referred to in Subsection (1) shall also include the marketing of investments relating to the investment fund or sub-fund or comparable facility of the foreign investment fund. The provisions governing the marketing of investments in an investment fund or a foreign investment fund shall apply *mutatis mutandis* to the marketing of investments relating to its sub-fund or comparable facility.

## Section 295

### **Investor's decision on his own initiative**

It is not the marketing of investments according to Section 294 (1) when an investor makes a decision to acquire a security or a book-entry security issued by an investment fund or a foreign investment fund or otherwise to become a unitholder, beneficiary, founder, shareholder or a silent partner of the investment fund or a foreign investment fund or in the case of a trust or a comparable facility to become a person who increases the assets of this fund by a contract, on his own initiative.

## Section 295a

### **Public marketing and private placement**

(1) An investment in an investment fund or in a foreign investment fund may only be publicly marketed in the Czech Republic under the conditions laid down by this Act and only if it is registered in the relevant list maintained by the CNB; this is without prejudice to Section 305 (1).

(2) Marketing an investment in an investment fund or a foreign investment fund in the Czech Republic to those who are not qualified investors, other than publicly (private placement), can only be marketed if such investments in the Czech Republic can be marketed publicly or the number of such persons does not exceed 20.

## Section 296

### **Marketing investments in qualified investors' funds and comparable foreign investment funds**

Investments in a qualified investors' fund or a comparable foreign investment fund may be marketed in the Czech Republic publicly; only a qualified investor may become a unitholder, a beneficiary, a founder, a shareholder or a silent partner of this fund or in the case of a trust or a comparable facility a person who increases the assets of this fund by a contract; this must be expressly stated in the marketing.

## Section 297

### **Marketing investment in foreign investment funds comparable to a retail AIF**

(1) Investments in a foreign investment fund comparable to a retail AIF may be publicly marketed to other than qualified investors in the Czech Republic only if the manager of such fund is authorised to exceed the relevant threshold upon the authorisation of the CNB or upon the authorisation of the supervisory authority of another EU member state in accordance with the requirements of Article 6 and Article 8 of the AIFMD<sup>5)</sup>, the obligation laid down in Section 306 (1) is fulfilled and the CNB issues a decision pursuant to Subsection (3). In order to comply with the obligation laid down in Section 306 (1), Section 306 (2) shall apply *mutatis mutandis*.

(2) If a manager of the fund referred to in Subsection (1) is not authorised to exceed the relevant threshold, or if the CNB has not decided pursuant to Subsection (3), Section 296 (1) shall apply *mutatis mutandis* to the marketing of investments pursuant to Subsection (1).

(3) The CNB shall decide on the fact that the foreign investment fund is comparable to a retail AIF within 20 working days from the date of submission of the application, which has the prescribed requirements and does not have any other defects.

(4) The application according to Subsection (3) may be submitted only electronically, the application must contain data and documents proving the fulfillment of the conditions stipulated by this Act. The CNB shall lay down, by a regulation, the requirements of the application certifying compliance with the conditions laid down by this Act, its form and method of submission.

## Section 298

### **Relation to EU law**

- (1) The marketing of investments in a EuVECA is governed by the EUVECA-R.
- (2) The marketing of investments in a EuSEF is governed by the EuSEF-R.
- (3) The marketing of investment in the ELTIF is governed by the ELTIF-R<sup>18)</sup>.

## Section 299

A retail AIF, a qualified investors' fund or a comparable foreign investment fund whose home state is an EU member state which is managed by a manager authorised to exceed a relevant threshold with its registered office in an EU member state is considered for the purposes of marketing of investments in this fund to be a foreign investment fund whose home state is not an EU member state, if according to its statute or a comparable document

- (a) it invests at least 85% of the value of its assets to a foreign investment fund whose home state is not an EU member state,
- (b) it invests at least 85% of the value of its assets to an investment fund or a foreign investment fund which is not managed by a manager with registered office in a EU member state,
- (c) invests at least 85% of the value of its assets to more investment funds referred to in (a) or (b) or to investment funds referred to in (b) which have mutually the same investment strategy, or
- (d) may have an exposure in the amount of at least 85% of its assets in relation to a foreign investment fund referred to in (a) or (b) or an investment fund referred to in (b) or in relation to more such funds which have mutually the same investment strategy.

## TITLE II

### **MARKETING INVESTMENTS IN AN INVESTMENT FUND OR IN A FOREIGN INVESTMENT FUND WHOSE HOME STATE IS AN EU MEMBER STATE**

#### **Chapter 1**

##### **In the case of the manager whose home state is an EU member state**

###### **Subchapter 1**

###### **Public marketing of investments in a UCITS fund or in a comparable foreign investment fund**

## Section 300

### **Public marketing of investments in the UCITS fund in the Czech Republic**

- (1) Investments in a UCITS fund may be publicly marketed in the Czech Republic only if this fund is registered in the register maintained by the CNB pursuant to Section 597 (a) or (b).

(2) It is forbidden to publicly market in the Czech Republic an investment in a UCITS fund if it is not managed by a person authorised by the CNB to manage the UCITS funds or a supervisory authority of another EU member state entitling it to manage foreign investment funds comparable to the UCITS fund.

### **Public marketing of investments in a UCITS fund in another EU member state**

#### **Section 301**

(1) Investments in a UCITS fund may be publicly marketed in another EU member state from the date when the manager of this receives a notification from the CNB under Section 303 (3).

(2) If investments in a UCITS fund are publicly marketed in another EU member state, the key investor information document must be published and provided in that EU member state under the same conditions as in the Czech Republic. Changes in the key investor information document other than its translation or amendments are not allowed. Section 229 (2) shall apply *mutatis mutandis*.

#### **Section 302**

(1) If investments in a UCITS fund are to be publicly marketed in another EU member state, the management of this fund shall notify the CNB in advance. The notification according to the first sentence shall be sent to the CNB in English language.

(2) The essentials of the notification according to Subsection (1) are defined in Article 1 and Annex I of the Commission Regulation (EU) No 584/2010.

(3) The manager of the concerned UCITS fund attaches to the notification according to Subsection (1) a translation of

- (a) the up-to-date key investor information document,
- (b) the up-to-date statute of this fund,
- (c) the up-to-date annual report of this fund, and
- (d) possibly the up-to-date semi-annual report of this fund, if it was executed after the execution of the annual report according to (c).

(4) The information document according to Subsection (3) (a) must be attached with a translation into a language in which documents may be submitted to a supervisory authority of another member state in which the investments are to be marketed publicly.

(5) The documents according to Subsection (3) (b) to (d) may, according to the discretion of the manager of the concerned UCITS fund, be accompanied with a translation into

- (a) a language in which documents may be submitted to a supervisory authority of another EU member state, in which the investments are to be marketed publicly, or
- (b) the English language.

(6) According to the discretion of the manager of the concerned UCITS fund, the translation according to Subsections (4) and (5) may be officially certified. The manager of the concerned UCITS fund is responsible for the correctness and completeness of the translation according to Subsections (4) and (5).

#### **Section 303**

(1) The CNB shall verify whether the notification and its annexes pursuant to Section 302 have all the required essentials and does not have any other defects.

(2) The CNB shall send, within 10 working days from the day when it received the notification and annexes according to Section 302 having all the required essential elements and not having any other defects, to a supervisory authority of another EU member state in which the investments according to Section 301 (1) are to be publicly marketed,

- (a) this notification and its annexes, and
- (b) an English attestation that the concerned UCITS fund meets the requirements of the UCITS-D<sup>4)</sup>; the essential elements of this attestation are defined in Article 2 and Annex II of Commission Regulation (EU) No 584/2010.

(3) The CNB shall inform the manager of the UCITS fund concerned, without undue delay, that it has sent the notification, its annexes, and the attestation according to Subsection (2).

(4) The procedure followed by the CNB according to Subsection (2) is further defined in Articles 3 to 5 of the Commission Regulation (EU) No 584/2010

#### Section 304

(1) If there are investments being publicly marketed to a UCITS fund in another EU member state, the investors in that EU member state must be provided and in that member must be published up-to-date:

- (a) the key investor information document, as well as changes thereof,
- (b) the statute of this fund, as well as changes thereof,
- (c) the annual report of this fund, as well as changes thereof, and
- (d) the semi-annual report of this fund, as well as changes thereof, and
- (e) information on the amounts at which unit certificates and investment shares issued by this fund are issued and redeem.

(2) The documents referred to in Subsection (1) (a) to (d) as well as changes thereto and the information referred to in Subsection (1) (e) are provided to investors and published in another EU member state in which investments in a UCITS fund are publicly marketed, in the same manner in which similar documents and information pertaining to a foreign investment fund comparable to a UCITS fund are provided and published under the laws of that other EU member state

(3) The notification referred to in Subsection (1) (a) as well as changes thereof, is provided to investors and published in another EU member state in which investments in a UCITS fund are publicly marketed with a translation into language in which documents may be submitted to a supervisory authority of that other EU member state.

(4) The documents referred to in Subsection (1) (b) to (d), as well as changes thereof, and the data referred to in Subsection (1) (e) are provided to investors and published in another EU member state in which investments in a UCITS fund are publicly marketed with a translation into

- (a) the language in which documents may be submitted to a supervisory authority of that other EU member state, or
- (b) the English language.

(5) The frequency of disclosure under Subsection (1) (e) is governed by Czech law.

**Public marketing of investments in a foreign investment fund comparable to a UCITS fund in the Czech Republic**

Section 305

(1) Investments in a foreign investment fund comparable to a UCITS fund may be publicly marketed in the Czech Republic from the day when the fund's manager receives a notification from the supervisory authority of another EU member state which is the home EU member state of this fund, comparable to the CNB's notification pursuant to Section 303 (3). The CNB shall enter the foreign investment fund on the register pursuant to Section 597 (d) without undue delay after the reception of documents comparable to those referred to in Section 303 (2) from the supervisory authority of the home state of that fund.

(2) It is forbidden to publicly marketed investments in the Czech Republic in a foreign investment fund comparable to a UCITS fund if it is not managed by a person authorised by the CNB to manage UCITS fund or a supervisory authority of another EU member state entitling it to manage foreign investment funds comparable to the UCITS fund.

Section 306

(1) If there are investments in the Czech Republic publicly marketed in a foreign investment fund comparable to a UCITS fund, an agreement with a bank, foreign bank with a branch in the Czech Republic, securities broker or a person referred to in Section 24 (5) or Section 28 (6) of an act regulating business activities on the capital market must ensure the manner of

- (a) issuance and redemption of securities or book-entry securities issued by this fund in the Czech Republic,
- (b) distributing and paying off the shares in profit and other proceeds from the assets of this fund in the Czech Republic,
- (c) paying off a distribution share and of distributing and paying off other monetary performances in the Czech Republic in case the fund is being dissolved,
- (d) publishing documents and information pertaining to this fund in the Czech Republic.

(2) The obligation laid down in Subsection (1) must be fulfilled even after the investment according to Subsection (1) ceased to be marketed publicly in the Czech Republic until the settlement of obligations towards the owners of securities or book-entry securities issued by this fund who have registered office or residence in the Czech Republic.

(3) In case of foreign investment funds comparable to a UCITS fund that do not have the right of the owners of securities and book-entry securities issued by that fund for their redemption on behalf of that fund, Subsection (1) (a) shall apply *mutatis mutandis*.

Section 307

(1) If there are investments in the Czech Republic being publicly marketed to a foreign investment fund comparable to a UCITS fund, the investors with their registered office or residence in the Czech Republic must be in relation to this fund provided with and there must be published of the internet pages of this fund the up-to-date:

- (a) document comparable to a key investor information document of this fund, as well as changes thereof,
- (b) a document comparable to a statute of the UCITS fund, as well as its amendments,
- (c) a document comparable to an annual report of the UCITS fund, as well as its amendments,
- (d) a document comparable to an semiannual report of the UCITS fund as well as its amendments, and

(e) information on the amounts at which unit certificates and investment shares issued by this fund are issued and redeemed.

(2) For the obligation set forth in Subsection (1), Section 306 (2) shall apply *mutatis mutandis*.

(3) The documents referred to in Subsection (1) (a) to (d) as well as changes thereof and the information referred to in Subsection (1) (e) are provided to the investors and published in the Czech Republic in the same manner in which comparable documents and information pertaining to a UCITS fund under this Act are provided and disclosed to investors pursuant to this Act or pursuant to a directly applicable EU regulation implementing UCITS-D governing key investor information document<sup>11)</sup>.

(4) The documents according to Subsection 1 (a) as well as changes thereof, may be provided to investors and published with a translation into

- (a) the Czech language, or
- (b) language the use of which for these purposes is laid down in a regulation by the CNB.

(5) The documents referred to in Subsection (1) (b) to (d), as well as changes thereof, and the information referred to in Subsection (1) (e) may be provided to investors and published with a translation into

- (a) the Czech language,
- (b) language the use of which for these purposes is laid down in a regulation by the CNB, or
- (c) the English language.

(6) The frequency of publishing information according to Subsection (1) (e) is governed by the laws of the home state of this fund.

## Section 308

### **Public marketing of investments in a foreign investment fund comparable to a UCITS fund managed by a management company in another EU member state**

Investments in a foreign investment fund comparable to a UCITS fund may be publicly marketed in another EU member state from the day when the management company managing this fund receives a notification from a supervisory authority of the home state of this fund that the management company has sent to a supervisory authority of another member state in which these investment are to be publicly marketed a notification, its annexes and an attestation comparable to a notification, its annexes and an attestation according to Section 303 (2).

## Subchapter 2

### **Marketing of investment in a retail AIF, a qualified investors' fund or a comparable foreign investment fund whose home state is EU member state**

#### Section 309

##### **In the case of a manager with registered office in the Czech Republic authorised to exceed the relevant threshold in the case of marketing in the Czech Republic**

Investments in a retail AIF, in a qualified investors' fund or in a comparable foreign investment fund whose home state is an EU member state, managed by a manager with registered office in the Czech Republic, authorised to exceed the relevant threshold, may be offered in the Czech Republic from the day when this fund is registered in the register kept by the CNB according to Sections 597. In case of a foreign investment fund, the content of an application for entry in the register of Section 312 (2) shall apply *mutatis mutandis*.

#### Section 310

##### **In the case of a manager not authorised to exceed the relevant threshold in the case of public marketing in the Czech Republic**

(1) Investments in a qualified investors' fund or in a foreign investment fund comparable to a retail AIF or qualified investors' fund whose home EU member state is an EU member state which is managed by a manager with registered office in the Czech Republic and who is not authorised to exceed the relevant threshold, can be publicly marketed in the Czech Republic from the day when this fund is registered in the register maintained by the CNB pursuant to Section 597 (a), (b), (c) or (d).

(2) Investments in a foreign investment fund comparable to a retail AIF or qualified investors' fund whose home EU member state is another EU member state which is managed by a manager who does not have the authorisation of the supervisory authority of another EU member state to exceed the relevant threshold, having its registered office in another EU member state, can be publicly marketed in the Czech Republic from the date when this fund is registered in the register maintained by the CNB pursuant to Section 597 (d).

##### **In the case of a manager with registered office in the Czech Republic authorised to exceed the relevant threshold in the case of marketing in another EU member state**

#### Section 311

Investments in a retail AIF, a qualified investors' fund or a comparable foreign investment fund whose home state is an EU member state managed by a manager with registered office in the Czech Republic, authorised to exceed the relevant threshold, may be marketed in another EU member state to persons referred to in Section 2a (1) or (2) of the Act governing capital market business and to persons who are considered, according to the Act governing the capital market business or under the law of another EU member state, with respect to investments in that fund as a client who is a professional client from the day on which the management of that fund receives a notification of the CNB pursuant to Section 313 (3).

#### Section 312

(1) If the investments in a UCITS fund are to be marketed in another EU member state according to Section 311, the manager of the concerned investment fund or foreign investment fund notifies it in advance to the CNB. The notification according to the first sentence and annexes thereof are to be sent to the CNB in English language or with a translation into English language.

(2) The notification according to Subsection (1) shall contain, or must be attached with,

- (a) a plan of business activity in relation to this marketing, including information necessary for the identification of the concerned investment fund or foreign investment fund and information necessary for the identification of the home state of this fund,
- (b) a statute or a comparable document, or a memorandum of association of the concerned investment fund or foreign investment fund,
- (c) information necessary for the identification of a depository of the concerned investment fund or foreign investment fund,
- (d) information about the concerned investment fund or foreign investment fund which are provided to investors, or a description of this information, in case of information referred to in Section 241 or Section 293 (1),
- (e) in the case of an investment fund or a foreign investment fund which according to its statute or comparable document invests at least 85% of the value of its assets to one investment fund or foreign investment fund, or to more investment funds or foreign investment funds having mutually the same investment strategy, or may have the exposure in the amount of up to 85% of the value of its assets towards one investment fund or foreign investment fund, or towards more investment funds or more foreign investment funds having mutually the same investment strategy, information on the home state of the funds to which its thus invests, or towards which it has this exposure,
- (f) information necessary for the identification of an EU member state in which investments are to be marketed according to Section 311, and
- (g) in the case of investments to be marketed only to persons referred to in Section 2a (1) or (2) of the act on capital market business and to persons considered according to the act on capital market business or according to the laws of another EU member state in relation to the investment to a particular fund to be a client, who is a professional client, information on measures by which compliance with this limitation is to be ensured, even in the case where these investment are to be offered in that other EU member state through another person in compliance with the laws of that other EU member state.

### Section 313

(1) The CNB shall verify whether the notification and its annexes according to Section 312 has all the prescribed requirements or does not have any other defects.

(2) The CNB sends, within 20 working days from the day when it received the notification and annexes according to Section 312 having all the prescribed requirements and not having any other defects, to the supervisory authority of another EU member state in which the investments are to be marketed according to Section 311,

- (a) this notification and its annexes, and
- (b) a confirmation in English language that the manager of the concerned investment fund or foreign investment fund is authorised to exceed the relevant threshold and to manage investment fund and foreign investment fund with a particular investment strategy.

(3) The CNB shall, without undue delay, notify the manager of the investment fund or the foreign investment fund concerned that it has sent the notification, its annexes and the confirmation pursuant to Subsection (2).

## Section 314

(1) If there are investments being marketed in another EU member state according to Section 311, the manager of the concerned investment fund or foreign investment fund will ask the CNB for granting the consent to every material change in the facts referred to in the notification or its annexes according to Section 312 1 month prior to the day when this change should occur at the latest. If the manager cannot, due to an obstacle which has occurred independently of its will, comply with the time-limit referred to in the first sentence the manager will ask for granting the consent without undue delay after the obstacle ceases to exist.

(2) In the proceedings on the application according to Subsection (1) the CNB may decide that it does not grant the consent to make a change only if making the change would mean that the manager of the concerned investment fund or foreign investment fund would cease to fulfil duties imposed on the manager authorised to exceed the relevant threshold by this Act, on the basis of this Act or a directly applicable EU regulation implementing the AIFMD.

(3) If the CNB decides that it does not grant the consent to execute a change, the manager must not execute the change, and if it has already been executed, the manager must without undue delay restore the facts referred to in the notification and its annexes according to Section 312 to the previous condition. If the manager does not fulfil the duty according to the first sentence, further offering of investments according to Section 311 is prohibited.

(4) If the CNB agrees with the execution of a change, it informs of this change without undue delay the supervisory authority of another member state in which the investments according to Section 311 are offered.

(5) The application for granting the consent according to Subsection (1) must contain information and documents proving that execution of this change will not mean that the manager of the concerned investment fund or foreign investment fund ceases to fulfil duties imposed on the manager authorised to exceed the relevant threshold by this Act, on the basis of this Act or by a directly applicable EU regulation implementing the AIFMD.

(6) The application according to Subsection (5) may only be submitted electronically; the application must contain information and documents proving the fulfilment of the conditions laid down by this Act. The CNB lays down in a regulation the requirements of the application proving the fulfilment of the conditions laid down by this Act, the form of application and the manner of submission.

## Section 315

### **In case of a manager with registered office in another EU member state authorised to exceed the relevant threshold, in case of marketing in the Czech Republic**

(1) Investments in a retail AIF, a qualified investors' fund or a comparable foreign investment fund whose home state is an EU member state, managed by a manager authorised to exceed the relevant threshold with registered office in another EU member state may be marketed in the Czech Republic to persons referred to in Section 2a (1) or (2) of the Act on Capital Market Business and to persons who are according to the Act on Capital Market Business considered in relation to the investments in a particular fund as a client, who is a professional client, from the day when the manager of this fund receives a notification, comparable to a notification of the CNB according to Section 313 (3), from the supervisory authority of another member state in which it has its registered office. The CNB shall record the foreign investment fund on the register pursuant to Section 597 (e) without undue delay after receiving from the supervisory authority from another EU member state documents comparable to those referred to in Section 313 (2).

(2) Investments pursuant to Subsection (1) may be publicly marketed in the Czech Republic from the date on which the fund is registered in the register maintained by the CNB pursuant to Section 597 (a), (b), (c) or (d).

## Chapter 2

### **In the case of a manager with registered office in a state which is not an EU member state** Section 316

(1) Investments in a foreign investment fund comparable to a retail AIF or a qualified investors' fund whose home state is another EU member state, managed by a manager that exceeds the relevant threshold with registered office in a state which is not a member state, may be marketed in the Czech Republic from the day when this fund is registered in a list kept by the CNB according to Subsection (2).

(2) The CNB shall record the foreign investment fund referred to in Subsection (1) on the register referred to in Section 597 (d) or (e) at the request of its manager within 20 working days if:

- (a) the supervisory authority of another state which has granted the fund's manager rights to manage this fund and the CNB, according to Articles 113 to 115 of Commission Delegated Regulation (EU) No 231/2013 have agreed to exchange information necessary for the exercise of supervision under this Act,
- (b) the supervisory authority of another state, which granted the manager of this fund an authorisation to manage this fund, and a supervisory authority of the home state of this fund, in compliance with Articles 113 to 115 of Commission Delegated Regulation (EU) No 231/2013, have agreed to exchange information necessary for the exercise of supervision under the law of the home EU member state of the fund implementing the directive of the European Parliament and of the Council regulating the alternative investment fund managers<sup>5)</sup>, and
- (c) the state in which the manager of this fund has its registered office is not on the list of non-cooperative countries and territories drawn up by the Financial Action Task Force on money laundering of the Organisation for Economic Co-operation and Development.

(3) In the marketing of investments according to Subsection (1) the manager of the concerned foreign investment fund fulfils in relation to this fund, the CNB and investors with registered office or residence in the Czech Republic duties imposed on the manager authorised to exceed the relevant threshold according to Sections 34 to 37, Section 233 to 235, Sections 241, 290, 291, 293, 463, 464 and 557 are applicable *mutatis mutandis*.

(3) The obligations laid down in Subsection (3) must be fulfilled even after the investment according to Subsection (1) ceased to be marketed in the Czech Republic until the settlement of obligations towards persons being in a position similar to that of unitholders, beneficiaries, founders, shareholders or silent partners of the concerned foreign investment fund, who has their registered office of residence in the Czech Republic, and, in the case of a facility comparable to a trust, those who increased the assets of this facility as the concerned foreign investment fund by a contract and have their registered office of residence in the Czech Republic.

(5) It is prohibited to market investments in the Czech Republic according to Subsection (1) after the day determined in an act within delegated competence adopted by the European Commission on the basis of Article 68 (6) of the directive of the European Parliament and of the Council regulating the alternative investment fund managers<sup>5)</sup> as a day as of which the domestic regimes regulated in Articles 36 and 42 of this directive must cease to exist and the passport regime regulated in Articles 35 and 37 to 41 of this directive becomes the only mandatory regime valid in all member states.

(6) The application according to Subsection (2) may only be submitted electronically; the application must contain information and documents proving the fulfilment of the conditions laid down by this Act. The CNB lays down in a regulation the elements of the application proving the fulfilment of the conditions laid down by this Act, the form of the application and the manner of submission.

### Section 317

(1) Investments in a retail AIF, a qualified investors' fund or a comparable foreign investment fund whose home state is another EU member state, managed by a foreign person with an authorisation according to Section 481 may be marketed in the Czech Republic from the day when this fund is registered in a register kept by the CNB according to Section 597.

(2) Sections 311 to 314 apply *mutatis mutandis* to marketing investments in another EU member state to a retail AIF, to a qualified investors' fund or to a comparable foreign investment fund, whose home state is another EU member state, which is managed by a foreign person with an authorisation under Section 481, to the persons referred to in Section 2a (1) or (2) of the Act on Capital Market Business and persons who, according to an Act on Capital Market Business or under the law of another EU member state, are considered in relation to the investment into a particular fund to be a client, who is a professional client.

(3) Section 315 shall apply *mutatis mutandis* to the marketing of investment in the Czech Republic to a retail AIF, to a qualified investors' fund or to a comparable foreign investment fund whose home state is another EU member state and which is managed by a person with registered office in a state which is not a member state, having an authorisation granted by a supervisory authority of another member state comparable to the authorisation according to Section 481.

(4) Investments in a foreign investment fund comparable to a retail AIF or qualified investors' fund whose home state is another EU member state which is managed by a manager established in a state other than an EU member state which is not authorised under Section 481 or a comparable authorisation granted by a supervision authority of another EU member state may be publicly marketed in the Czech Republic from the date on which the fund is registered in the register maintained by the CNB pursuant to Section 597 (d).

## TITLE III

### MARKETING INVESTMENT TO A FOREIGN INVESTMENT FUND WHOSE DOMESTIC STATE IS NOT AN EU MEMBER STATE

#### Chapter 1

##### **In the case of a manager having its registered office in an EU member state**

### Section 318

##### **In the case of a management company authorised to exceed the relevant threshold in case of marketing is only in the Czech Republic**

(1) An investment in a foreign investment fund whose home state is not an EU member state managed by a management company authorised to exceed the relevant threshold can only be marketed in the Czech Republic from the date on which this fund is registered in the register maintained by the CNB pursuant to Section 597 (d) or (e).

(2) The CNB shall register the foreign investment fund referred to in Subsection (1) on the register referred to in Section 597 (d) or (e) at the request of its manager within 20 working days if:

- (a) the supervisory authority of the home state of this fund and the CNB have agreed, according to Articles 113 to 115 of Commission Delegated Regulation (EU) No 231/2013 agreed on the exchange of information necessary for the exercise of supervision according to this Act, and
- (b) the home state of this fund is not on the list of non-cooperative countries and territories drawn up by the Financial Action Task Force on money laundering of the Organisation for Economic Co-operation and Development.

(3) In the offering of investments according to Subsection (1) the manager of the concerned foreign investment fund fulfils in relation to this fund duties imposed on the manager authorised to exceed the relevant threshold according to this Act, on the basis of this Act or according to the directly applicable EU regulation implementing the AIFMD<sup>6)</sup>, with the exception of Section 60 to 84; however, the manager of the concerned foreign investment fund ensures that the activity of a depository according to Sections 71 to 73 in relation to his fund is carried out by other persons. The manager of the concerned foreign investment fund notifies to the CNB information necessary for the identification of persons performing the activity of a depository of this fund according Sections 71 to 73 as well as changes of such information.

(4) Section 316 (4) applies to the duties laid down in Subsection (3) *mutatis mutandis*.

(5) It is forbidden to market investments in the Czech Republic pursuant to Subsection (1) after the date specified in the delegated act adopted by the European Commission pursuant to Article 68 (6) of the AIFMD<sup>5)</sup> as a day as of which the domestic regimes regulated in Articles 36 and 42 of this directive must cease to exist and the passport regime regulated in Articles 35 and 37 to 41 of this directive will become the only mandatory regime valid in all EU member states.

(6) The application according to Subsection (2) may only be filed electronically; the application must contain information and documents proving the fulfilment of the conditions laid down by this Act. The CNB lays down in a regulation the elements of the application proving the fulfilment of the conditions laid down by this Act, the form of the application and the manner of filing. The CNB further lays down in a regulation, in the extent necessary for the exercise of supervision over the capital market, the extent, structure, form and manner of notifying information and documents according to Subsection (3) to the CNB, as well as time-limits for their notifying and providing.

## Section 319

### **In the case of a manager, with registered office in another EU member state, authorised to exceed the relevant threshold in case of marketing is only in the Czech Republic**

(1) An investment in a foreign investment fund whose home state is not an EU member state managed by a manager authorised to exceed the relevant threshold with registered office in the Czech Republic can only be marketed in the Czech Republic from the date on which this fund is registered in the register maintained by the CNB pursuant to Section 597 (d) or (e).

(2) The CNB shall register the foreign investment fund referred to in Subsection (1) on the register referred to in Section 597 (d) or (e) at the request of its manager within 20 working days if:

- (a) the supervisory authority of the home state of this fund and the supervisory authority of another EU member state where the manager has its registered office have, according to Articles 113 to 115 of Commission Delegated Regulation (EU) No 231/2013, agreed on the exchange of information necessary for the exercise of supervision under the law of that other EU member state implementing the AIFMD<sup>5)</sup> and
- (b) the condition according to Section 318 (2) (b) is fulfilled *mutatis mutandis*.

(3) In the marketing of investments according to Subsection (1) the manager of the concerned foreign investment fund fulfils in relation to this fund duties imposed on the manager authorised to exceed the relevant threshold according to the directly applicable EU regulation implementing the AIFMD<sup>6)</sup>, according to the law of the country in which it has its registered office, on the basis of the AIFMD<sup>5)</sup> with the exception of Article 21 of the AIFMD, the manager of the foreign investment fund concerned shall, however, ensure that the activities of the depository under Article 21 (7), (8) and (9) of the AIFMD<sup>5)</sup> in relation to that fund are performed by other persons. The manager of the concerned foreign investment fund notifies to the supervisory authority of another EU member state in which it has its registered office information necessary for the identification of persons performing the activity of a depository of this fund according Articles 21 (7), (8) and (9) of the AIFMD<sup>5)</sup> as well as changes of such information.

(4) Section 316 (4) applies for the purposes of Subsection (3) *mutatis mutandis*.

(5) It is prohibited to market investments in the Czech Republic according to Subsection (1) after the day specified in the delegated act adopted by the European Commission on the basis of Article 68 (6) of the AIFMD<sup>5)</sup>, as a day as of which the domestic regimes regulated in Articles 36 and 42 of this directive must cease to exist and the passport regime regulated in Articles 35 and 37 to 41 of this directive will become the only mandatory regime valid in all member states.

(6) An application under Subsection (2) may be submitted only electronically, the application must contain data and documents proving the fulfillment of the conditions stipulated by this Act. The CNB shall lay down, by a regulation, the elements of the application proving the fulfilment of the conditions laid down by this Act, the form of the application and the manner of filing.

## Section 320

### **In the case of a manager authorised to exceed the relevant threshold in the case of marketing in the Czech Republic**

(1) Investments in a foreign investment fund whose home state is not an EU member state, managed by a management company authorised to exceed the relevant threshold may only be marketed in the Czech Republic from the day when this fund is registered in a register kept by the CNB pursuant to Section 597 (d) or (e).

(2) The CNB shall register the foreign investment fund referred to in Subsection (1) on the register referred to in Section 597 (d) or (e) at the request of its manager within 20 working days if:

- (a) the conditions according to Section 318 (2) (a) and (b) are met *mutatis mutandis*,
- (b) the home state of this fund and the Czech Republic concluded a treaty which corresponds to the principles referred to in Article 26 of the Model Tax Convention of the Organisation for Economic Co-operation and Development on Income and on Capital, ensuring the exchange of information in tax matters, and
- (c) the day from which these investments are to be marketed is preceded by a day determined in an EU regulation issued pursuant to Article 67 (6) of the AIFMD<sup>5)</sup> as the date of entry into force of Articles 35 and 37 to 41 of this directive.

(3) The application according to Subsection (2) may only be submitted electronically; the application must contain information and documents proving the fulfilment of the conditions laid down by this Act. The CNB lays down in a regulation the elements of the application proving the fulfilment of the conditions laid down by this Act, the form of the application and the manner of submission.

## Section 321

### **In the case of a management company authorised to exceed the relevant threshold in the case of marketing in another EU member state**

(1) Sections 311 to 314 apply to the marketing of investments in another EU member state to a foreign investment fund whose home state is not an EU member state, managed by a management company authorised to exceed the relevant threshold to persons referred to in Section 2a (1) or (2) of an act on Capital Market Business and to persons who are according to an act on Capital Market Business or according to the laws of another EU member state considered in relation to the investments in a particular fund to be a client, who is a professional client, *mutatis mutandis*.

(2) The investments referred to in Subsection (1) may be marketed in another EU member state only if:

- (a) the conditions according to Section 318 (2) (a) and (b) and Section 320 (2) (b) and (c) are met and
- (b) the home state of this fund and another EU member state, in which these investments are to be marketed, concluded a treaty which corresponds to the principles referred to in Article 26 of the Model Tax Convention of the Organisation for Economic Co-operation and Development on Income and on Capital, ensuring the exchange of information in tax matters.

## Section 322

### **In the case of a manager with registered office in another EU member state authorised to exceed the relevant threshold in the case of marketing in the Czech Republic**

(1) Sections 315 (1) applies to the marketing of investments in the Czech Republic to a foreign investment fund whose home state is not an EU member state, managed by a manager authorised to exceed the relevant threshold, having its registered office in another EU member state, to persons referred to in Section 2a (1) or (2) of an act on Capital Market Business and to persons who are according to an act on Capital Market Business considered in relation to the investments in a particular fund to be a client, who is a professional client, *mutatis mutandis*.

(2) Investments pursuant to Subsection (1) may be marketed in the Czech Republic only if:

- (a) the conditions according to Section 318 (2) (b), Section 319 (2) (a) and 320 (2) (b) and (c) are met *mutatis mutandis* and
- (b) the home state of this fund and another EU member state, in which the manager of this fund has its registered office, concluded a treaty which corresponds to the principles referred to in Article 26 of the Model Tax Convention of the Organisation for Economic Co-operation and Development on Income and on Capital, ensuring the exchange of information in tax matters.

(3) Investments pursuant to Subsection (1) may be publicly marketed in the Czech Republic from the date on which the fund is registered in the register maintained by the CNB pursuant to Section 597 (d) or (e).

(4) The CNB shall register the foreign investment fund referred to in Subsection (1) on the register pursuant to Section 597 (d) or (e) at the request of its manager within 20 working days, if the conditions pursuant to Section 318 (2) (b), Section 319 (2) (a), Section 320 (2) (b) and (c) and Subsection (2) (b) are met *mutatis mutandis*.

(5) An application according Subsection (4) may be submitted only electronically; the application must contain data and documents proving the fulfillment of the conditions stipulated by this Act. The CNB shall lay down, by regulation, the elements of the application certifying compliance with the conditions laid down by this Act, its form and method of submission.

## Section 323

### **In the case of a management company with a registered office in an EU member state not authorised to exceed the relevant threshold in the case of public marketing in the Czech Republic**

Investments in a foreign investment fund whose home state is not an EU member state which is managed by a manager with a registered office in an EU member state not authorised to exceed the relevant threshold may be publicly marketed in the Czech Republic from the date on which the fund is registered in the register maintained by the CNB under Section 597 (d).

## Chapter 2

### **In the case of a manager not having its registered office in an EU member state**

## Section 324

### **Marketing only in the Czech Republic**

(1) Investments in a foreign investment fund whose home state is not an EU member state which is managed by the manager, who exceeds the relevant threshold with registered office in a state which is not an EU member state may only be marketed in the Czech Republic from the date when this fund is registered in the register maintained by the CNB pursuant to Section 597 (d) or (e).

(2) The CNB shall register the foreign investment fund referred to in Subsection (1) on the register referred to in Section 597 (d) or (e) at the request of its manager within 20 working days if:

- (a) the conditions according to Section 318 (2) (a) and (e) are fulfilled *mutatis mutandis*,
- (b) the supervisory authority of another state which granted the fund's manager authorisation to manage such fund and the CNB, according to Articles 113 to 115 of Commission Delegated Regulation (EU) No 231/2013 have agreed to exchange information necessary for the exercise of supervision under this Act, and
- (c) the state in which the manager of this fund has its registered office is not on the list of non-cooperative countries and territories drawn up by the Financial Action Task Force on money laundering of the Organisation for Economic Co-operation and Development.

(3) Section 316 (3) to (5) shall apply *mutatis mutandis* to the marketing of investments pursuant to Subsection (1).

(4) An application under Subsection (2) may be submitted only electronically, the application must contain data and documents proving the fulfillment of the conditions stipulated by this Act. The CNB shall lay down, by a regulation, the requirements of the application certifying compliance with the conditions laid down by this Act, its form and method of submission.

## Section 325

### **Marketing in the Czech Republic**

(1) Investments in a foreign investment fund whose home state is not an EU member state, managed by a foreign person with an authorisation according to Section 481, may be marketed in the Czech Republic from the day when this fund is registered in the register kept by the CNB according to the Section 597 (d) or (e).

(2) The CNB shall register the foreign investment fund referred to in Subsection (1) on the register referred to in Section 597 (d) or (e) at the request of its manager within 20 working days, if the conditions pursuant to Section 318 (2) (a) and (b) and Section 320 (2) (b) and (c) are met.

(3) Investments in a foreign investment fund whose home state is not an EU member state, managed by a person with registered office in a state which is not an EU member state, having an authorisation, comparable to the authorisation according to Section 481, granted by the a supervisory authority of another member state, may be marketed in the Czech Republic to persons referred to in Section 2a (1) or (2) of an Act on Capital Market Business and to persons who are according to Act on Capital Market Business or according to the laws of another EU member state considered in relation to the investments in a particular fund to be a client, who is a professional client, from the day when the manager of this fund receives a notification from the supervisory authority of another EU member state, which granted such a person an authorisation comparable to the authorisation according to Section 481, comparable to the notification of the CNB according to Section 313 (3); these investment may be offered in the Czech Republic only if the conditions according to Section 318 (2) (b) and Section 320 (2) (b) and (c) are fulfilled *mutatis mutandis*, and

- (a) the supervisory authority of the home state of this fund and the supervisory authority of another EU member state, that has granted the manager of this fund an authorisation comparable to the authorisation according to Section 481, in compliance with Articles 113 and 115 of Commission Delegated Regulation (EU) No 231/2013, have agreed on the exchange of information necessary for the exercise of supervision according to the laws of that other EU member state implementing the AIFMD<sup>5)</sup>, and
- (b) the home state of this fund and another EU member state whose supervisory authority granted the manager of this fund an authorisation comparable to an authorisation according to Section 481, concluded a treaty which corresponds to the principles referred to in Article 26 of the Model Tax Convention of the Organisation for Economic Co-operation and Development on Income and on Capital, ensuring the exchange of information in tax matters.

(4) Investments according to Subsection (3) may be publicly marketed in the Czech Republic from the day when this fund is registered in the register kept by the CNB according to Section 597 (d) or (e).

(5) The CNB shall register a foreign investment fund referred to in Subsection (3) in the register according to Section 597 (d) upon an application of its manager within 20 working days, if the conditions according to Section 318 (2) (b) and Section 320 (2) (b) and (c) and (3) (a) and (b) are fulfilled *mutatis mutandis*.

(6) The application according to Subsections (2) and (5) may only be filed electronically; the application must contain information and documents proving the fulfilment of the conditions laid down by this Act. The CNB lays down in a regulation the requirements of the application proving the fulfilment of the conditions laid down by this Act, the form of the application and the manner of filing.

#### Section 325a

##### **In case of a manager with registered office in a state, that is not an EU member state and that is neither authorised to exceed the relevant threshold or not exceeding the relevant threshold in case of public marketing in the Czech Republic**

Investments in a foreign investment fund whose home state is not an EU member state and which is managed by a manager established in a state other than an EU member state which does not have an authorisation under Section 481 or a comparable authorisation granted by a supervisory authority in another EU member state and which does not exceed the relevant threshold may be publicly marketed from the day when this fund is registered in the list maintained by the CNB pursuant to Section 597 (d).

## Section 326

### **Marketing in an another EU member state**

For the purpose of marketing investment in another EU member state to a foreign investment fund whose home state is not an EU member state and which is managed by a foreign person with an authorisation under Section 481, to persons referred to in Section 2a (1) or (2) of an Act on Capital Market Business and to persons who are according to the laws of that other EU member state considered in relation to the investments in a particular fund to be a client, who is a professional client apply *mutatis mutandis*; these investments may be marketed in another EU member state only if the conditions according to Section 318 (2) (a) and (b), Section 320 (2) (b) and (c) and Section 321 (2) (b) are fulfilled *mutatis mutandis*.

## Chapter 3

### **A depository of a foreign investment fund whose home state is not an EU member state**

## Section 327

(1) A depository of a foreign investment fund whose home state is not an EU member state and to which are marketed investments in the Czech Republic, may only be

- (a) a foreign person
  1. who has its registered office or branch in the home EU member state of that fund,
  2. who complies with prudential rules according to the laws of the state, in which it has its registered office,
  3. who is subject to the supervision in the state in which it has its registered office,
  4. if the conditions pursuant to Section 318 (2) (b) and Section 320 (2) (b) are met *mutatis mutandis*,
  5. if the supervisory authority of the state in which it has its registered office and the CNB have agreed to exchange information necessary for the exercise of supervision under this Act, and
  6. who undertakes in an agreement comparable to a depository agreement to exercise a controlling activity of a depository at least in a way as follows from Section 73, and to be liable for harm at least in a way as follows from Sections 80 to 82, or
- (b) a person who has its registered office or branch in the EU member state in which the management company of that fund has its registered office or which is a state of reference of the manager of this fund, and which may be according to the laws of that member state a depository.

(2) The provisions of this Act invoking a depository of a retail AIF or a depository of a qualified investors' fund apply to a depository of a foreign investment fund referred to in Subsection (1) (b) whose manager has its registered office or branch in the Czech Republic, or for whose manager the Czech Republic is a state of reference, state of reference apply *mutatis mutandis*.

(3) The requirements for fulfilment of the conditions according to Subsection 1 (a) (2) and (3) are further defined Article 84 of Commission Delegated Regulation (EU) No 231/2013.

## PART TEN

### CROSS-BORDER MANAGEMENT

#### TITLE I

##### MANAGEMENT COMPANY OR FOREIGN PERSON WITH THE AUTHORISATION FROM THE CNB NOT COMPARABLE WITH THE INTERNALLY MANAGED INVESTMENT FUND MANAGING A FOREIGN INVESTMENT FUND

#### Chapter 1

##### Through a branch

###### Section 328

###### Notice of the management company

(1) If a management company authorised to manage UCITS funds and comparable foreign investment funds or authorised to exceed the relevant threshold or a foreign person with an authorisation under Section 481 which is not comparable to an internally managed investment fund, intends to manage a foreign investment fund in the host state through a branch or intends as a manager that is authorised to exceed the relevant threshold to perform any of the activities pursuant to Section 11 (1) (c) to (f) or pursuant to Section 11 (6) (a), it shall notify the CNB in advance.

(2) The notice referred to in Subsection (1) shall include

- (a) a host state in which the branch is to be placed,
- (b) a plan of business activity including mainly the type and range of services that the notifier intends to provide, for example, whether the notifier intends to administer the foreign investment fund,
- (c) if the notifier intends to manage a foreign investment fund comparable to a UCITS fund in the host state,
  1. a description of the risk management system in relation to that branch,
  2. rules for dealing with the complaints and claims of the investors of such fund,
  3. rules for ensuring the provision of information to the investors and
  4. a description of the measures adopted to ensure the exercise of the rights of investors in such a fund in the host state,
- (d) if the notifier intends to manage a foreign fund comparable to a retail AIF or a qualified investors' fund in the host state, the data necessary to identify that fund,
- (e) an organizational structure of the branch,
- (f) the address of the branch to which information and documents may be required, and
- (g) the information necessary to identify the branch manager and its contact details.

###### Section 329

###### Procedure of the CNB

(1) If the CNB does not have objections against placing the branch of the notifier in the host state, it will communicate the information according to Section 328 (2) to the supervisory authority of the host state, within 2 months from the day of delivery of the notice according to Section 328 (1).

(2) The CNB also informs the supervisory authority of the host state about the conditions for provision of compensation from the Guarantee Fund of the securities brokers.

(3) The CNB shall further inform the relevant supervisory authority of the host state about the scope of licence of the notifier and about possible restrictions that the notifier is obliged to comply with while managing or performing administration of a foreign investment fund.

(4) The CNB shall inform the notifier about the transmission of the information in accordance with Subsections (1) to (3) to the supervisory authority of the host state without undue delay.

(5) If a management company authorised to manage UCITS funds manages a foreign investment fund comparable to a UCITS fund and the CNB does not consider the location of the branch of the notifier in the host state to be appropriate due to the organizational structure or financial situation of the notifier with regards to the plan of business activity according to Section 328 (2) (b), the CNB decides within 2 months from the day of delivery of the notice according to Section 328 (1) that it denies to communicate the information listed in Section 328 (2) to the supervisory authority of the host state.

(6) If a management company authorised to exceed the relevant threshold or a foreign person with an authorisation under Section 481 which is not comparable to an internally managed investment fund, manage a foreign investment fund that is comparable to a retail AIF or a qualified investors' fund or to perform any of the activities pursuant to Section 11 (1) (c) to (f) or pursuant to Section 11 (6) (a), and this notifier does not comply, or with regards to the plan of business activities according to Section 328 (2) (b) cannot be expected that it will continue to comply with the duties imposed on the manager authorized to exceed the relevant threshold by this Act, pursuant to this Act or a directly applicable EU regulation implementing the AIFMD<sup>6)</sup> The CNB will decide within 2 months from the day of delivery of the notice according to Section 328 (1) that it denies to communicate the information according to the Section 328 (2) to the supervisory authority of the host state.

## Section 330

### **Creation of the authorisation**

(1) A management company authorised to manage UCITS funds and comparable foreign investment funds may start, through a branch, to manage a foreign investment fund comparable to a UCITS fund and, if necessary, carry out other activities specified in the notice pursuant to Section 328 (2) (b) in the host state from the date when the supervisory authority of the host state informs it about which information obligations it must comply with, or after 2 months from the day of delivery of the information listed in Section 329 (4) to the supervisory authority of the host state from the CNB.

(2) A management company authorised to exceed the relevant threshold, and a foreign person with an authorisation under Section 481 that is not comparable to an internally managed investment fund may start to manage through a branch a foreign investment fund comparable to a retail AIF or a qualified investors' fund or to perform any of the activities under Section 11 (1) (c) to (f) or pursuant to Section 11 (6) (a) and, if necessary, to carry out other activities specified in the notice pursuant to Section 328 (2) (b), as of the date on which the CNB informed it pursuant to Section 329 (4) on the transmission of the information to the supervisory authority of the host state.

## Section 331

### **Notification of changes**

(1) The notifier shall notify the CNB and the competent supervisory authority of the host state of any change in the facts notified pursuant to Section 328 (2) no later than one month before the date of its realization.

(2) If the notifier cannot meet the deadline according to Subsection (1) due to an impediment that occurred independently on its will, the notifier will notify the change without undue delay after the impediment passes.

(3) In case of management of a foreign investment fund comparable to a UCITS fund, the CNB shall decide within 2 months from the date of the delivery of the notification under Subsection (1) that it refuses to communicate to the supervisory authority of the host state the change referred to in Subsection (1), if it does not find this change appropriate due to the organizational structure or the financial situation of the notifier.

(4) In case of management of a foreign investment fund comparable to a retail AIF or a qualified investors' fund, the CNB shall decide within 2 months from the date of the delivery of the notification according to Subsection (1) on refusing to communicate the change according to Subsection (1) to the supervisory authority of the host state if the notifier does not comply, or with regards to the change planned cannot be expected that it will continue to comply with the duties imposed on the manager authorized to exceed the relevant threshold by this Act, under this Act or a directly applicable EU regulation implementing the AIFMD<sup>6</sup>.

(5) The CNB shall, without undue delay, inform the competent supervisory authority of the host state also of any change notified under Subsection (1).

## **Chapter 2**

### **Without placing a branch**

#### **Section 332**

##### **Notice**

(1) If a management company is authorised to manage UCITS funds and comparable foreign investment funds or is authorised to exceed the relevant threshold, or a foreign person with an authorisation under Section 481, which is not comparable to an internally managed investment fund, manage a foreign investment fund in the host state without placing a branch, it shall make a prior notice to the CNB in advance.

(2) The notice referred to in Subsection (1) shall include the indication of the host state in which the notifier intends to manage a foreign investment fund without placing a branch and information listed in Section 328 (2) (b) to (d).

#### **Section 333**

##### **Procedure of the CNB**

(1) The CNB shall communicate the information according to Section 332 (2) to the supervisory authority of the host state within a month from the date of delivery of the notice according to Section 332 (1).

(2) The CNB also informs the supervisory authority of the host state about the conditions for provision of compensation from the Guarantee Fund of the securities brokers.

(3) The CNB further informs the relevant supervisory authority of the host state about the scope of authorisation of the notifier and about possible restrictions that the notifier is obliged to comply with while managing or administrating a foreign investment fund.

(4) The CNB shall, without undue delay, inform the notifier of the transmission of the information referred to in Subsections (1) to (3) to the supervisory authority of the host state.

#### **Section 334**

### **Inception of the authorisation**

(1) A management company authorised to manage UCITS funds and comparable foreign investment funds may start to carry out the activities specified in the notice pursuant to Section 328 (2) (b) in the host state from the date on which the CNB, pursuant to Section 333 (4), informed it of the submission of the data of the host state's supervisory authority or after futile expiration of time limit according to Section 333 (1).

(2) A management company authorised to exceed the relevant threshold and a foreign person with an authorisation under Section 481 which is not comparable with the internally managed investment fund may start without placing of a branch to manage a foreign investment fund comparable to a retail AIF or qualified investors' fund or to carry out any of the activities according to Section 11 (1) (c) to (f) or according to Section 11 (6) (a) and, if necessary, to carry out other activities specified in the notice pursuant to Section 328 (2) (b), as of the date on which the CNB informed it pursuant to Section 333 (4) information to the supervisory authority of the host state.

### Section 335

#### **Notification of changes**

(1) The notifier shall notify the CNB and the supervisory authority of the host state of any change in the facts notified pursuant to Section 332 (2) latest one month prior to its realization.

(2) If the notifier cannot meet the deadline according to Subsection (1) due to an impediment that occurred independently on its will, the notifier will notify the change without undue delay after the impediment passes.

(3) The CNB informs the supervisory authority of the host state without undue delay also about every change notified in accordance with Subsection (1).

### Section 336

#### **Provision of information by the CNB to the supervisory authority of the host state**

If requested by the supervisory authority of the host state, the CNB will provide information needed for the performance of supervision over the notifier, mainly

- (a) information about every managing person of the notifier or information about the managing person of the branch of the notifier placed in the host state,
- (b) information about every person with a share in the registered capital or voting rights of the notifier, and
- (c) information about the tied agents with which the notifier intends to perform the activity in this host state.

## TITLE II

### MANAGEMENT OF A FOREIGN INVESTMENT FUND, WHOSE HOME STATE IS NOT A MEMBER STATE

### Section 337

A management company authorised to exceed the relevant threshold may manage a foreign investment whose home state is not a member state, if the investments in this fund are not marketed in a member state, as long as

- (a) it complies, while managing this foreign investment fund, the obligation imposed on the management company authorised to exceed the relevant threshold by this Act, pursuant to this Act or a directly applicable EU regulation implementing the AIFMD<sup>6</sup>, except for the obligations listed in Sections 60 to 91, Sections 233 to 236 and Sections 290 to 292, and
- (b) the supervisory authority of the home state of this foreign investment fund and the CNB in accordance with Articles 113 to 115 of Commission Delegated Regulation (EU) No 231/2013, agreed on the exchange of information needed for the performance of supervision according to this Act.

### TITLE III

#### A FOREIGN PERSON MANAGING A UCITS FUND

##### Section 338

(1) The CNB shall inform a foreign person listed in Section 14 (1) that intends to manage a UCITS fund through a branch placed in the Czech Republic within 2 months of the day it received the information comparable to the information in accordance with Section 328 (2) about duties stated by this Act, based on this Act and the act regulating business activities on the capital market, with which this foreign person is obliged to comply while providing these services.

(2) The foreign person referred to in Subsection (1) may start, through a branch placed in the Czech Republic, to manage a UCITS fund from the date on which the CNB has informed it about the duties stated by this Act, based on this Act and the act regulating business activities on the capital market, with which this foreign person is obliged to comply while providing these services, or after the lapse of time stated in Subsection (1).

##### Section 339

The foreign person listed in Section 14 (1) may start managing a UCITS fund without a branch placed in the Czech Republic

- (a) from the day the CNB receives the information related to the management of a UCITS fund by this foreign person from the supervisory authority of another member state, which granted a licence for the activity to this foreign person, or
- (b) after a month from the day the supervisory authority of another EU member state, which granted a licence for the activity to this foreign person, receives the information related to the management of a UCITS fund by this foreign person.

##### Section 340

#### **Obligations of a foreign person to manage a UCITS fund**

- (1) The foreign person referred to in Section 14 (1), which manages a UCITS fund,
  - (a) publishes and provide in the Czech Republic documents and information which it publishes and provides under the legislation adopted pursuant to the UCITS-D<sup>4)</sup> in the EU member state in which it has its registered office,
  - (b) notifies the CNB at least 1 month in advance of any change in the data contained in a notification comparable to the notification pursuant to Section 328 (2), and
  - (c) follows the rules of conduct during management of a UCITS fund defined by this Act and on the basis of this Act.

(2) If the foreign person referred to in Subsection (1) can not keep the time period referred to in Subsection (1) (b) for an obstacle which has arisen independently of its will, it will notify the change to the CNB without undue delay after the obstacle has ceased.

(3) The foreign person referred to in Section 14 (1) shall, when managing a UCITS fund in the Czech Republic, use the same denomination as the one used in the state in which it has its registered office. In the event of insufficient differentiation of its denomination from another, the CNB may impose an obligation to add a distinctive element.

(4) Since the day when a supervisory authority of another EU member state has withdrawn an authorisation from a foreign person referred to in Section 14 (1) to manage foreign investment funds comparable to a UCITS fund, that person is not authorised to manage a UCITS fund; till the settlement of obligations towards the owners of securities or book-entry securities issued by this fund, having a registered office or residence in the Czech Republic, this person is viewed as a foreign person referred to in Section 14 (1) which manages a UCITS fund, and this person fulfil its duties defined in Subsection (1) to (3).

## TITLE IV

### FOREIGN PERSON MANAGING RETAIL AIF OR QUALIFIED INVESTOR'S FUND

#### Section 342

The foreign person referred to in Section 14 (2) may start to manage a retail AIF or a qualified investor's fund through a branch located in the Czech Republic from the day, when the information that the supervisory authority from another EU member state granted it an authorisation to exceed the relevant threshold, provided the CNB with data concerning the management of a retail AIF or qualified investor's fund by this foreign person, is received.

#### Section 343

The foreign person referred to in Section 14 (2) may start to manage a retail AIF or a qualified investor's fund without a branch located in the Czech Republic from the date on which the information is received from the supervisory authority of another EU member state which has granted this authorisation to the foreign person and the supervisory authority submitted to the CNB the data concerning the management of a retail AIF or a qualified investor's fund by this foreign person.

#### Section 344

#### **Obligations of a foreign person to provide services for the management of a retail AIF or qualified investor's fund**

(1) The foreign person referred to in Section 14 (2), which manages a retail AIF or a fund of qualified investor's fund, or performs any of the activities pursuant to Section 11 (1) (c) to (f) or pursuant to Section 11 (6) (a),

- (a) publishes and makes available in the Czech Republic documents and information which it publishes and makes available according to the legislation adopted on the basis of the AIFMD<sup>5)</sup> in the EU member state in which it has its registered office or the supervisory authority has granted it an authorisation comparable to the authorisation pursuant to Section 481, if it does not have its registered office in an EU member state,
- (b) notifies the CNB at least 1 month in advance of any change in the data contained in a notification comparable to the notification pursuant to Section 328 (2), and
- (c) adheres to the rules of conduct and the requirements for the proper and prudent pursuit of activities within the scope of activities performed through a branch located in the Czech Republic.

(2) Where the foreign person referred to in Section 14 (2) who provides services in the Czech Republic can not keep the time period referred to in Subsection (1) (b) for an obstacle which has arisen independently of its will, it will notify the change without undue delay after the obstacle has ceased.

(3) The foreign person referred to in Section 14 (2) shall, when managing a retail AIF or a qualified investors' fund, or performs any of the activities pursuant to Section 11 (1) (c) to (f) or pursuant to Section 11 (6) (a), in the Czech Republic, use the same denomination as the one used in the state in which it has its registered office. In the event of insufficient differentiation of its denomination from another, the CNB may impose an obligation to add a distinctive element.

(4) As from the date on which the supervisory authority of another EU member state has withdrawn an authorisation from a foreign person referred to in Section 14 (2) to exceed the relevant threshold, that person is not authorised to manage a retail AIF or a qualified investors' fund; till the settlement of obligations towards persons in a comparable position to the shareholders, beneficiaries, founders, shareholders or silent shareholders of the foreign investment fund concerned, who are having a registered office or residence in the Czech Republic, and, in case of facilities comparable to the trust to those, who increased the assets of this facility contract as the foreign investment fund concerned and have their registered office or residence in the Czech Republic, shall be regarded as a foreign person referred to in Section 14 (2) which manages a retail AIF or a qualified investors' fund and that person fulfills the obligations set out in Subsections (1) up to (3).

## **PART ELEVEN**

### **DISSOLUTIONS, TRANSFORMATIONS, AND OTHER ASSET DISPOSITIONS** TITLE I

#### **DISSOLUTION AND TRANSFORMATION OF A MANAGEMENT COMPANY AND OTHER ASSET DISPOSITIONS RELATING TO A MANAGEMENT COMPANY**

##### **Chapter 1**

###### **Dissolution of the management company with liquidation**

###### **Subchapter 1**

###### **Procedure in some cases of dissolution of a management company with liquidation**

###### **Section 345**

###### **Decision of a court**

If the court decides on the dissolution of a management company with liquidation, it shall appoint its liquidator upon the suggestion of the CNB.

###### **Section 346**

###### **Decision of a body of a management company**

(1) If the competent body of the management company decides on its dissolution with liquidation, it simultaneously decides on filing an application for the appointment of its liquidator.

(2) A management company shall submit an application of the appointment of a liquidator without undue delay after its competent body decides on its dissolution with liquidation.

Section 347

**Expiration of time**

A management company that has been established for a determinate period files 2 months before this period expires at the latest an application for the appointment of its liquidator. The competent body of a management company resolves on the filing of an application.

**Subchapter 2**

**Liquidator**

Section 348

**Professional care**

The liquidator of a management company is obliged to perform its function with professional care.

Section 349

**Requirements for the exercise of office**

(1) A liquidator of a management company may be only the person who is registered in a register of persons who may be appointed as liquidator of a management company, liquidator of retail investment fund with legal personality, or liquidator of a main administrator, kept by the CNB.

(2) The liquidator of a management company may not be a person,

- (a) whose interests are in conflict with the interests of shareholders, unitholders or beneficiaries of an investment fund or a foreign investment fund, managed by the management company, or with the interests of other clients of the management company, management company,
- (b) who is linked to the management company in terms of personnel or assets, or
- (c) who has been involved in the audit of a management company in the past 3 years.

Section 350

**Appointment and removal**

(1) A liquidator of a management company shall be appointed and removed by the CNB unless the management company has been dissolved by a court's decision.

(2) The CNB is not, in appointing a liquidator of a management company upon request, bound by the person referred to in the application.

(3) The remonstrance against a decision of the CNB on the appointment or removal of a liquidator of a management company does not have a suspensory effect.

(4) An application on the registration of a liquidator of a management company in the Commercial register and an application of the deletion of this liquidator from the Commercial register are to be submitted by the CNB.

(5) Section 515 shall not apply to a liquidator of a management company.

## Section 351

### **Termination of office**

(1) A liquidator of a management company appointed by the CNB may withdraw from his office by a written notification to the CNB. The office of a liquidator terminates as of the day referred to in the notification, but no sooner than 30 days after the day when the notification is delivered to the CNB.

(2) The CNB shall remove the liquidator of a management company which it has appointed, if the liquidator

- (a) does not fulfill the requirements for performing the function of liquidator set out in Section 349,
- (b) seriously or repeatedly breaches its obligation, or
- (c) does not perform its function.

(3) If the liquidator of a management company appointed by the CNB withdraws from office, is removed or otherwise terminates his office, the CNB will appoint a new liquidator without undue delay.

## Section 352

### **Reimbursement of cash expenses and remuneration**

(1) The reimbursement of the cash expenses and the remuneration of the liquidator of a management company appointed by the CNB shall be paid out of the assets of the management company. If the CNB has appointed a liquidator, it is also the person who called it.

(2) If the assets of the management company are not sufficient to pay the reimbursement of the cash expenses and the remuneration of its liquidator, the state shall pay it.

(3) Even after the withdrawal of the management company's authorisation, the procedure for determining the reimbursement of cash expenses and the remuneration of its liquidator shall be determined according to the rules governing the reimbursement of the liquidator's cash expenses and the remuneration of the liquidator of the management company.

(4) The CNB shall lay down, by a regulation, the rules for determining the amount of the liquidator's remuneration and the conditions for the reimbursement of the actual expenditure and the remuneration of the liquidator by the state.

## Section 353

### **Obligation to cooperate**

Everyone must cooperate with a liquidator of a management company appointed by the CNB to the extent in which everyone must cooperate with an insolvency administrator according to an act on insolvency and its resolution.

## **Chapter 2**

### **Transformation of a management company**

#### **Section 354**

##### **Forbidden transformations**

It is forbidden to

- (a) transfer assets of the management company to its shareholder, and
- (b) change of a legal form of the management company.

#### **Section 355**

##### **Authorisation of the CNB**

(1) An authorisation of the CNB is required for a merger or a division of a management company managing a retail investment fund, or for a transfer of assets to a shareholder which is a management company managing a retail investment fund.

(2) The CNB does not approve a merger or division of a management company or a transfer of assets to a shareholder who is a management company managing a retail investment fund, if the protection of the interests of shareholders and unitholders of retail investment funds managed by the management company.

#### **Section 356**

##### **Proceedings in respect of an application for approving a merger, division or transfer of fortune**

(1) An application for approving a merger or a division of a management company managing a retail investment fund, or a transfer of fortune to a shareholder which is a management company managing a retail investment fund, files the management company which participates in the merger, division or transfer of fortune.

(2) The party to a proceeding in respect of an application for approving a merger or a division of a management company managing a retail investment fund, or a transfer of assets to a shareholder which is a management company managing a retail investment fund are the management companies which participate in the merger, division or transfer of fortune.

## **Chapter 3**

### **Transfer and usufructuary lease of, and creation of pledge of an establishment of a management company or part thereof**

#### **Section 357**

(1) A transfer or usufructuary lease of, or pledge of a business establishment of a management company or part thereof which would mean a significant change in the existing structure of the establishment of a significant change in the activity of a management company is prohibited.

(2) For the purposes of Subsection (1) and Section 374, a business establishment shall not include assets and debts from investment activities.

## TITLE II

### DISSOLUTION AND TRANSFORMATION OF ADMINISTRATOR AND OTHER ASSET DISPOSALS CONCERNING MAIN ADMINISTRATOR

#### Section 358

##### **Application *mutatis mutandis* of the provisions about a management company**

The provisions of this Act on dissolution and transformation of a management company and on other asset disposals concerning the management company will be used *mutatis mutandis* to the dissolution and transformation of a main administrator and for other asset disposals concerning the main administrator, unless this Act provides otherwise. If those provisions operate with management of investment funds or a foreign investment fund, it means providing administration to this funds.

#### Section 359

##### **Change in legal form of the main administrator**

- (1) The authorisation of the CNB is necessary for the change in the legal form of the main administrator who administers the retail investment fund.
- (2) The CNB will not allow the change in the legal form of the main administrator unless there is ensured protection of interests of shareholders and participants of a retail investment fund for which the administration is carried out.

#### Section 360

##### **Procedure on application for change in legal form of main administrator**

- (1) An application for change in legal form of a main administrator is submitted by the main administrator.
- (2) A party to a proceeding concerning the change in legal form of the main administrator is the main administrator whose legal form is being changed.

## TITLE III

### DISSOLUTION AND TRANSFORMATION OF AN INVESTMENT FUND WITH LEGAL PERSONALITY AND OTHER ASSETS DISPOSITIONS CONCERNING THIS FUND

#### **Chapter 1**

##### **Dissolution of investment fund with legal personality with liquidation**

#### Section 361

- (1) The provisions of this Act on the dissolution of a management company shall apply *mutatis mutandis* to the dissolution of an investment fund with legal person, unless otherwise provided in this Act.

- (2) The investment fund referred to in Section 9 (1) shall be dissolved with liquidation and its liquidator shall be appointed by the CNB if its manager has been dissolved with liquidation or the authorisation to manage the fund has ceased to exist, and

- (a) the CNB has not decided within three months from the date when the competent authority of the manager decided to dissolve with liquidation, to transfer the management of this fund to another manager and
- (b) this fund is a joint-stock company with variable capital or a limited partnership on investment certificates.

## Section 362

### **Substitute for discharge of liquidation share**

If the conditions for substitute performance according to the Civil Code are met, the liquidation share from an investment fund with legal personality will be deposited into custody of a court. The liquidation share will not be deposited into custody of a court and it will devolve upon the state, if the judicial fee for the application to commence custody proceedings exceeds the amount that is to be deposited into custody.

## Section 362a

### **Special provisions for a case of a joint stock company with variable capital's insolvency**

(1) If a decision on the insolvency of a joint stock company with variable capital has been rendered, an insolvency administrator or a person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator shall ensure the transfer of all assets and debts from its investment activity, in the case of a joint stock company with variable capital that did not create a sub-fund, or the transfer of all sub-funds, in the case of a joint stock company with variable capital that created a sub-fund, (hereinafter referred to as "**transfer of fortune**") having the same manager or the same administrator, if this is possible considering the proper and prudent performance of these activities. The transfer of fortune must also be approved by the general meeting of the joint stock company with variable capital, which is insolvent, and in the case of voting on the transfer of fortune, only shareholders holding investment shares related to the transferred fortune have the right to vote. The insolvency administrator or the person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator, also has the right to convene the general meeting of a joint stock company with variable capital for voting on the transfer of fortune.

(2) If the procedure referred to in Subsection (1) cannot be followed, in particular if the general meeting does not give its approval, the insolvency administrator or the person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator shall ensure the transfer of fortune to another joint stock company with variable capital that agrees with it, if this is possible considering the proper and prudent performance of these activities. The second and last sentence of Subsection (1) shall apply *mutatis mutandis*.

(3) If the procedure referred to in Subsection (1) or (2) cannot be followed, in particular if the general meeting does not give its approval, the insolvency administrator or the person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator shall ensure liquidation of assets and debts from its investment activity or sub-fund or sub-funds.

(4) The transfer of fortune pursuant to Subsection 1 or 2 shall take effect from the transfer of fortune agreement, which requires a written form and includes:

- (a) identification data related to the joint stock company with variable capital whose fortune is being transferred (hereinafter referred to as "**transferring company**") and the joint stock company with variable capital on which it is being transferred (hereinafter referred to as "**receiving company**"),
- (b) identification data related to the transferred fortune,

- (c) in the event that the fortune is being transferred from investment activity, which is not a sub-fund, data indicating that the fortune will become a sub-fund of the receiving company and the identification data of the future sub-fund,
- (d) in the event that the sub-fund is being transferred, identification date of the sub-fund after its transfer,
- (e) the share exchange ratio, which must be fixed evenly, so as to maintain the share of the shareholder, to whom the exchange relates to, on the transferred fortune, thus not affecting the rights in respect of share in profit and liquidation share
- (f) detailed rules for the exchange of shares following the transfer of fortune, and
- (g) description of the change in the rights of shareholders following the transfer of fortune, if their rights change.

(5) The transferred fortune becomes the sub-fund of the receiving company on the effective date of the transfer of fortune agreement.

(6) The provisions of the law regulating the transformation of business corporations shall not apply to the procedure pursuant to Subsections (1), (2), (4) and (5).

## Section 362b

(1) The provisions of the Civil Code on the conversion of book-entry securities to securities shall apply to the procedure for the exchange of book-entry shares to certificated shares; however, the length of the time-limit for submission of the certificated share may be shortened by the transfer of fortune agreement up to a time-limit of 1 month.

(2) The provisions of the Civil Code on the conversion of securities to book-entry securities shall apply to the procedure for the exchange of certificated shares to book-entry shares; however, the length of the time-limit for submission of the certificated share may be shortened by the receiving company up to a time-limit of 1 month. The receiving company shall request central depository or foreign central depository to register the book-entry shares prior to the entry of a change in the data necessary to identify the sub-fund in the relevant list maintained by the CNB.

(3) The exchange of certificated shares for certificated shares shall be made by the receiving company without undue delay after the effective date of the transfer of fortune agreement. The provisions of the act regulating legal relations of business companies and cooperatives on the exchange of certificated shares when increasing the registered capital by increasing the nominal value of the shares shall apply *mutatis mutandis* to the procedure for the exchange of certificated shares for certificated shares. The information required by the Business Corporations Act in the resolution of the general meeting is stated in the transfer of fortune agreement. However, the length of the time-limit for submission of the certificated share may be shortened by the transfer of fortune agreement up to a time-limit of 1 month.

(4) If book-entry shares are to be exchanged for book-entry shares, the receiving company shall after the effective date of the transfer of fortune agreement without undue delay order the cancellation of the existing shares and request central depository or foreign central depository to register the new book-entry shares prior to the entry of a change in the data necessary to identify the sub-fund in the relevant list maintained by the CNB.

## Section 362c

(1) If the resolution of the transferring company does not indicate how the articles of association are amended, their content shall be changed by the statutory body in accordance with the decision of the general meeting and the transfer of fortune agreement. If the resolution of the receiving company does not indicate how the articles of association are amended, their content shall be changed by the statutory body in accordance with the decision of the general meeting and the transfer of fortune agreement.

(2) An amendment to the articles of association by the statutory body pursuant to Subsection (1) shall be issued as an authentic instrument.

#### Section 362d

(1) An insolvency administrator or a person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator shall be entitled to reimbursement of cash expenses and remuneration for the activity referred to in Section 362a.

(2) If the insolvency assets of the joint stock company with variable capital are not sufficient to pay the reimbursement of cash expenses and remuneration of an insolvency administrator or a person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator, they shall be paid by the state.

(3) The CNB shall lay down, by a regulation, the rules for determining the amount of remuneration and cash expenses and the conditions for reimbursement of the remuneration and cash expenses of an insolvency administrator or a person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator; for fulfilling the obligations stated in Section 362a and their maximum amount paid by the state.

### Chapter 2

#### Transformation of an investment fund with legal personality

##### Subchapter 1

###### Basic provisions

#### Section 363

The transformation of an investment fund with a legal person means, for the purposes of this Act, the transformation according to an act governing the transformation of companies and cooperatives and the transformation of the investment fund, which has the legal form of a joint-stock company, into a joint-stock company with variable capital.

#### Section 364

###### Prohibited transformations

It is prohibited to

- (a) transfer fortune of an investment fund with legal personality to its shareholder,
- (b) change in legal form of retail investment fund with legal personality.

#### Section 365

###### Authorisation of the CNB

(1) An authorisation of the CNB is required to merge or to demerge a retail investment fund with a legal person or to transfer a fortune to a shareholder, which is a retail investment fund with legal personality.

(2) The CNB shall not authorise the merge or demerge of a retail investment fund with a legal personality or the transfer of fortune to a shareholder, which is a retail investment fund with a legal personality unless the protection of the interests of the shareholders of that fund is ensured.

(3) Subsections (1) and (2) shall not apply to the merger of a retail investment fund with a legal personality that invests in real estate or participation in a real estate companies and in real estate of a company.

## Section 366

### **Proceedings on application for approval of merger, demerger or transfer of fortune**

(1) An application for approval of a merger or demerger of a qualified investors' fund with legal personality or for approval of the transfer of fortune to a shareholder, which is a retail investment fund with legal personality, shall be submitted by the administrator of this fund.

(2) Parties to a proceeding on approval of a merger or demerger of a qualified investors' fund with legal personality or for approval with transfer of fortune to a shareholder which is a retail investment fund with legal personality, are the retail investments funds with legal personality which participates in the merger, demerger or transfer of fortune, and their managers, administrators and depositaries.

## Subchapter 2

### **Transformation of an investment fund with legal form as joint-stock company, to a joint-stock company with variable capital**

## Section 367

### **Admissibility of transformation**

(1) An investment fund, which has the legal form of a joint-stock company, may be transformed into a joint-stock company with variable capital.

(2) The transformation of a joint-stock investment fund into a joint-stock company with variable capital takes place by means of a change of the business name of the transforming investment fund so that the business name is in compliance with requirements in Section 154 (1), and of a change of articles of association of the transforming investment fund so that the articles are in compliance with requirements for the contents of articles of association of the joint-stock company with variable capital referred to in Section 156, and if it changes a type of shares it issued.

(3) The legal effects of the transformation pursuant to Subsection (1) shall become effective on the date of registration of a business name, meeting the requirements of Section 154 (1), in the Commercial Register.

## Section 368

### **Change of types of shares**

(1) A decision of the general meeting of a transforming investment fund about a change in types of share will determine shares which will, after the transformation, become founder's shares, in an amount of a share in the equity which corresponds with the registered share capital of a future joint-stock company with variable capital; remaining share will become investment shares after the transformation. If a joint-stock company with variable capital is to create sub-funds, it shall be determined in the decision to which sub-fund or sub-funds these investment shares will be issued.

(2) A consent of each shareholder whose shares will become the founder's shares is required for the decision of the general meeting on the change in the types of shares apart from conditions defined by an act regulating legal relations of business companies and cooperatives.

(3) Only the shares which issue price was fully paid are suitable as shares which will become founder's shares after the transformation.

### Section 369

#### **Authorisation of the CNB**

(1) An authorisation of the CNB is required for a transformation of a retail investment fund with a legal form as a joint-stock company into a joint-stock company with variable capital.

(2) The CNB shall not authorise the transformation if protection of interests of transformed retail investment fund's shareholders is not ensured.

### Section 370

#### **Proceeding on application for an authorisation of transformation**

(1) An application for an authorisation of transformation shall be submitted by the administrator of the transformed retail investment fund.

(2) The parties to the proceeding on authorisation of the transformation are the transforming retail investment fund and its manager, administrator and depositary.

### **Subchapter 3**

#### ***Mutatis mutandis* use of some provisions for consolidation and amalgamation of a mutual fund**

### Section 371

#### **Consolidation and amalgamation of an investment fund with legal personality which is a UCITS fund**

(1) Provisions of this Act for consolidation and amalgamation of an investment fund with a legal personality, which is a UCITS fund as a mutual fund will apply *mutatis mutandis* to a consolidation and an amalgamation of an investment fund with legal personality which is an investment fund. If those provisions invokes unitholders, it means owners of investment shares; if they invoke unit certificates, it means investment shares.

(2) Provisions of this Chapter and of an Act regulating transformation of business corporations and cooperatives will be used only if the provisions of this Act on the consolidation and the amalgamation of a UCITS fund in a legal form as a mutual fund will apply *mutatis mutandis* to the consolidation and the amalgamation of the investment fund with legal personality which is a UCITS fund, as a mutual fund, unless provided otherwise.

## Section 372

### **Amalgamation of a joint-stock company with variable capital and an open-ended mutual fund**

(1) It is accepted

- (a) an amalgamation of a retail AIF having the legal form of a joint-stock company with variable capital and a retail AIF having the legal form of an open-ended mutual fund, and
- (b) an amalgamation of a qualified investors' fund with a legal form as a joint-stock company with variable capital and a qualified investors' fund with a legal form as an open-ended mutual fund.

(2) Provisions of this Act for an amalgamation of a retail AIF with a legal form as a mutual fund will apply *mutatis mutandis* to the amalgamation referred to in Subsection 1 (a). Provisions of this Act for amalgamation of a qualified investor's fund with a legal form as a mutual fund will apply *mutatis mutandis* to the amalgamation referred to in Subsection 1 (b). If those provisions invoke unitholders, it means owners of investment shares in the case of a joint-stock company with variable capital; if they invoke unit certificates, it means investment share in the case of a joint-stock company with variable capital.

(3) Provisions of this Chapter will apply to the amalgamation referred to in Subsection (1) only if the provisions of this Act for the amalgamation of a retail AIF with a legal form as a mutual fund or provisions of this Act on the amalgamation of a qualified investor's fund with a legal form as a mutual fund provide otherwise.

## Section 373

### **Transformation of a subfund of an investment fund with legal personality**

Provisions of this Act on a transformation of a sub-fund of an investment fund that is legal entity that is a UCITS fund will apply *mutatis mutandis* to the transformation of a subfund of an investment fund with legal personality. If those provisions invoke a unitholder, it means owners of investment shares relating to the subfund; if the provisions invoke unit certificates, it means investment shares relating to the subfund.

## Chapter 3

### **Transfer, usufructuary lease and pledge of enterprise of investment fund with legal personality or its part**

## Section 374

A transfer, usufructuary lease and a pledge of enterprise of an investment fund with legal personality or its part that would mean a substantial change of current structure in the enterprise or a substantial change in activity of the investment fund with legal personality, is prohibited.

## TITLE IV

### DISSOLUTION AND TRANSFORMATION OF A MUTUAL FUND

#### Chapter 1

##### **Dissolution of the mutual fund with liquidation**

###### Section 375

###### **Reasons for dissolution of the mutual fund with liquidation**

A mutual fund is dissolve with liquidation if

- (a) it was decided by its manager,
- (b) its manager has been dissolved with liquidation, unless the CNB decides within 3 months from the date on which the competent authority of the manager has decided to dissolve the manager with liquidation, on the transfer the of the management of this fund to another manager,
- (c) the authorisation of the manager of a mutual fund ceases to manage this fund, unless the CNB decides to transfer the management of this fund to another manager,
- (d) the CNB has decided on this or the court decided on that, or
- (e) the period for which a fund was created has expired, unless it is a closed-ended mutual fund which is after the expiration of the period transformed into an open-ended mutual fund or a joint-stock company with variable capital.

###### Section 376

###### **Liquidation of the mutual fund**

(1) A manager of a mutual fund realises the assets in this fund and discharges debts in this fund within 6 months from the day of dissolution of this fund.

(2) An administrator of a mutual fund pays to the unitholders their shares in the liquidation balance within 3 months from the day of realisation of the assets in this fund and discharge of debts in this fund.

###### Section 377

###### **Substitute performance of a liquidation share**

If conditions for a substitute performance according to the Civil Code are fulfilled, the liquidation share will be put in judicial custody. The liquidation share will not be put in judicial custody, but devolves upon the state, if the judicial fee for an application for commencement of proceedings with respect to custody exceeds the amount to be put in judicial custody.

###### Section 378

###### **Advance payment on a liquidation share**

(1) Until the rights of all known creditors of claims corresponding to debts in the mutual fund are satisfied, a liquidation share may not be paid even in the form of advance payment or used otherwise. If a claim is disputable or is not due, the liquidation balance may be used if a creditor has been provided with sufficient security.

(2) If a liquidation share has been paid in the form of advance payment, a manager is not obligated to realise the assets in a mutual fund within the time-limit referred to in Section 376 (1) and an administrator is not obligated to pay to the unitholders their liquidation shares within the time-limit referred to in Section 376 (2). The obligation of a manager to discharge debts in a mutual fund within the time-limit referred to in Section 376 (1) is not prejudiced.

## Section 379

### **Special provision for a case of manager's insolvency**

(1) If a decision on the insolvency of a manager of a mutual fund has been rendered, an insolvency administrator or a person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator ensures the management of a mutual fund or fulfilment of obligations according to Section 376; Sections 377 and 378 apply *mutatis mutandis*.

(2) The insolvency administrator or any person who, according the laws of a foreign state, performs tasks comparable to those of the insolvency administrator, shall be responsible for the reimbursement of cash expenses and remuneration for the activity referred to in Subsection (1). A claim to have them a paid is a claim against the insolvency assets of a manager of a mutual fund.

(3) If the insolvency assets of the fund's manager are not sufficient to pay the reimbursement of cash expenses and remuneration of an insolvency administrator or a person who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator, they will be paid by the state.

(4) The CNB shall lay down, by a regulation, a rule for determining the amount of remuneration and cash expenses and the conditions of reimbursement of remuneration and cash expenses of an insolvency administrator or a persons who according to the laws of a foreign state performs the same tasks comparable to tasks of an insolvency administrator for the discharge of obligations referred to in Subsection (1) and their maximum amount paid by the state.

## Section 380

### **Obligations of a feeder fund upon dissolution of its master fund with liquidation**

(1) If a master fund is being dissolved with liquidation or in a manner comparable to liquidation according to the laws of a foreign state, a manager of a feeder fund apply via the administrator of this fund for a prior consent of the CNB whereas the manager intends

- (a) to invest assets in that fund as a manager of feeder fund to securities or book-entry securities issued by another master fund, or
- (b) to continue to invest assets in that fund as a manager of a UCITS fund which is not a feeder fund.

(2) If the management of a feeder fund does not request the prior consent of the CNB pursuant to Subsection (1) within 2 months from the date on which it received a communication that the master fund is dissolved [Section 435 (2)] or a comparable communication according to the laws of a foreign state, this fund is dissolved with liquidation upon lapse of this time-limit due to neglect to act. If the CNB rejects the request for prior consent pursuant to Subsection (1), the feeder fund is dissolved with liquidation upon the day of this decision taking legal effects.

(3) Until the lapse the-time limit referred to in Subsection (2) or until prior consent pursuant to Subsection (1), the management of the subfund may invest the assets in thit fund solely for the purpose of preserving its assets.

## **Chapter 2**

### **Transformation of the mutual fund**

#### **Subchapter 1**

##### **Basic provision**

###### **Section 381**

(1) A transformation of a mutual fund is for the purposes of this Act considered to be

- (a) consolidation of mutual funds,
- (b) amalgamation of mutual funds,
- (c) a transformation of a mutual fund into a joint stock company,
- (d) a transformation of a qualified investors' fund into a retail AIF,
- (e) a transformation of a closed-ended mutual fund into an open-ended mutual fund,
- (f) transformation of a retail AIF into a UCITS fund.

(2) Other transformations of a mutual fund other than those referred to in Subsection (1) shall not be permitted.

#### **Subchapter 2**

##### **Consolidation of mutual funds**

###### **Section 382**

##### **Admissible manners of consolidation**

(1) Admissible consolidations are consolidations of

- (a) retail AIFs having the legal form of mutual funds into a new retail AIF which has the legal form of a mutual fund,
- (b) a retail AIF having the legal form of a mutual fund and a UCITS fund having the legal form of a mutual fund into a new UCITS fund that has the legal form of a mutual fund,
- (c) UCITS funds having the legal form of mutual funds, into a new UCITS fund having the legal form of a mutual fund or into a new foreign investment fund comparable to a UCITS fund,
- (d) a UCITS fund having the legal form of a mutual fund and a foreign investment fund comparable to a UCITS fund into a new UCITS fund having the legal form of a mutual fund or into a new foreign investment fund comparable to the UCITS fund, and
- (e) qualified investors' fund having the legal form of mutual funds in one new qualified investors' fund, having the legal form of a mutual fund.

(2) Mutual funds, or foreign investment funds comparable to the UCITS fund, participating in the consolidation, are dissolved without liquidation and their assets become the assets in a mutual fund, or a foreign investment fund comparable to a UCITS fund, which should arise out of the consolidation.

(3) The manager of mutual funds, or foreign investment funds comparable to the UCITS fund, which are to be dissolved by consolidation, is competent to decide on consolidation. If more persons decide on consolidation, their agreement is required.

###### **Section 383**

### **Project of consolidation**

- (1) Consolidation is carried out according to an approved project of consolidation.
- (2) Administrators of mutual funds, or of foreign investment funds comparable to a UCITS fund, which is to be dissolved by the consolidation, draw up a project of consolidation.
- (3) A project of consolidation must be approved in the same wording by all who have drawn it up.

### **Section 384**

#### **Essentials of a project of consolidation**

- (1) A project of consolidation contains with regard to the manner of consolidation at least
  - (a) a determination as to which manner of consolidation referred to in Section 382 (1) is concerned,
  - (b) the designation of a mutual fund or, where applicable, of the foreign investment fund comparable to a UCITS fund to be dissolved by the consolidation, and a designation of a mutual fund, or a foreign investment fund comparable to a UCITS fund which should arise out of the consolidation,
  - (c) reasons for the consolidation,
  - (d) probable impacts of the consolidation on the interests of the owners of securities or book-entry securities issued by a mutual fund, or a foreign investment fund comparable to a UCITS fund which is to be dissolved by the consolidation,
  - (e) criteria for evaluation of the assets and debts in a mutual fund, or a foreign investment fund comparable to a UCITS fund which is to be dissolved by the consolidation,
  - (f) the procedure for the calculation of an exchange ratio (Section 395),
  - (g) a decisive day of consolidation,
  - (h) the rules for taking over the fortune in the mutual fund or, where applicable, in a foreign investment fund comparable to the UCITS fund which is to be dissolved and the exchange of securities or book-entry securities issued by the fund for securities or book-entered securities issued by the mutual fund, and by a foreign investment fund comparable to the UCITS fund which should arise out of the consolidation, and
  - (i) a draft statute of a mutual fund, or a foreign investment fund comparable to a UCITS fund, which should arise out of the consolidation.

- (2) A project of consolidation must be made in writing.

### **Section 385**

#### **Authorisation of the CNB**

- (1) The CNB must authorise consolidation which is to be carried out in a manner according to Section 382 (1) (a) to (d).
- (2) The CNB shall not authorise consolidation of
  - (a) an open-ended mutual fund and a closed-ended mutual fund,
  - (b) mutual funds or foreign investment funds comparable to a UCITS fund with a materially different manner of investing,
  - (c) mutual funds or foreign investment funds comparable to the UCITS fund, unless the protection of the interests of the owners of securities or book-entry securities issued by such funds is ensured,
  - (d) mutual funds or foreign investment funds comparable to a UCITS fund, if no sufficient information on the consolidation has been provided to the owners of securities or book-entry securities issued by these funds, and

(e) mutual funds or foreign investment funds comparable to the UCITS fund in case of consolidation upon which a communication on consolidation is to be drawn up, and a UCITS fund or a foreign investment fund comparable to a UCITS fund, which should arise out of the consolidation, will not be authorised to offer publicly securities or book-entry securities, issued by it, in the same member states in which every UCITS fund, which is to be dissolved by the consolidation, was authorised to offer them publicly,

(3) A project of consolidation is cancelled as of the day of taking legal effects of the decision of the CNB or of any other competent supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund not approving the consolidation. The legal effects of cancellation of a project of consolidation will cease to exist as of the day when such decision has been repealed upon a final and conclusive decision of a court.

## Section 386

### **Proceeding with respect to an application for authorisation of consolidation**

(1) An application for authorisation of consolidation to be carried out

(a) in the manner referred to in Section 382 (1) (a), shall be submitted by the person who will provide the administration to the mutual fund which should arise out of the consolidation, or  
(b) in the manner referred to in Section 382 (1) (b) to (d), shall be submitted by the administrator of the UCITS fund which is to be dissolved by the consolidation.

(2) An application for authorisation of consolidation to be carried out in the manner referred to in Section 382 (1) (c) or (d) and its annexes must further be in an official language of the home state of a foreign investment fund comparable to a UCITS fund, which is to be dissolved by the consolidation, and in an official language of the home state of a foreign investment fund comparable to a UCITS fund which should arise out of the consolidation, or in a language in which documents may be submitted to supervisory authorities of these states.

(3) The parties to the proceedings with respect to the application for authorisation of consolidation are managers, administrators and depositaries of mutual funds, or foreign investment funds comparable to the UCITS fund, which are to be dissolved by consolidation.

## Section 387

### **Time-limit for rendering decision**

(1) The CNB shall render a decision on an application for authorisation of consolidation within 20 working days at the latest from the day of filing the application having all the prescribed essentials and not having any other defects.

(2) If the application for authorisation of consolidation, upon which a communication on consolidation is to be drawn up, does not have all the prescribed essentials or has other defects, the CNB calls the applicant within 10 working days at the latest from the day of filing the application or from the day of its supplementing to remove the defects in a reasonable time-limit.

## Section 388

### **Communication on consolidation**

(1) The administrator of a UCITS fund which is to be dissolved by the consolidation, draws up, publishes, and provides to the unitholders or shareholders of this fund, a communication on consolidation, if by the consolidation

- (a) a UCITS fund is to be dissolved, and a UCITS fund or, where appropriate, a foreign investment fund comparable to a UCITS fund, or
- (b) a UCITS fund whose unit certificates are publicly marketed in another EU member state.

(2) The administrators of a UCITS fund, which is to be dissolved by the consolidation may draw up a joint communication on consolidation. They always draw up a joint communication on consolidation if only UCITS funds are to be dissolved by, and only a UCITS fund should arise from, the consolidation.

(3) An administrator of a UCITS fund which is to be dissolved by the consolidation publishes a communication on consolidation after the day when a decision of the CNB or a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund approving the consolidation to the last applicant for approval of consolidation takes legal effects.

## Section 389

### **Essentials of a communication on consolidation**

(1) A communication on consolidation contains such information about a consolidation so as the owners of securities or book-entry securities issued by mutual funds, or foreign investment funds comparable to a UCITS funds, which are to be dissolved by the consolidation, could consider the impacts of the consolidation on their interests; a communication on consolidation contains at least

- (a) reasons for the consolidation,
- (b) impacts of the consolidation on the interests of the owners of securities or book-entry securities issued by mutual funds or foreign investment funds comparable to a UCITS funds, which are to be dissolved by the consolidation,
- (c) a decisive day of the consolidation, and
- (d) information as to whether the owners of securities or book-entry securities issued by mutual funds or foreign investment funds comparable to a UCITS funds, which are to be dissolved by the consolidation, will have a right of redemption or a right of substitution according to Section 390 (1), and an explanation of the nature of this right including the time-limit for its exercise.

(2) A communication on consolidation is to be drawn up and published also in an official language of other EU member states in which investments in a UCITS fund or to a foreign investment fund comparable to a UCITS fund, which is to be dissolved by the consolidation, are publicly marketed, or in a language in which documents may be submitted to supervisory authorities of these states.

(3) The CNB shall lay down, by a regulation, the requirements with respect to the contents of a communication on consolidation to the extent of Subsection (1).

## Section 390

### **Consequences of the publication of a communication on consolidation**

(1) The owner of a security or a book-entry security issued by a mutual fund or a foreign investment fund comparable to a UCITS fund to be dissolved by the consolidation, has, upon publication of a communication on consolidation,

- (a) a right to have the security or book-entry security redeem without deduction; however, it is possible to deduct an amount corresponding to reasonable expenses connected to the redemption of the security or book-entry security, or

(b) right to have the security or book-entry security substituted with a security or a book-entry security issued by another UCITS fund or another foreign investment fund comparable to a UCITS fund, managed by the same manager or by a manager who is a part of the same holding as a manager of a UCITS fund or a foreign investment fund comparable to a UCITS fund, which issues securities or book-entry securities with which the securities or book-entry securities are to be substituted.

(2) The right according to Subsection (1) shall cease to exist if it is not applied within the time-limit referred to in a communication on consolidation. The time-limit for the exercise of the right according to Subsection (1) must be determined in a way that it should last at least 30 days from the day of publication of a communication on consolidation and should run out 5 working days before the decisive day of consolidation at the latest.

(3) In case of redemption, Section 131 to 141 shall apply *mutatis mutandis*.

### Section 391

#### **Procedure without publication of a communication on consolidation**

(1) In case of a consolidation upon which a communication on consolidation is not to be drawn up, an administrator of a mutual fund which is to be dissolved by the consolidation publishes on the internet pages of this fund a decision of the CNB approving the consolidation and a statute of a mutual fund which should arise out of the consolidation, within 1 month from the day of this decision taking legal effects. Simultaneously, the administrator publishes on the internet pages of a mutual fund to be dissolved by the consolidation a notification on the creation of a right to have a unit certificate redeemed.

(2) The unitholders of mutual funds which are to be dissolved by the consolidation have, upon publication of the communication according to Subsection (1), a right to have a unit certificate redeemed without deduction; it is possible to deduct an amount corresponding to reasonable expenses connected to the redemption of a unit certificate. This right will cease to exist if it is not exercised within 2 months from the day of publication of the communication.

(3) Sections 131 to 141 apply to the redemption of a unit certificate *mutatis mutandis*.

### Section 392

#### **Temporary exemption from investment limits**

A manager of a retail investment fund which was created by the consolidation does not have to, for the period of 6 months or less from the decisive day of the consolidation, comply with investment limits with respect to this fund, which are laid down in a government regulation issued according to Section 215 (2) with respect to investment securities, money market instruments, securities issued by an investment fund or a foreign investment fund, derivatives or claims to payment of financial means from accounts in a Czech or a foreign currency, if there is a reason for it from the perspective of the consequences of the consolidation.

### Section 393

#### **Further rules**

(1) A manager of a mutual fund or of a foreign UCITS fund comparable to a mutual fund which was created by the consolidation, notifies a depository of this fund that the transfer of fortune in this fund has been completed; the manager also publishes the information that the decisive day of the consolidation has occurred on the internet pages of this fund.

(2) A depository of a mutual fund or a foreign investment fund comparable to a UCITS fund which was dissolved by the consolidation, controls whether the assets and debts in this fund have been evaluated in accordance with the criteria contained in the project of consolidation and whether the exchange ratio has been calculated in accordance with this Act and the project of consolidation. The depository draws up a report on the result of the control which it freely provides upon request to the owners of securities or book-entry securities issued by a UCITS fund or a foreign investment fund comparable to a UCITS fund, which is to be dissolved by the consolidation, as well as to the CNB and a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund.

(3) A depository of a mutual fund or of a foreign investment fund comparable to a UCITS fund which was dissolved by, or which arose out of, the consolidation controls the compliance of the information contained in the communication on consolidation with the requirements of this Act and a statute of these funds.

#### Section 394

##### **The decisive day of consolidation**

(1) A mutual fund, or a foreign investment fund comparable to the UCITS fund participating in the consolidation is dissolved, and the owners of securities or book-entry securities issued by this fund become the owners of securities or book-entry securities issued by a mutual fund or a foreign investment fund comparable to a UCITS fund which should arise out of the consolidation, by the lapse of time-limit as of the decisive day of consolidation.

(2) The decisive day of consolidation is also a day from which the fortune in a mutual fund or a foreign investment fund comparable to a UCITS fund which is to be dissolved by the consolidation are considered from an accounting perspective to be the fortune in a mutual fund or a foreign investment fund comparable to a UCITS fund which should arise out of the consolidation.

(3) The decisive day of consolidation must not precede the day as of which the decision on authorisation of the consolidation rendered by the CNB or a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund takes legal effects.

(4) If a UCITS fund is to be dissolved by the consolidation and a foreign investment fund comparable to a UCITS fund is to be created by the consolidation, the unitholders of the UCITS fund which is to be dissolved by the consolidation become the owners of securities or book-entry securities issued by the foreign investment fund comparable to a UCITS fund which should arise out of the consolidation, as of the day which follows from the law of the home state of this fund.

(5) If a master fund participates in the consolidation, the decisive day may first occur 60 days from the day of publication of a communication that the master fund is to be dissolved [Section 435 (1)].

(6) A project of consolidation may not be amended or cancelled or the consolidation or decision about it may not be declared void after the decisive day of consolidation.

#### Section 395

##### **Exchange of securities or book-entry securities**

(1) An administrator of a mutual fund which was created by the consolidation ensures within 3 months after the decisive day of the consolidation an exchange of a security or a book-entry security issued by a mutual fund or a foreign investment fund comparable to a UCITS fund, which was dissolved by the consolidation for a unit certificate of the mutual fund which was created by the consolidation in the ratio determined according to the amount of fund capital of the mutual fund per a security or a book-entry security issued by the mutual fund or foreign investment fund comparable to a UCITS fund, which was dissolved by the consolidation, as of the decisive day of the consolidation.

(2) If a mutual fund is to be dissolved by the consolidation and a foreign investment fund comparable to a UCITS fund is to arise out of the consolidation, the unit certificate will be exchanged for a security or a book-entry security issued by the foreign investment fund comparable to a UCITS fund within the time-limit and in the ratio determined as of the day following from the law of the home state of the foreign investment fund comparable to a UCITS fund.

### Section 396

#### **Additional monetary compensation due the disproportionality of an exchange ratio**

(1) If the exchange ratio referred to in the project of consolidation is not proportionate with respect to the right of exchange according to Section 395, the manager of the mutual fund or foreign investment fund comparable to a UCITS fund which was created by the consolidation will provide via the administrator of this fund to the owners of securities or book-entry securities issued by the mutual fund or a foreign investment fund comparable to a UCITS fund additional monetary compensation up to the amount of 10 % of the current value of securities or book-entry securities issued by the mutual fund or foreign investment fund comparable to a UCITS fund which was dissolved by the consolidation.

(2) The day as of which the current value of a security or book-entry security is to be determined for the purposes of additional compensation, must be the same as the decisive day of consolidation.

### Section 397

#### **Cooperation between the CNB and the supervisory authority of a foreign investment fund in the proceedings with respect to the application for approval of consolidation**

(1) As soon as an application for authorisation of consolidation which is to take place in the manner referred to in Section 382 (1) (c) or (d) fulfils all the prescribed requirements, the CNB sends without undue delay its copy and copies of documents attached to the application to a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund which should arise out of the consolidation.

(2) The CNB informs without undue delay a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund which is to be dissolved or created by the consolidation on rendering a decision authorizing the consolidation taking place in the manner referred to in Section 382 (1) (c) or (d), as well as of the fact that the decisive day has occurred.

### Subchapter 3

#### **Amalgamation of mutual funds**

### Section 398

#### **Admissible manners of amalgamation**

(1) Admissible is amalgamation of

- (a) retail AIFs having the legal form of mutual funds,
- (b) a retail AIF having the legal form of a mutual fund and a UCITS fund that has the legal form of a mutual fund if UCITS fund is to be a receiving mutual fund,
- (c) UCITS funds having the legal form of mutual funds,
- (d) a UCITS fund having the legal form of a mutual fund and a foreign investment fund comparable to a UCITS fund, and
- (e) qualified investors' funds which have the legal form of mutual funds.

(2) A mutual fund which is to be dissolved by the amalgamation dissolves without liquidation and the assets in the fund becomes a component part of the assets in the receiving mutual fund or receiving foreign investment fund comparable to the UCITS fund.

(3) A manager of mutual funds or of foreign investment funds comparable to a UCITS fund, participating in the amalgamation, is competent to decide on the amalgamation. If more persons decide on amalgamation, their agreement is required.

## Section 399

### **Project of an amalgamation**

(1) An amalgamation is to be carried out according to an approved project of amalgamation.

(2) A project of amalgamation is to be drawn up by administrators of mutual fund or foreign investment funds comparable to a UCITS fund, participating in the amalgamation.

(3) A project of amalgamation must be approved in the same wording by all who have drawn it up.

## Section 400

### **Essentials of a project of amalgamation**

(1) A project of amalgamation contains with respect to the manner of amalgamation at least

- (a) a determination as to which manner of amalgamation referred to in Section 398 (1) is concerned,
- (b) a designation of mutual funds or foreign investment funds comparable to a UCITS fund, participating in the amalgamation,
- (c) reasons for the amalgamation,
- (d) probable impacts of the amalgamation on the interests of the owners of securities or book-entry securities issued by a mutual fund, or a foreign investment fund comparable to a UCITS fund which is to be dissolved by the amalgamation, and on the interests of the owners of securities or book-entry securities issued by a receiving mutual fund or a receiving foreign investment fund comparable to a UCITS fund,
- (e) criteria for evaluation of the assets and debts in a mutual fund, or a foreign investment fund comparable to a UCITS fund which become a component part of the assets and debts in a receiving mutual fund or a receiving foreign investment fund comparable to a UCITS fund,
- (f) a procedure for calculation of an exchange ratio (Section 411),
- (g) a decisive day of amalgamation,
- (h) rules for taking over the fortune in the mutual fund or, where applicable, the foreign investment fund comparable to the UCITS fund which is to be dissolved by the amalgamation, and exchange of securities or book-entry securities issued by this fund for securities or book-entry securities issued by a receiving mutual fund or receiving foreign investment fund comparable to a UCITS fund, and
- (i) a draft new or updated statute of a receiving mutual fund or the receiving foreign investment fund comparable to the UCITS fund.

(2) A project of amalgamation must be made in writing.

## Section 401

### **Authorisation of the CNB**

(1) The CNB must authorise amalgamation which is to be carried out in a manner referred to in Section 398 (1) (a) to (d). Unless it is an amalgamation to be carried out in a manner referred to in Section 398 (1) (d) and a UCITS fund should not be dissolved by the amalgamation.

(2) The CNB shall not authorise amalgamation of

- (a) an open-ended mutual fund and a closed-ended mutual fund,
- (b) mutual funds or foreign investment funds comparable to a UCITS fund with a significantly different manner of investment,
- (c) mutual funds or foreign investment funds comparable to a UCITS fund, if the protection of the interests of the owners of securities or book-entry securities issued by these funds is not ensured,
- (d) mutual funds or foreign investment funds comparable to a UCITS fund if no sufficient information on the amalgamation has been provided to the owners of securities or book-entry securities issued by these funds,
- (e) mutual funds or foreign investment funds comparable to a UCITS fund, in case of amalgamation upon which a communication on amalgamation is to be drawn up, and a receiving UCITS fund or a receiving foreign investment fund comparable to a UCITS fund will not be authorised to market publicly securities or book-entry securities issued by it in the same member states in which every UCITS fund, participating in the amalgamation, was authorised to market them publicly, and
- (f) mutual funds or foreign investment funds comparable to a UCITS fund, in case of amalgamation upon which a communication on amalgamation is to be drawn up, and a supervisory authority of the home state of a receiving foreign investment fund comparable to a UCITS fund has not notified, after the CNB has rendered its decision authorising the amalgamation, to the CNB that its reservations, which it communicated to the CNB, are no longer present.

(3) A project of amalgamation is cancelled as of the day of taking legal effects of the decision of the CNB or of any other competent supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund not approving the amalgamation. The legal effects of cancellation of a project of amalgamation will cease to exist on the day when such decision has been repealed upon a final and conclusive decision of a court.

## Section 402

### **Proceeding with respect to an application for authorisation of amalgamation**

(1) An application of amalgamation shall be carried out

- (a) in the manner referred in Section 398 (1) (a), shall be submitted by the administrator of the receiving mutual fund, or
- (b) in the manner referred to in Section 398 (1) (b) to (d) shall be filed by the administrator of a mutual fund which is to be dissolved by the amalgamation.

(2) An application for authorisation of amalgamation shall be carried out in the manner referred to in Section 398 (1) (b) to (d) and its annexes must further be in an official language of the home state of a foreign investment fund comparable to a UCITS fund, which is to be dissolved by the amalgamation, and in an official language of the home state of a receiving foreign investment fund comparable to a UCITS fund, or in a language in which documents may be submitted to supervisory authorities of these states.

(3) The parties to the proceedings with respect to the application for authorisation of amalgamation are managers, administrators and depositaries of mutual funds or of foreign investment funds comparable to a UCITS fund that are participating in the amalgamation.

## Section 403

### **Time-limit for rendering decision**

(1) The CNB shall render a decision on an application for authorisation of amalgamation within 20 working days at the latest from the day of filing the application having all the prescribed essentials and not having any other defects.

(2) If the application for an authorisation of amalgamation, upon which a communication on amalgamation is to be drawn up, does not have all the prescribed essentials or has other defects, the CNB calls the applicant within 10 working days at the latest from the day of submitting the application or from the day of its supplementing to remove the defects in a reasonable time-limit.

## Section 404

### **Communication on amalgamation**

(1) An administrator of a UCITS fund participating in the amalgamation, draws up, publishes, and provides to the unitholders or shareholders of this fund, a communication on amalgamation,

- (a) if the UCITS fund shall be dissolved by the amalgamation and the fortune in it should become a component part of the assets in a UCITS fund or a foreign investment fund comparable to a UCITS fund,
- (b) if a UCITS fund, whose unit certificates are marketed publicly in another member state, participates in the amalgamation.

(2) The administrators of the UCITS funds participating in the amalgamation may draw up a joint communication on amalgamation. They always draw up a joint communication on amalgamation, if only UCITS funds are to be dissolved by the amalgamation and the fortune in them should become a component part of the fortune of only a UCITS fund.

(3) An administrator of the UCITS fund participating in the amalgamation publishes a communication on amalgamation after the day when a decision of the CNB or a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund approving the amalgamation to the last applicant for authorisation of amalgamation takes legal effects.

## Section 405

### **Essentials of a communication on amalgamation**

(1) A communication on amalgamation contains such information about an amalgamation so as the owners of securities or book-entry securities issued by mutual funds, or foreign investment funds comparable to UCITS funds, participating in the amalgamation, could consider the impacts of the amalgamation on their interests; a communication on amalgamation contains at least

- (a) reasons for the amalgamation,
- (b) impacts of amalgamation on the interests of the owners of securities or book-entry securities issued by mutual funds or foreign investment funds comparable to UCITS funds, participating in the amalgamation,
- (c) a decisive day of the amalgamation, and

(d) information as to whether the owners of securities or book-entry securities issued by mutual funds or foreign investment funds comparable to UCITS funds, participating in the amalgamation, will have a right of redemption or a right of substitution according to Section 406 (1), and an explanation of the nature of this right including the time-limit for its exercise.

(2) A communication on amalgamation is to be drawn up and published also in an official language of other member states in which investments in a UCITS fund or to a foreign investment fund comparable to a UCITS fund, participating in the amalgamation, are publicly marketed, or in a language in which documents may be submitted to supervisory authorities of these states.

(3) The CNB shall lay down in a regulation the requirements with respect to the contents of a communication on amalgamation to the extent of Subsection (1).

## Section 406

### **Consequences of publication of a communication on amalgamation**

(1) A unitholder of a UCITS fund participating in the amalgamation, or of a retail AIF, which is to be dissolved by the amalgamation, has, upon publication of a communication on amalgamation,

- (a) a right to have a unit certificate redeem without deduction; however, it is possible to deduct an amount corresponding to reasonable expenses connected to the redemption of the unit certificate, or
- (b) a right to have unit certificate substituted with a security or a book-entry security issued by another UCITS fund or another foreign investment fund comparable to a UCITS fund, managed by the same manager or by a manager who is part of the same holding as a manager of a UCITS fund or a foreign investment fund comparable to a UCITS fund, which issues securities or book-entry securities with which the securities or book-entry securities are to be substituted.

(2) The right according to Subsection (1) ceases to exist if it is not exercised within a time-limit referred to in a communication on amalgamation. The time-limit for the exercise of the right according to Subsection (1) must be determined in a way that it should last at least 30 days from the day of publication of a communication on amalgamation and should run out 5 working days before the decisive day of amalgamation at the latest.

(3) Sections 131 to 141 apply to the redemption by *mutatis mutandis*.

## Section 407

### **Procedure without publication of a communication on amalgamation**

(1) In case of an amalgamation upon which a communication on amalgamation is not to be drawn up, an administrator of a mutual fund which is to be dissolved by the amalgamation publishes on the internet pages of this fund a decision of the CNB approving the amalgamation and a statute of a receiving mutual fund within 1 month after the day of this decision taking legal effects. Simultaneously, the administrator publishes on the internet pages of a mutual fund to be dissolved by the amalgamation a notification on the creation of a right to have a unit certificate redeem.

(2) The unitholders of mutual funds which are to be dissolved by the amalgamation have, upon publication of the communication according to Subsection (1), a right to have a unit certificate redeem without deduction; it is possible to deduct an amount corresponding to reasonable expenses connected to the redemption of a unit certificate. This right will cease to exist if it is not exercise within 2 months from the day of publication of the communication.

(3) Sections 131 to 141 apply to the redemption of a unit certificate *mutatis mutandis*.

## Section 408

### **Temporary exemption from investment limits**

A manager of a receiving investment fund does not have to, for the period of 6 months from the decisive day of the amalgamation, comply with the investment limits with respect to this fund, which are laid down in a government regulation issued according to Section 215 (2) with respect to investment securities, money market instruments, securities issued by an investment fund or a foreign investment fund, derivatives or claims to payment of financial means from accounts in a Czech or a foreign currency, if there is a reason for it from the perspective of the consequences of the amalgamation.

## Section 409

### **Further rules**

(1) A management of the receiving fund or a receiving foreign investment fund, comparable to a UCITS fund, shall notify the fund's depository that the transfer of fortune in that fund has been finalized; the manager as well publishes the information that the decisive day of the amalgamation has occurred on the internet pages of this fund.

(2) A depository of a mutual fund which was dissolved by the amalgamation, controls whether the assets and debts in this fund have been evaluated in accordance with the criteria contained in the project of amalgamation and whether the exchange ratio has been calculated in accordance with this Act and the project of amalgamation. The depository draws up a report on the result of the control which it freely provides upon request to the owners of securities or book-entry securities issued by UCITS funds or foreign UCITS funds, participating in the amalgamation, as well as to the CNB and to a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund.

(3) A depository of a mutual fund or a foreign investment fund comparable to a UCITS fund participating in the amalgamation controls the compliance of the information contained in the communication on amalgamation with the requirements of this Act and a statute of these funds.

## Section 410

### **Decisive day of amalgamation**

(1) A mutual fund or a foreign investment fund comparable to a UCITS fund which is to be dissolved by the amalgamation, is dissolved and the owners of securities or book-entry securities issued by this fund become the unitholders of a receiving mutual fund by the lapse of time-limit determined as of the decisive day of the amalgamation.

(2) The decisive day of amalgamation is also a day from which the fortune in a mutual fund or a foreign investment fund comparable to a UCITS fund which is to be dissolved by the amalgamation are considered from an accounting perspective to be the fortune in a receiving fund.

(3) The decisive day of amalgamation must not precede the day as of which the decision on approval of the amalgamation rendered by the CNB and a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund takes legal effects.

(4) If a UCITS fund is to be dissolved by the amalgamation and a foreign investment fund comparable to a UCITS fund is a receiving fund, the unitholders of the UCITS fund which is to be dissolved by the amalgamation become the owners of securities or book-entry securities issued by the receiving foreign investment fund comparable to a UCITS fund as of the day which follows from the law of the home state of this fund.

(5) If a master fund participates in the amalgamation, the decisive day may first occur 60 days from the day of publication of a communication that the master fund is to be dissolved [Section 435 (1)].

(6) A project of amalgamation may not be amended or cancelled or the amalgamation or decision about it may not be declared void after the decisive day of amalgamation.

## Section 411

### **Exchange of securities or book-entry securities**

(1) An administrator of a receiving mutual fund ensures within 3 months after the decisive day of the amalgamation an exchange of a security or a book-entry security issued by a mutual fund or a foreign investment fund comparable to the UCITS which was dissolved by the amalgamation for a unit certificate of a receiving mutual fund in the ratio determined according to the amount of fund capital of the mutual fund per a security or a book-entry security issued by the mutual fund or the foreign investment fund comparable to a UCITS fund, which was dissolved by the amalgamation, as of the decisive day of the amalgamation.

(2) If a mutual fund is to be dissolved by the amalgamation and a foreign investment fund comparable to a UCITS fund is a receiving fund, the unit certificate will be exchanged for a security or a book-entry security issued by the foreign investment fund comparable to a UCITS fund within the time-limit and in the ratio determined as of the day following from the law of the home state of the foreign investment fund comparable to a UCITS fund.

## Section 412

### **Additional monetary compensation due to the disproportionality of an exchange ratio**

(1) If the exchange ratio referred to in the project of amalgamation is not proportionate in respect to the application of the right of exchange according to Section 411, the manager of a receiving mutual fund or a receiving foreign investment fund comparable to a UCITS fund will provide via the administrator of this fund to the owners of securities or book-entry securities issued by the mutual fund or the foreign investment fund comparable to a UCITS fund, which was dissolved by the amalgamation, additional monetary compensation up to the amount of 10 % of current value of securities or book-entry securities issued by the mutual fund or the foreign investment fund comparable to a UCITS fund which was dissolved by the amalgamation.

(2) The day as of which the current value of a unit certificate or a security or book-entry security is to be determined for the purposes of additional compensation must be the same as the decisive day of amalgamation.

## Section 413

### **Cooperation between the CNB and a supervisory authority of a foreign investment fund in the proceedings with respect to the application for approval of amalgamation**

(1) As soon as an application for approval of an amalgamation shall be carried out in the manner referred to in Section 398 (1) (d) fulfils all the prescribed requirements, the CNB sends without undue delay a copy thereof and copies of documents attached to the application to a supervisory authority of the home state of a receiving foreign investment fund comparable to a UCITS fund and asks the supervisory authority for a statement whether it has any reservations to the communication on amalgamation from the perspective of information referred in it in relation to the owners of securities or book-entry securities issued by this receiving foreign investment fund comparable to a UCITS fund.

(2) If the CNB receives from a supervisory authority of the home state of a foreign investment fund comparable to a UCITS fund participating in the amalgamation, in connection with rendering a decision on approval of amalgamation, which is to be carried out in the manner referred to in Section 398 (1) (d), a copy of a communication on amalgamation to which the CNB has, after considering it, reservations from the perspective of protection of interests of unitholders of a UCITS fund participating in the amalgamation, it acquaints the supervisory authority which has sent the copy of the communication on amalgamation to it, with the nature of such reservations; simultaneously, the CNB may communicate within 15 business days from the day when the copy has been delivered to it to the manager of this UCITS fund and calls on him to amend the contents of the communication on amalgamation on the basis of reservations of the CNB.

(3) The CNB notifies a supervisory authority referred to in Subsection (2) that its reservations are still present if it deems the amendment to the contents of the communication on amalgamation made by the manager on the basis of the call of the CNB according to Subsection (2) not to be sufficient. The CNB sends a notification that its reservations are still present to the supervisory authority within 20 business days from the day when the submission of the manager regarding the amendment to the communication on amalgamation on the basis of reservations of the CNB has been delivered to the CNB.

(4) The CNB shall, without undue delay, inform the supervisory authority of the home state of a foreign investment fund comparable to the UCITS fund participating in the amalgamation about rendering a decision on approval of the amalgamation carried out in the manner referred to in Section 398 (1) (d), as well as about the fact that the decisive day has occurred.

## **Subchapter 4**

### **Transformation of the mutual fund into a joint-stock company**

#### **Section 414**

##### **Admissibility of transformation**

(1) A mutual fund may be transformed into a joint-stock company with variable capital.

(2) A closed-ended mutual fund may also be transformed into a joint-stock company, which is not a joint-stock company with variable capital.

(3) The manager of the mutual fund shall decide on the transformation of the mutual fund into a joint-stock company.

#### **Section 415**

##### **Project of transformation**

(1) The transformation of a mutual fund into a joint-stock company is carried out according to an approved transformation project.

(2) The transformation project shall be prepared by the administrator of a mutual fund.

#### **Section 416**

##### **Essentials of a project of transformation**

(1) A project of transformation contains at least

- (a) a designation of a transforming mutual fund and a business name of the joint-stock company into which the mutual fund is to be transformed,
- (b) information necessary for the identification of a manager which should manage the joint-stock company into which the mutual fund is to be transformed,
- (c) reasons for transformation,
- (d) probable impacts of the transformation on the interests of unitholders of the mutual fund,
- (e) criteria for evaluation of the assets and debts in the mutual fund,
- (f) procedure for the calculation of an exchange ratio between unit certificates and shares of the joint-stock company or investment shares of the joint-stock company with variable capital (Section 422), (Section 422),
- (g) the day of transformation,
- (h) rules for taking over the assets in the mutual fund by the joint-stock company and for the exchange of unit certificates for shares of the joint-stock company or for investment shares of the joint-stock company with variable capital, and
- (i) a draft memorandum of association and a draft statute of the joint-stock company into which the mutual fund is to be transformed.

(2) A project of transformation must be made in writing.

## Section 417

### **Approval of the CNB**

(1) A transformation of retail investment fund having the legal form of a mutual fund into a joint-stock company must be approved by the CNB.

(2) The CNB shall not approve the transformation if

- (a) the protection of the interests of unitholders of a transforming mutual fund is not ensured, or
- (b) the only person to subscribe the founder's shares of the joint-stock company with variable capital, into which the mutual fund is to be transformed, is not the manager of a transforming mutual fund.

(3) A project of transformation is cancelled as of the day when the decision of the CNB not approving the transformation takes legal effects. The legal effects of cancellation of a project of transformation will cease to exist as of the day when such decision has been repealed upon a final and conclusive decision of a court.

## Section 418

### **Proceedings with respect to an application for approval of transformation**

(1) An administrator of a transforming mutual fund files an application for approval of a transformation.

(2) The parties to the proceedings with respect to the application for approval of a transformation are the manager, administrator and the depositary of a transforming mutual fund.

## Section 419

### **Subscription of founder's shares**

If a mutual fund is to be transformed into a joint-stock company with variable registered capital, part of the decision of the manager of mutual fund on the transformation and part of the project of transformation is an obligation of the manager of the mutual fund to subscribe founder's shares of the future joint-stock company with variable registered capital in the amount of a share in the registered capital which will correspond to the registered share capital of this company.

## Section 420

### **Informing the unitholders and the right of redemption of a unit-certificate**

(1) An administrator of a transforming mutual fund publishes on the internet pages of this fund a decision of the CNB on approval of the transformation within 1 month from the day when the decision takes legal effects. If an open-end mutual fund is being transformed, the administrator of this fund publishes within the same time-limit at the same place the project of transformation, memorandum of association and the statute of the joint-stock company with variable registered capital, into which the mutual fund is to be transformed.

(2) The administrator of a transforming mutual fund publishes together with documents referred to in Subsection (1) on the internet pages of this fund a statement on the creation of a right to have a unit certificate bought out. The right to have a unit certificate bought out without deduction is created for the unitholders of the transforming mutual fund upon publication of this statement; it is however possible to deduct an amount corresponding to necessary expenses connected to the redemption of the unit certificate. This rights ceases to exist if it is not exercised within 2 from the day of publication of the statement.

(3) Sections 131 to 141 apply to redemption *mutatis mutandis*.

## Section 421

### **Day of effectiveness of a transformation**

(1) A mutual fund which is to be transformed into a joint-stock company is dissolved and its unitholders become the shareholders of a newly formed joint-stock company or the owners of investment shares of a newly formed joint-stock company with variable registered capital upon the day of registration of the newly formed joint-stock company in the Commercial register.

(2) A newly formed joint-stock company may not be registered in the Commercial register prior to the day when the decision of the CNB on approval of the transformation takes legal effect, if the transformation needs to be approved. A newly formed joint-stock company with variable registered capital may not be registered in the Commercial register even if the issue price of founder's shares has not been paid up in full.

(3) After the day of effectiveness of the transformation, the project of transformation can not be changed or canceled, nor can the transformation neither the decision on the transformation be declared void.

## Section 422

### **Exchange of unit certificates for shares**

The administrator of a joint-stock company, into which a mutual fund has been transformed, ensures within 3 months from the day of effectiveness of a transformation an exchange of the unit certificate issued by the dissolved mutual fund for a share of a newly formed joint-stock company or an investment share of a newly formed joint-stock company with variable registered capital in the ratio determined according to the amount of fund capital of the mutual fund per a unit certificate of the dissolved mutual fund as of the day of effectiveness of the transformation.

## Section 423

### **Cash settlement for inappropriate exchange ratio**

(1) If the exchange ratio referred to in the project of transformation is not proportionate with respect to the right of exchange according to Section 422, the manager of a joint-stock company, into which the mutual fund has been transformed, will provide via the administrator of this fund to the owners of securities or book-entry securities issued by the dissolved mutual fund additional monetary compensation up to the amount of 10 % of current value of unit certificates issued by the dissolved mutual fund.

(2) The day as of which the current value of a unit certificate is to be determined for the purposes of additional compensation must be the same as the day of effectiveness of transformation.

## Section 424

### **Application of other parts of this Act *mutatis mutandis***

Provisions of this Act for granting an authorisation for an activity of an internally managed investment fund apply to the creation of a joint-stock company, into which a mutual fund is to be transformed, and if this joint-stock company is to be an internally managed investment fund *mutatis mutandis*.

## **Subchapter 5**

### **Transformation of a closed-ended mutual fund into an open-ended mutual fund**

## Section 425

### **Admissibility of a transformation**

(1) A closed-ended mutual fund may be transformed into an open-ended mutual fund only in the case referred to in Section 144.

(2) The manager of the transformed mutual fund is competent to resolve on the transformation of a closed-ended mutual fund into an open-ended mutual fund.

## Section 426

### **Authorisation of the CNB**

(1) A transformation of a retail investment fund having the legal form of a closed-ended mutual fund into a retail investment fund having the legal form of an open-ended mutual fund must be approved by the CNB.

(2) The CNB shall not authorise a transformation if the protection of interests of unitholders of a transforming retail investment fund is not ensured.

#### Section 427

##### **Proceedings with respect to an application for autorisation of transformation**

(1) The administrator of a transforming mutual fund files an application for autorisation of a transformation.

(2) The parties to the proceedings with respect to the application for autorisation of a transformation are the manager, administrator and the depository of a transforming mutual fund.

#### Section 428

##### **Further rules**

(1) If it may not be reasonably presumed that the relations of a mutual fund will not be as of the day of effectiveness of a transformation in compliance with the rules, techniques or limits which are to be introduced, maintained and applied according to Sections 215 or 284, transitional provisions will be inserted in the statute containing

- (a) the length of a transitional period, and
- (b) exceptions from the rules, techniques or limits which are necessary in the transitional period for the execution of the transformation in the best interests of all unitholders.

(2) The CNB may, in the decision approving the transformation, impose on the manager or administrator of a mutual fund with respect to the transformation with the exception according to Subsection (1) (b) further conditions which the manager or administrator must observe or fulfil in connection with the transformation during the transitional period.

(3) From the day of filing an application for an authorisation of a transformation, the administrator of a mutual fund publishes on the internet pages of this fund information of an intended transformation and the consequences thereof for the unitholders.

#### **Subchapter 6**

##### **Transformation of a retail AIF into a UCITS fund**

#### Section 429

##### **Admissibility of transformation**

(1) A retail AIF may be transformed into a UCITS fund.

(2) The manager of a transforming retail AIF is competent to resolve on the transformation of a retail fund into a UCITS fund.

#### Section 430

##### **Authorisation of the CNB**

(1) A transformation of a retail AIF into a UCITS fund must be authorised by the CNB.

(2) The CNB shall not authorise transformation if the protection of interests of unitholders of a transforming retail AIF is not ensured.

(3) At the same time as the transformation is authorised, the CNB shall decide on the approval of the depository and the statute of this fund.

#### Section 431

##### **Proceedings with respect to an application for authorisation of transformation**

(1) The administrator of a transforming retail AIF files an application for authorisation of a transformation.

(2) The parties to the proceedings with respect to the application for authorisation of a transformation are the manager, administrator and the depository of the transformed retail AIF.

#### Section 432

##### **Further rules**

(1) If it may not be reasonably presumed that the relations of a mutual fund will not be as of the day of effectiveness of a transformation in compliance with the rules, techniques or limits which are to be introduced, maintained and applied for the UCITS fund according to Section 215, transitional provisions will be inserted in the statute containing

- (a) the length of the transitional period, and
- (b) exceptions from the rules, techniques or limits which are necessary in the transitional period for the execution of the transformation in the best interests of all unitholders.

(2) The CNB may, in the decision authorising the transformation, impose on the manager or administrator of a mutual fund with respect to the transformation with the exception according to Subsection (1) (b) further conditions which the manager or administrator must observe or fulfil in connection with the transformation during the transitional period.

(3) From the day of filing an application for approval of a transformation, the administrator of a mutual fund publishes on the internet pages of this fund information of an intended transformation and the consequences thereof for the unitholders.

#### **Subchapter 7**

##### **Special rules for master and feeder funds**

#### Section 433

##### **Obligations of a manager of a feeder fund in case of dissolution of its master fund**

(1) If a master fund participates in the amalgamation or consolidation or participates in another transformation allowed by the law of a foreign state, or if a master fund is being dissolved according to the law of a foreign state without liquidation or a master fund participates in the amalgamation or another comparable transformation allowed by the law of a foreign state, the manager of a feeder fund to this master fund asks via the administrator of this fund for a prior consent of the CNB to the fact that it intends

- (a) to invest the assets in this fund as a manager of a feeder fund into securities or book-entry securities issued by the current master fund or another master fund, or
- (b) to continue to invest the assets in this fund as a manager of a UCITS fund which is not a feeder fund.

(2) If the manager of a feeder fund does not apply for a prior consent of the CNB according to Subsection (1) within 1 month from the day when it has received a notification that the master fund is being dissolved [Section 435 (2)] or a comparable notification according to the law of a foreign state, this fund is dissolved upon lapse of this time-limit due to neglect to act. If the CNB dismisses the application for a prior consent according to Subsection (1), the feeder fund is dissolved with liquidation upon the day when this decision takes legal effects.

(3) Until the lapse of time referred to in Subsection (2) or until granting a prior consent according to Subsection (1) the manager of a feeder fund may invest the assets in this fund only for the purpose of preservation of its assets.

## **Chapter 3**

### **Common Provisions**

#### **Section 434**

##### **Obligation to prepare financial statement**

The administrator of a mutual fund prepares an extraordinary financial statement of this fund according to an act regulating bookkeeping as of the day of dissolution of this fund; an annual report is not made as of the day of dissolution of this fund.

#### **Section 435**

##### **A special provision for a master fund and a feeder fund**

(1) A master fund may be dissolved at the earliest after 3 months from the day when a statement that this fund is to be dissolved has been published.

(2) The administrator of the master fund sends the statement referred to in Subsection (1) simultaneously with its publication to all of its feeder funds and to competent supervisory authorities of their home states.

## **TITLE V**

### **CHANGE OF THE HOME STATE OF AN INVESTMENT FUND OR A FOREIGN INVESTMENT FUND**

## **Chapter 1**

### **Transformation of a foreign investment fund with legal personality into an investment fund with legal personality**

#### **Section 436**

##### **Admissibility of transformation**

(1) The transformation of a foreign investment fund with a legal personality into an investment fund with legal personality is admitted.

(2) The transformation of a foreign investment fund with a legal personality into an investment fund with legal personality takes place when the transforming foreign investment fund moves its registered office to the Czech Republic.

### Section 437

#### **Special provisions on the granting of authorisation to for the activity of an internallymanaged investment fund**

(1) A foreign investment fund with legal personality, which is supposed to transform into an internally managed investment fund, will request the CNB for an authorisation for the activity of an internally managed investment fund prior to the entry of the change of registered office to the Commercial register.

(2) The CNB grants to a foreign investment fund with a legal person an authorisation to operate an internally managed investment fund, although the fund does not have its registered office in the Czech Republic, if the other conditions for granting an authorisation are fulfilled. The decision on granting the authorisation does not become effective prior to the day when the change of the registered office of the foreign investment fund with legal personality to the Czech Republic becomes effective.

### Section 438

#### **Similar use of other provisions of this Act**

For the transformation of a foreign investment fund with legal personality into an internally managed investment fund will further apply the provisions of this Act regarding the granting of the authorisation for the activity of an internally managed investment fund *mutatis mutandis*.

## **Chapter 2**

### **Transformation of an investment fund with legal personality into a foreign investment fund with legal personality**

#### Section 439

#### **Admissibility of transformation**

(1) Transformation of an investment fund with legal personality into a foreign investment fund with legal personality is admissible.

(2) The transformation of an investment fund with a legal person into a foreign investment fund with legal personality occurs when the transformingd investment fund moves its registered office abroad.

#### Section 440

#### **Authorisation of the CNB**

(1) An authorisation of the CNB is needed for the transformation of a retail investment fund with legal personality into a foreign investment fund with legal personality.

(2) The CNB shall not allow

(a) a transformation of a UCITS fund into a foreign investment fund without legal personality, or

(b) a transformation if the protection of the interests of the shareholders of the transforming retail investment fund is not ensured.

#### Section 441

##### **Proceeding about the request for the authorisation of the transformation**

(1) The request for the transformation authorisation is filed by the administrator of the transforming retail investment fund.

(2) Parties to the proceeding about the request for the transformation authorisation are the transforming retail investment fund and its manager, administrator and depository.

### **Chapter 3**

#### **Transformation of a foreign investment fund without legal personality into an investment fund without legal personality**

#### Section 442

##### **Admissibility of the transformation**

(1) Transformation of a foreign investment fund without legal personality into an investment fund without legal personality is admissible if also permitted by the law of the state which is the home state of the transforming foreign investment fund.

(2) The manager of the transforming foreign investment fund decides about the transformation; the manager will also decide on the legal form permissible according to Czech law that the transformed investment fund will have.

#### Section 443

##### **Effective day of the transformation**

(1) A foreign investment fund without a legal person shall become an investment fund without legal person on the day of entry in the list of mutual funds maintained by the CNB if the fund has the legal form of a mutual fund or in the list of investment funds having a legal form of a trust maintained by the CNB if this fund has the legal form of a trust.

(2) Provisions of the home state law of the transforming foreign investment fund which have the purpose to protect the investors of this fund in case of transformation will also apply after the effective day of the transformation if the home state law of the transforming foreign investment fund insists on it and if it is not contrary to the public order according to Czech law.

(3) The transformation or the decision on it may not be declared void after the effective day of the transformation.

#### Section 444

##### **Similar use of other provisions of this Act**

A transformation of a foreign investment fund without legal personality into an investment fund without legal personality is further governed by the provisions of this act for the coming into existence of an investment fund without legal personality having the relevant legal form.

## Chapter 4

### **Transformation of an investment fund without legal personality into a foreign investment fund without legal personality**

#### Section 445

##### **Admissibility of the transformation**

(1) Transformation of an investment fund without legal personality into a foreign investment fund without legal personality is admissible if also permitted by the law of the state, which will be the home state of the transformed foreign investment fund.

(2) The manager of the transforming investment fund decides about the transformation; the manager will also decide on the legal form that the transformed foreign investment fund.

#### Section 446

##### **Project of transformation**

(1) Transformation of an investment fund without legal personality into a foreign investment fund without legal personality is realized in accordance with an approved transformation project.

(2) The transformation project will be prepared by the administrator of the transforming investment fund.

#### Section 447

##### **Essentials of the transformation project**

(1) The transformation project contains at least

- (a) a designation of the transforming investment fund,
- (b) information about the state which will be the home state of the transforming foreign investment fund,
- (c) information about the legal form, which the transforming foreign investment fund will have,
- (d) the reasons for the transformation,
- (e) likely impacts of the transformation on the interests of the unitholders or the beneficiaries of the transforming investment fund,
- (f) the criteria for valuing the assets and liabilities of the transforming investment fund,
- (g) procedure for the calculation of the exchange ratio between the unit certificates, if the transforming investment fund has the legal form of a mutual fund, and other securities or book-entry securities, if these securities or book-entry securities represent the share of investors on the assets of the transformed foreign investment fund, as well as the rules for their exchange,
- (h) the decisive day of the transformation and
- (i) proposal of the statute of the transforming investment fund or other comparable document if applicable.

(2) The transformation project requires a written form.

## Section 448

### **Authorisation of the CNB**

(1) The authorisation of the CNB is needed for the transformation of a retail investment fund without legal personality into a foreign investment fund without legal personality.

(2) The CNB shall not authorise

- (a) a transformation of a UCITS fund into a foreign investment fund without legal personality, or
- (b) a transformation if the protection of the interests of unitholders of the transformed retail investment fund is not ensured.

(3) The transformation project is cancelled by the day of when the decision of the CNB whereby the transformation is not allowed has taken legal effects. The legal effects of such cancellation of the transformation project cease to exist by the day when such decision of the CNB was finally repealed by the decision of a court.

## Section 449

### **Proceeding about the request for the transformation authorisation**

(1) The request for the transformation authorisation shall be submitted by the administrator of the transforming retail investment fund.

(2) Participants in the transformation authorisation procedure are a manager, the administrator and the depository of the transformed retail investment fund.

## Section 450

### **Informing the investors and the right of redemption of unit certificates**

(1) The administrator of the transformed retail investment fund shall publish on the website of this fund the transformation project and the decision of the CNB to authorisation transformation within 1 month from the effective date of this decision.

(2) The administrator of a transforming qualified investors' fund shall publish a transformation project on the fund's website within one month from the date of its approval.

(3) If the transforming investment fund has the legal form of a mutual fund, the administrator of the transforming investment fund shall publish together with the documents listed in Subsection (1) or (2) the notice of origin of the redemption right of the unit certificates on the internet site of this fund.

(4) The right of redemption without a deduction of the unit certificates arises for the unit-holders of the transforming mutual fund upon the publication of the notice according to Subsection (3); however, the amount corresponding to the reasonable expanses of the administrator connected to the redemption of the unit certificate may be deducted.

(5) The redemption right under Subsection (4) shall cease to exist if it is not invoked within 2 months after the day of publication of the notice according to Subsection (3).

(6) Sections 131 to 141 will apply on the redemption of a unit certificate.

## Section 451

### **Effective day of the transformation**

(1) An investment fund without legal personality becomes a foreign investment fund without legal personality on the day determined by the law of the home state of the foreign investment fund without legal personality, otherwise on the day of erasure of the investment fund without legal personality from the list of mutual funds maintained by the CNB, if this fund has the legal form of a mutual fund, or from the list of investment funds having the legal form of a trust maintained by the CNB, if this fund has the legal form of a trust.

(2) Provisions of Czech law, which have the purpose to protect the unitholders or the beneficiaries of the investment fund without legal personality in case of a transformation, will also apply after the effective day of the transformation.

(3) If an authorisation from the CNB is needed for the transformation, the effective day of the transformation cannot precede the day when the decision of the CNB on the authorisation for the transformation has taken legal effects.

(4) The transformation project may not be changed or cancelled, nor can the transformation or the decision on it be declared void after the effective day of the transformation.

## Section 452

### **Transfer and exchange of securities or book-entry securities**

(1) Should the share of investors in the assets of the transformed foreign investment fund without legal personality be represented by securities or book-entry securities, the person who performs the activity comparable to the activity of an administrator for this fund will ensure within 3 months from the decisive day of transformation the transfer of these securities or book-entry securities to the investors of the transformed foreign investment fund.

(2) If the transforming investment fund without legal personality has the legal form of a mutual fund, the securities or book-entry securities listed in Subsection (1) will be transferred by exchange for unit certificates issued by this fund in a ratio determined according to the amount of fund capital of the mutual fund attributable to the unit certificate to the decisive day of the transformation.

## Section 453

### **Monetary compensation for the inadequacy of the exchange ratio**

(1) If the exchange ratio stated in the transformation project is inadequate for the exercise of the right for exchange according to Section 452 (2), the one who performs for the transformed investment fund without legal personality the activity comparable to the activity of a manager will provide through the one who for this fund performs the activity comparable to the activity of an administrator a monetary compensation to the owners of unit certificates up to the amount of 10 % of the current value of these unit certificates.

(2) The day to which the current value of the unit certificate is determined for the purpose of the compensation must be identical to the effective day of the transformation.

## TITLE VI

### COMMON PROVISIONS

#### Section 454

(1) The application for the appointment of a liquidator according to Section 346 (2) may be filed only electronically; the application must include information and documents proving the fulfilment of the preconditions for the appointment of the one requested for appointment as the liquidator of a management company. The CNB will lay down in a regulation the requirements for the application certifying the fulfilment of the assumptions stated by this Act, its form and the method of administration.

(2) The application for granting an authorisation according to Section 356 (1), Section 360 (1), Section 366 (1), Section 370 (1), Section 386 (1), Section 402 (1), Section 418 (1), Section 427 (1), Section 431 (1), Section 441 (1) and Section 449 (1) may be filed only electronically; the application must include information and documents proving the fulfilment of the preconditions for granting the authorisation stated by this Act. The CNB will lay down in a regulation the requirements for the application certifying the fulfilment of the preconditions stated by this Act, its form and the method of administration.

## PART TWELVE

### REPORTING OBLIGATIONS

#### Section 455

#### **Annual and semi-annual reports**

(1) The manager of an investment fund or a foreign investment fund provides the CNB with its annual report, semi-annual report or consolidated annual report if they are drawn up. The management company must always draw up its annual report.

(2) The administrator of an investment fund or a foreign investment fund provides the CNB with its annual report and semi-annual report, and the annual report and semi-annual report of an investment fund or a foreign investment fund, whose administration it performs, if they are drawn up.

(3) The administrator of a feeder fund, whose master fund is a foreign investment fund, provides the CNB with the annual report and semi-annual report of this master fund, if they are drawn up.

(4) The financial statement verified by auditor or consolidated financial statement verified by auditor is part of the annual or consolidated annual report referred to in Subsection (1).

#### Section 456

#### **Failure to approve the financial statement**

The administrator of an investment fund or a foreign investment fund notifies the CNB that the competent body within the specified period has not approved the financial statement of the investment fund, whose administration it performs, or that a court decided on the invalidity of an act of the competent body, which has approved the financial statement of this fund.

## Section 457

### **Statute and the key investor information document**

(1) The administrator of an investment fund or a foreign investment fund shall provide the CNB with the statute of this fund and shall notify it of any change thereof.

(2) The administrator of an investment fund or a foreign investment fund shall provide the CNB with a notice of the the key investor information document of the fund and shall notify it of any change therein.

## Section 458

### **Suspension of the issue or redemption of unit certificates or investment shares**

The manager of the investment fund or foreign investment fund shall notify the CNB of its decision to suspend issuance or redemption of unit certificates or investment shares and submits to it the minutes of this decision.

## Section 459

### **Delegation of the performance of an individual activity to another**

(1) The manager of an investment fund or a foreign investment fund shall notify the CNB that it intends to delegate the performance of an individual activity, which is included in the management of an investment fund or a foreign investment fund.

(2) The administrator of an investment fund or a foreign investment fund shall notify the CNB that it intends to delegate the performance of an individual activity, which is included in the administration of an investment fund or a foreign investment fund.

## Section 460

### **Delegation to another person by the delegated person**

(1) The manager of an investment fund or a foreign investment fund informs the CNB that the person to whom the performance of an individual activity, which is included in the management of an investment fund or a foreign investment fund, has been delegated, intends to delegate the performance of an act or some acts from this activity to another person.

(2) The administrator of an investment fund or a foreign investment fund informs the CNB that the person to whom the performance of an individual activity, which is included in the administration of an investment fund or a foreign investment fund, has been delegated, intends to delegate the performance of an act or some acts from this activity to another person.

## Section 461

### **Public marketing of investments in the Czech Republic**

(1) An administrator of a foreign investment fund comparable to a UCITS fund in which investments are publicly marketed in the Czech Republic shall notify the CNB of an amendment to a document of this fund comparable to the memorandum of association, statute, annual report, semi-annual report, key investor information document and also informs it at the same time as to where these documents may be found in an electronic form.

(2) An administrator of a foreign investment fund comparable to a UCITS fund in which investments are publicly marketed in the Czech Republic shall notify the CNB of the amendment of the agreements pursuant to Section 306 and of any change in the types of investments in that fund.

(3) The manager of an investment fund or foreign investment fund shall notify the CNB that the investments in this fund are publicly marketed in the Czech Republic. Other requirements of this notification in respect of a foreign investment fund comparable to a UCITS fund are defined in Article 1 and Annex I of Commission Regulation (EU) No 584/2010.

(4) The manager of an investment fund or foreign investment fund shall notify the CNB of any change in the information given in the notification pursuant to Subsection (3) as well as the fact that the investments in this fund have ceased to be publicly marketed in the Czech Republic.

## Section 462

### **Basic information on composition of asset**

The manager of an investment fund or a foreign investment fund notifies to the CNB the information about

- (a) the composition of the fund's assets with the division according to the types of the proprietary values, in which the fund may invest according to the statute,
- (b) the number of investors of the fund divided into investors with their registered office or residence in the Czech Republic and investors with their registered office or residence abroad, and
- (c) the value of the fund's assets pertaining to investors with their registered office or residence in the Czech Republic and about the value of the property pertaining to the investors with registered office or residence abroad.

## Section 463

### **Information regarding the management of an investment fund and a foreign investment fund**

(1) The manager of an investment fund or of a foreign investment fund shall notify the CNB of the information about

- (a) the share of the fund's assets, which is subject to special measures due to its low liquidity, to the fund's total assets, expressed as a percentage,
- (b) the measures adopted for risk management of insufficient liquidity of the fund,
- (c) the risk profile of the fund and the measures adopted for managing the risks, to which the fund may be exposed in relation to the chosen investment strategy, and
- (d) the results of the stress tests conducted.

(2) The manager of an investment fund or a foreign investment fund shall notify the CNB of the information about

- (a) the most important and most significant
  1. markets, on which it is being traded on behalf of all investment funds and foreign investment funds managed by the manager,
  2. investment instruments, with which the manager trades on behalf of the investment funds and foreign investment funds managed by the manager, and
  3. exposures in respect of every investment fund and foreign investment fund, managed by the manager,
- (b) investment funds and foreign investment funds managed by the manager.

(3) A further obligation under Subsections (1) and (2) is defined in Article 110 of Commission Delegated Regulation (EU) No 231/2013.

## Section 464

### **Information about the use of leverage**

(1) If the manager of an investment fund or a foreign investment fund uses the leverage in such a way that the degree of the use of leverage in relation to the investment fund or the foreign investment fund is high, the manager will announce to the CNB information about

- (a) the degree of exposure with division of exposures created by accepting credit or loan or investment instruments or by investing in investment securities or money market instruments including a derivative,
- (b) the degree of the use of leverage in relation to every such fund,
- (c) the total extent of the use of the assets of the fund while using the leverage, and
- (d) five most significant exposures with division according to (a).

(2) Article 111 of Commission Delegated Regulation (EU) No 231/2013 defines when the use of leverage is high.

## Section 465

### **Failure to reach the fund capital of an investment fund**

If the fund capital of an investment fund does not reach within the determined time-limits at least the amount laid down in an act, the administrator of such fund notifies this to the CNB.

## Section 466

### **Further information**

(1) The manager of an investment fund or a foreign investment fund notifies to the CNB information about

- (a) a financial situation of that fund,
- (b) the result of management of this fund and
- (c) the amount and volume of issued and redeemed securities or book-entry securities and of another collection, payment or division of the property of this fund or its part.

(2) A manager of an investment fund or a foreign investment fund and the administrator of an investment fund or a foreign investment fund shall notify the CNB of

- (a) its financial situation,
- (b) results of their management, and
- (c) the fulfilment of legal conditions for the performance of their activity.

(3) A manager of an investment fund or a foreign investment fund shall notify the CNB that it:

- (a) it has established a legal person as a single founder,
- (b) it has established a branch for its enterprise,
- (c) it has gained a qualified shareholding in a legal person, or
- (d) that
  - 1. the legal person, which it established as a single founder, has been dissolved,
  - 2. the branch of its business establishment has been dissolved, or

3. it has lost the qualified shareholding in a legal person.

(4) Manager of an investment fund or a foreign investment fund and administrator of an investment fund or a foreign investment fund will announce to the CNB the list of persons, which had a qualified shareholding in the fund or which were closely linked with it in the past year.

## Section 467

### **Notification of changes**

(1) A person who has a licence from the CNB for the activity according to Sections 479, 480, 481 or 482 notifies to the CNB every change in the facts, on the basis of which the person was granted the authorisation for the activity, as long as such fact may not be detected from a register according to an act regulating basic registers. A foreign person with a licence according to Section 481 notifies to the CNB without undue delay that the person has been granted a comparable authorisation by the supervisory authority of another member state.

(2) The manager of an investment fund or a foreign investment fund notifies to the CNB every change, which may significantly worsen its economic situation or the financial situation of the investment fund or the foreign investment fund, managed by the manager. The same duty lies with the administrator of an investment fund or a foreign investment fund, in case of a change which may significantly worsen its economic situation.

(3) The administrator of an investment fund or a foreign investment fund notifies to the CNB every change, which may significantly influence the value of the unit certificate, investment share or other share in the investment fund or a foreign investment fund, whose current value it calculates.

(4) If a registered fact has changed, the registered person or a person, on whom the duty is imposed by a legal regulation, notifies such change to the CNB which enters such change to the registers according to Sections 596 and 597, as long as such fact cannot be detected from a register according to an act regulating basic registers.

(5) A manager of an investment fund or a foreign investment fund shall notify the CNB of the change in the person of the administrator.

## Section 468

### **Information about the derivatives**

The investment fund or the foreign investment fund manager shall notify the CNB of the information on

- (a) the types of derivatives, which the manager has negotiated on behalf of this fund,
- (b) the investment limits in respect of the derivatives referred to in letter (a) which the manager complies with.

## Section 469

### **Information about the expert committee and real estate and shareholdings in real estate companies**

The administrator of the investment fund or of the foreign investment fund shall notify the CNB of the information of the

- (a) the expert committee, and

(b) the real estate and the shareholdings in real estate companies, in which this fund invests.

## Section 470

### **Feeder and master fund**

(1) The administrator of a feeder fund whose master fund is a foreign investment fund comparable to a retail investment fund shall provide the CNB with a document comparable to the statute of the master fund and shall notify the CNB of any change of it.

(2) An administrator of a sub-fund whose master fund is a foreign investment fund comparable to a retail investment fund shall provide the CNB with a key investor information document of that fund and shall notify the CNB of any change to it.

(3) The administrator of a master fund shall notify the CNB of the data necessary to identify each of its feeder funds that have begun investing in the securities or book-entry securities issued by that master fund and shall notify it of any change in the information.

### **Notification of shares in voting rights**

## Section 471

(1) In case of shares in the voting rights related to the assets of an investment fund or a foreign investment fund managed by the manager, its manager authorised to exceed the relevant threshold notifies to the CNB of the share in all voting rights of a legal person listed in Section 34 (1), if the share in voting rights of a legal person reaches or exceeds 10 %, 20 %, 30 %, 50 % or 75 %, or if it decreases below these limits.

(2) A manager referred to in Section 34 (1) shall notify the CNB of the information specified in Section 34 (1) and Section 35 (1) (a) to (e).

(3) A manager referred to in Section 34 (1) or Section 35 (3) shall notify the CNB of the information specified in Section 35 (1) (f) to (h).

(4) Section 34 (4) shall apply *mutatis mutandis* to the calculation of the share in voting rights according to Subsection (1).

## Section 472

(1) The notification duty according to Section 471 (1) also applies to the change of distribution of a share in voting rights between persons acting in concert to the extent imposing the notification duty.

(2) If the duty according to Section 471 (1) arises for more persons, these persons can fulfil the notification duty by way of a joint notification.

(3) The notification duty is fulfilled if the written notice is properly dispatched.

### **Information regarding the breach of a legal duty or its possible breach**

## Section 473

The manager of an investment fund or a foreign investment fund and the administrator of an investment fund or a foreign investment fund notifies to the CNB remedial measures or penalties finally and conclusively imposed on it by the supervisory authority of another state with the statement of reasons for imposing such a remedial measure or penalty.

## Section 474

(1) If the depositary of the investment fund is of the opinion, based on the procedure according to Section 66 or without this procedure, that the manager of this fund breached this Act, a regulation implementing it, directly applicable EU legislation in the field of the field of investment fund management<sup>2)</sup>, the statute of an investment fund or a depositary agreement, the depositary notifies this fact to the CNB, in case of danger of delay.

(2) The depositary of the investment fund shall notify the CNB of any fact it has found in the performance of its activities which may significantly affect the value of the securities or book-entry securities issued by the fund or its shares in the fund or which may lead to a substantial deterioration of the fund's management.

## Section 475

(1) The investment fund or foreign investment fund manager shall notify the CNB that there is an obstacle impeding the fulfilment of its duties arising from the statute of an investment fund or a comparable document of a foreign investment fund, or duties stipulated by this Act, based on this Act, or by directly applicable EU legislation in the field of management of investment funds<sup>2)</sup>.

(2) The administrator of an investment fund or a foreign investment fund shall notify the CNB that there is an obstacle impeding the fulfilment of its duties arising from the statute of the investment fund or a comparable document of the foreign investment fund, or duties laid down by this Act, based on this Act, or by directly applicable EU legislation in the field of management of investment funds<sup>2)</sup>.

## Section 476

### **Notification duty of the person with the prior approval of the CNB to perform its office**

The person referred to in Section 515, who has obtained the prior approval of the CNB to perform its office under this Act, shall notify the CNB of any change to the terms referred to in Section 516 or termination of performance of its office.

## Section 477

### **Extended scope of application**

(1) The provisions of Section 462, Section 463 (2) (a) points (2) and (3) and Section 475 shall apply *mutatis mutandis* to the person referred to in Section 15 (1).

(2) The information provided in Sections 458, 462, 463 (1), 464 (1), 466 (1), 467 (2) and (3) and 468 shall also be notified to the CNB in respect of each sub-fund.

## Section 478

### **Enabling provisions**

The CNB lays down in a regulation the extent, structure, form, manner and time-limits for notification of information and provision of documents according to Sections 455 to 477 and Section 545 (3) to the extent necessary for the performance of supervision over the capital market and to the extent not regulated by directly applicable EU regulation implementing the AIFMD<sup>6)</sup>.

## PART THIRTEEN

### PROCEEDINGS ON APPLICATIONS

#### TITLE I

##### AUTHORISATION FOR MANAGEMENT AND ADMINISTRATION

###### Chapter 1

###### Prerequisites for granting authorisation

###### Section 479

###### Management company

(1) The CNB shall grant an authorisation to the activity of a management company upon an application of a joint-stock company or upon an application of a founder or founders of a joint-stock company prior to the day of its entry in the Commercial register, if

- (a) the registered office and actual seat is or is to be in the Czech Republic,
- (b) the company is trustworthy,
- (c) there are no reasonable concerns that the company will not have, to the extent of application for an authorisation for the activity, the material, organisational and personal prerequisites for the performance of such activity as of the day of commencement of activity, allowing for fulfilling the plan of business activity, and it is apparent in which manner the operative management, fulfilling the investment strategy will be ensured, how the compliance and internal audit and the risk management will be ensured, how the financial control will be carried out and how the cash flow will be managed, how the remuneration system is regulated procedures are set up for delegating third parties to an activity involving the management or administration of an investment fund, and for controlling the activities of authorised persons,
- (d) its business plan
  - 1. defines and covers the planned scope of activities,
  - 2. is based on real economic calculations and
  - 3. defines the activities, which are intended to be delegated to another,
- (e) the proper and prudent performance of the company's activities will be managed by at least 2 persons who fulfill the prerequisites for the approval of the managing persons stipulated in Section 516 (1),
- (f) the registered capital is paid-up, initial capital including registered capital has a transparent and non-defective origin and everything suggests that the company will have equity in an amount allowing proper management of the investment funds or of foreign investment funds which it wants to manage, and which will be placed according to the rules for the placement of capital (Section 32),
- (g) a close connection with another person does not prevent the performance of supervision over the company; in the case of a close connection with a person without registered office or actual seat in the state, which is not a member state, the law of this state and manner of its application, including enforceability, must not hinder supervision over the management company,
- (h) in case of funds or corporations which manage or intend to manage, there is no reasonable cause for concern that it will not make the information referred to in Section 241 (1) or Section 293 available to investors,
- (i) only the persons fulfilling the prerequisites referred to in Section 522 (2) will have a qualified shareholding in the company,
- (j) it prove fulfillment of the prerequisites pursuant to Section 507 (1), if it intends to perform any of the activities pursuant to Section 11 (1) (c) to (f)

- (k) it fulfils the prerequisites according to Article 14 (2) of the EUVECA-R if it intends to manage EuVECAs or comparable foreign investment funds, and
- (l) meets the preconditions laid down in Article 15 (2) of the EuSEF-R if it intends to manage EuSEFs or comparable foreign investment funds.

(2) The CNB shall grant an authorisation to the activity of a management company if it intends to manage only EUVECAs, EuSEFs or comparable foreign investment funds also at the request of a joint-stock company or at the request of the founder or founders of a joint-stock company prior to the date of its incorporation in the Commercial Register if its registered office and actual seat is or is to be in the Czech Republic, and

- (a) if the prerequisites according to Article 14 (2) of the EUVECA-R are met, if it intends to manage EuVECAs according to Article 3 (b) of this legislation or comparable foreign investment funds, or
- (b) if the prerequisites laid down in Article 15 (2) of the EuSEF-R are met, if it intends to manage EuSEFs according to Article 3 (b) of this legislation or comparable foreign investment funds.

## Section 480

### **Internally managed investment fund**

(1) The CNB shall grant an authorisation for the activity of an internally managed investment fund at the request of the founder or founders of a legal entity prior to the date of its entry in the Commercial Register or at the request of the investment fund referred to in Section 9 (1), if

- (a) it certifies that the legal person was established and that it has a legal form authorisation by this Act,
- (b) requirements set out in Section 479 (1) are met,
- (c) it submits a draft of administrative agreement, if the administration is to be carried out by another person,
- (d) the person who will be a depository confirms the creation of requirements for fulfilling the duties of the depository pursuant to this Act,
- (e) it submits the statute of the investment fund, which has all the prescribed requirements arising from this Act,
- (f) assumptions provided for in Section 248 (1) are met if it is to be a feeder fund, or
- (g) assumptions under Articles 5 and 6 of the ELTIF-R are met if it is to be an ELTIF.

(2) The CNB shall also grant authorisation to operate the internally managed investment fund pursuant to Subsection (1) also at the request of a legal person registered in the register maintained by the CNB pursuant to Section 596 (f) if it is to be a investors' fund.

(3) The CNB shall grant an authorisation to operate an internally managed investment fund if it is to qualify as a EuVECA or a EuSEF, also at the request of the founder or founders of a legal person prior to the date of its entry in the Commercial Register or at the request of the investment fund referred to in Section 9 (1) or at the request of a legal person enrolled in register of the CNB pursuant to Section 596 (f), if this legal person fulfills the presumption stipulated in Section 479 (1) (a) and

- (a) if the assumptions under Article 14 (2) of the EUVECA-R are fulfilled, or
- (b) if the assumptions under Article 15 (2) of the EuSEF-R are fulfilled.

## Section 481

### **Foreign person as a manager**

(1) The CNB shall grant an authorisation to operate a foreign entity based in a non-EU member state which intends to manage retail AIFs, comparable foreign investment funds, qualified investors' funds or comparable foreign investment funds, or to marketing investments in such funds, or to administer the funds, at its request, if

- (a) the Czech Republic is its state of reference,
- (b) it meets the conditions laid down in Section 479 (1) (b) to (h), the registered capital being a comparable variable, depending on its legal form,
- (c) qualifying holdings are limited to persons who are trusted and capable of ensuring the proper and prudent pursuit of the activities of a foreign person,
- (d) it has the authorisation of the home state supervisory authority to manage a foreign investment fund comparable to an investment fund which it intends to manage,
- (e) activities pursuant to Section 38 (1) (d), (n) and (o) is to be performed by a person with its registered office, place of residence or branch in the territory of the Czech Republic,
- (f) the CNB, the foreign supervisory authority of the foreign entity and, where appropriate, the supervisory authority of the home EU member state of the foreign investment fund that the foreign person intends to manage according to Articles 113 to 115 of Commission Delegated Regulation (EU) No 231/2013, have agreed on the exchange of information necessary for the exercise of supervision under this Act,
- (g) the state in which the foreign person has its registered office or its registered office is not on the list of non-cooperating countries and territories drawn up by the Organization for Economic Cooperation and Development,
- (h) the state in which the foreign person has its registered office and effective place of business has concluded an agreement with the Czech Republic which complies with the principles set out in Article 26 of the Model Organization Taxation and Income Taxation and Development Agreement and provides for the exchange of information in tax issues,
- (i) the law of the state in which the foreign person has its registered office or its registered office, including any limitation on the powers of the supervisory authorities of a foreign person in that state, does not prevent effective supervision of that foreign person pursuant to this Act,
- (j) it certifies fulfillment of prerequisites pursuant to Section 507 (2), if it intends to perform any of the activities pursuant to Section 11 (1) (c) to (f),
- (k) if applicable, the CNB has granted it exemption from the fulfillment of its obligations under Section 492 (1), and
- (l) it provides a justification as to why the Czech Republic is a reference country and a strategy for marketing investment in investment funds and foreign investment funds it manages, if this strategy is not part of a plan pursuant to Section 479 (1) (d).

(2) It is considered that the assumptions under Subsection (1) (b) and (c) are met if the applicant has submitted a confirmation from the supervisory authority of its home state that they have been met and if the CNB has no reasonable doubt that the confirmation of fulfillment of the assumptions referred to in Subsection (1) (b) and (c) certifies.

## Section 482

### **Main administrator**

The CNB shall grant an authorisation to the activity of the main administrator at the request of a commercial company or at the request of the founder or founders of a commercial company before the date of its entry in the Commercial Register if

- (a) the registered office and actual seat is or is supposed to be in the Czech Republic,
- (b) the company is trustworthy,
- (c) there are no reasonable grounds for concern that the main administrator will not have material, organizational and personal prerequisites for carrying out the business plan to the extent that it is applying for an operating authorisation at the commencement date, and in particular it is clear how the operational management, compliance and internal audit, and the activity of the persons whom it intends to entrust to carry out certain activities, including the administration of an investment fund or a foreign investment fund,
- (d) its business plan
  - 1. defines and covers the planned scope of activities,
  - 2. is supported by real economic calculations,
  - 3. determines activities the performance of which is intended to entrust another,
- (e) the proper and prudent performance of the company's activities will be managed by at least 2 persons who fulfill the prerequisites for the approval of the managing persons stipulated in Section 516 (1),
- (f) the registered capital is paid, the initial capital, including the registered capital, has a transparent and non-discriminatory origin, and there are no reasonable grounds for fear that the company will not have its own equity at a level that allows the proper administration of investment funds or foreign investment funds,
- (g) the qualified holding will be owned only by persons fulfilling the conditions set out in Section 522 (2),
- (h) it is authorised to provide the relevant investment services pursuant to Section 39 (3) or (4) if it intends to perform any of the activities referred to in Section 38 (2) (a) or (b), and
- (i) its other business activity does not prevent or will not prevent the proper conduct of the administration.

## **Chapter 2**

### **Proceedings**

#### **Subchapter 1**

##### **Basic provisions**

###### **Section 483**

##### **Time-limits for decision**

(1) The CNB decides upon an application for an authorisation according to Section 479, 480 or Section 481 within three months from the day of filing the application with prescribed requirements and with no other defects; if necessary from the perspective of assessment of requirements of the application, the time-limit is extended by three months.

(2) In case of an application for authorisation pursuant to Section 479 authorising a management company to manage UCITS funds or comparable foreign investment funds or an application for authorisation pursuant to Section 480, if the internally-managed investment fund is to be a UCITS fund, the CNB shall decide on this application within 6 months from the date of filing of the application, which has the prescribed requirements and with no other defects.

(3) The CNB does not have to decide on the application referred to in Section 484 prior to expiration of one month from the day when the applicant proves the fulfilment of prerequisites according Section 479 (1) (c) and (i) or from the date on which the opinion of the European supervisory authority referred to in Section 489 has been delivered to the CNB.

(4) If the CNB does not take a decision on a request for authorisation within the time limit provided for in Subsections (1) to (3), it is possible to claim that the court impose a duty to render a decision on merits on the CNB, even if all remedies provided for by the Code of Administrative Procedure for protection against failure to act by an administrative authority have not been exhausted without result.

## Section 484

### **Complete applications**

(1) The application for an authorisation authorising a management company or an internally managed investment fund to exceed the relevant threshold is presumed to have all prescribed requirements and to have no other defects, if it contains information for proving the fulfilment of prerequisites according to Section 479 (1) (c) to (e) and (i); the CNB shall decline the application if, however, during the course of the application procedure, the fulfillment of the requirements under Section 479 (1) (a), (b) and (j) will not be proven.

(2) The application for an authorisation for an activity to a foreign person according to Section 481 is presumed to have all prescribed requirements and to have no other defects, if it contains information for proving the fulfilment of prerequisites according to Section 479 (1) (c) to (h) and according to Section 481 (1) (d), (i) and (k).

### **Statement of the decision**

## Section 485

(1) The CNB states in the holding of a decision on granting a licence according to Section 479 or 481, whether the manager is authorised to

- (a) to exceed the relevant threshold,
- (b) to manage
  - 1. UCITS funds,
  - 2. foreign investment funds comparable to the UCITS fund,
  - 3. retail AIFs,
  - 4. foreign investment funds comparable to the retail AIF,
  - 5. qualified investors' funds, with the exception of EuVECAs and EuSEFs,
  - 6. foreign investment funds comparable to a qualified investors' funds, with the exception of foreign investment funds comparable to the EuVECA and foreign investment funds comparable to the EuSEF,
  - 7. EuVECAs,
  - 8. foreign investment funds comparable to the EuVECAs,
  - 9. EuSEFs, or
  - 10. foreign investment funds comparable to the EuSEF,
- (c) to administer
  - 1. UCITS funds,
  - 2. foreign investment funds comparable to the UCITS fund,
  - 3. retail AIFs,
  - 4. foreign investment funds comparable to the retail AIF,
  - 5. qualified investors' funds, with the exception of EuVECAs and EuSEFs, with a distinction as to whether their manager is authorised to exceed the relevant threshold,
  - 6. foreign investment funds comparable to the qualified investors' fund, with the exception of foreign investment funds comparable to the EuVECA and foreign investment funds comparable to the EuSEF, with a distinction as to whether their manager is authorised to exceed the relevant threshold,
  - 7. EuVECAs,

8. foreign investment funds comparable to the EuVECA,
9. EuSEFs, or
10. foreign investment funds comparable to the EuSEFs,

(d) to perform the activities referred to in Article 38 (2) (a) or (b) for another in relation to

1. UCITS funds,
2. foreign investment funds comparable to the UCITS fund,
3. retail AIFs,
4. foreign investment funds comparable to the retail AIF,
5. qualified investors' funds, with the exception of EuVECAs and EuSEFs, with a distinction as to whether their manager is authorised to exceed the relevant threshold,
6. foreign investment funds comparable to a qualified investors' fund, except for foreign investment funds comparable to the EuVECA and foreign investment funds comparable to the EuSEF, with a distinction as to whether their manager is authorised to exceed the relevant threshold,
7. EuVECAs,
8. foreign investment funds comparable to the EuVECA,
9. EuSEFs, or
10. foreign investment funds comparable to a EuSEF and

(e) to perform the activities specified in Section 11 (1) (c) to (f) when applying for authorisation to perform them.

(2) In the holding of the decision on granting an authorisation according to Section 479 or 481, the CNB may limit the extent of the authorised activity, especially in case of the extent of an investment strategy of investment funds or foreign investment funds which the management company according to Section 479 or a foreign person with the authorisation according to Section 481 manage.

## Section 486

(1) In the decision on the granting of an authorisation pursuant to Section 480, the CNB shall indicate whether the internally managed investment fund

- (a) authorised to exceed the relevant threshold,
- (b) a UCITS fund, a retail AIF, a qualified investors' fund, an ELTIF, a EuVECA or a EuSEF and
- (c) authorised to conduct its own administration.

(2) The CNB, together with the decision to grant an authorisation pursuant to Section 480, shall decide on the approval of the depository and the statute if the internally managed investment fund is to be a UCITS fund.

## Section 487

The CNB shall state in the decision on the granting of authorisation under Section 482 whether the main administrator is authorised

- (a) to perform an administration of
  1. retail AIFs,
  2. foreign investment funds comparable to the retail AIF,
  3. qualified investors' fund with a distinction as to whether their manager is authorised to exceed the relevant threshold, or
  4. foreign investment funds comparable to the qualified investors' fund, with a distinction whether their management is authorised to exceed the relevant threshold and, where appropriate,
- (b) to perform activities referred to in Section 38 (2) (a) or (b) in relation to
  1. retail AIFs,
  2. foreign investment funds comparable to the retail AIF,
  3. qualified investors' fund, or

4. foreign investment funds comparable to the qualified investors' fund.

#### Section 488

(1) The CNB shall, at the same time as the decision granting the authorisation for the activity of the management company, the internally-managed fund and the main administrator, decide on the granting an authorisation to perform of the office of a managing person or managing persons under Section 21 (5), if the requirements referred to in Section 516 (1) are fulfilled.

(2) The CNB, at the same time as the decision granting the authorisation for the activity of a foreign person according to Section 481, shall decide on granting authorisation to the performance of the office of a managing person or managing persons, if the requirements referred to in Section 516 (1) are fulfilled.

#### Section 489

##### **Consultation with a foreign supervisory authority**

The CNB shall ask a supervisory authority of another member state for an opinion before granting an authorisation according to Section 479, 480 or Section 481, if the applicant is controlled by

- (a) a manager with registered office in another member state, if it has an authorisation granted by a supervisory authority of another EU member state,
- (b) a foreign person, if the authorisation to provide investment services is granted by the supervisory authority of another EU member state,
- (c) a foreign bank, if the authorisation is granted by the supervisory authority of another EU member state,
- (d) a foreign insurance company or a foreign reinsurance company, if the authorisation is granted by the supervisory authority of another EU member state, or
- (e) the same person who controls the persons referred to in (a) to (d).

#### **Subchapter 2**

##### **Special provisions for the assessing of an application in case of a foreign person**

#### Section 490

##### **Further suspension of the time-limit for deciding on merits**

The time limit laid down in Section 483 (1) shall also not run from the date on which the CNB has sent a notification to the European supervisory authority that:

- (a) it is a state of reference of a foreign person, who applied for an authorisation according to Section 481, until the day when the opinion of a European supervisory authority concerning this application has been delivered to the CNB, or
- (b) it intends to allow an exception to the fulfilment of a duty due to incompatibility according to Section 492 to the foreign person, who applied for an authorisation according to Section 481, until the day when the opinion of a European supervisory authority on this application was delivered to the CNB.state of reference

## Section 491

If the CNB decides to grant an authorisation to a foreign person pursuant to Section 481 contrary to the opinion of the European Supervisory Authority, this discrepancy in the decision shall be justified and informed to the European Supervisory Authority and the supervisory authority of another EU member state in which that person intends to manage foreign investment fund that is not comparable to a UCITS fund or intends to market investment in investment funds that are not a UCITS fund or a comparable foreign investment fund.

## Section 492

### **Allowing an exception to the fulfilment of duties to a foreign person**

(1) The CNB shall allow an exception to the fulfilment of duties ensuing from this Act to a foreign person, who applies for an authorisation according to Section 481, if the foreign person proves to the CNB that

- (a) this Act or a legal regulation implementing it imposes a duty on it incompatible with a duty imposed by foreign law, and
- (b) according to laws of the state, in which it has its registered office or which is the home state of a foreign investment fund, in which it offers investments in an EU member state, it fulfils a duty whose purpose of performance and level of protection, which is afforded to investors by means of its fulfilment, correspond to the purpose and level of protection, which is afforded to investors by means of fulfilment of the duty to the fulfilment of which the exception is to be allowed.

(2) The CNB shall, without undue delay, inform the European supervisory authority that a foreign person has applied for an exemption under Subsection (1).

(3) The information referred to in Subsection (2) shall include the data received by the CNB in connection with the application for exemption under Subsection (1).

(4) If the CNB decides on allowing the exception according to Subsection (1) contrary to the opinion of a European supervisory authority, it explains the contradiction in the decision and informs this European supervisory authority about it, as well as a supervisory authority of another EU member state, in which the foreign person intends to offer investments in an investment fund, which is not a UCITS fund, or in a comparable foreign investment fund.

## Subchapter 3

### **Determination of a state of reference**

## Section 493

### **The Czech Republic as the state of reference**

(1) The Czech Republic is a state of reference of a foreign person with registered office in a state, which is not an EU member state, if it intends to manage or if it manages an investment fund, which is not a UCITS fund or a comparable foreign investment fund, or if it intends to offer or if it offers investments in this fund in an EU member state. (2) The Czech Republic is the state of state of reference of the foreign persons referred to in Subsection (1) if

- (a) the number of investment funds it manages, which are not a UCITS fund, exceeds the number of comparable foreign investment funds that it intends to manage or manage in another EU member state, and at the same time does not intend to market or does not market investment in those funds in another EU member state,

- (b) the sum of the value of the assets of the investment funds which it manages, which are not a UCITS fund, exceeds the sum of the assets of comparable foreign investment funds which it intends to manage or manage in another EU member state and, at the same time, does not intend to market or does not market investments in those funds in another EU member state,
- (c) the person intends to market or is marketing investment in a non-UCITS investment fund or a comparable foreign investment fund only in the Czech Republic,
- (d) the person intends to market or is marketing in the EU member states only one investment fund which is not a UCITS fund and does not intend to market or is not marketing in the EU member states investment in foreign investment funds,
- (e) this person intends to market or is marketing in the EU member states investments only to one foreign investment fund which is not comparable to a UCITS fund and also is marketing these investments in the Czech Republic,
- (f) that person intends to market or is marketing in the EU member states only investments in investment funds which are not a UCITS fund and does not intend to market or is not marketing investment in foreign investment funds in the EU member states,
- (g) the number of non-UCITS investment funds and comparable foreign investment funds to which investments are or are to be marketed in the Czech Republic exceeds the number of such funds to which the investment is or is to be marketed in another EU member state,
- (h) in case referred to in Section 494, such person has applied to the CNB for authorisation pursuant to Section 481 unless a similar request has been made by the supervisory authority of another EU member state referred to in Section 494 (1), and
  1. the CNB or the supervisory authority of another EU member state has not decided on its application pursuant to Section 494 (1) or an application comparable to an application under Section 494 (1) within one month from the date on which the request was received by the last of the supervisory authorities concerned,
  2. the CNB or the supervisory authority of another EU member state has not informed it of its decision on its application pursuant to Section 494 (1) or of an application comparable to the application under Section 494 (1) within 7 days of its receipt, or
- (i) within 2 years from the date of authorisation under Section 481 or an earlier authorisation under the law of another EU member state, there has been no such change in the strategy for marketing investment in investment funds or foreign investment funds that would lead to the designation of another EU member state as the state of reference.

## Section 494

### **Multiplicity of states of reference state of reference**

(1) Where the law of another EU member state indicates that this state is the reference state of a foreign person to which the Czech Republic is also the reference state, such person shall apply to the CNB to determine whether the Czech Republic is the only state of reference.

(2) The CNB shall, in agreement with the supervisory authorities of other EU member states referred to in Subsection (1), decide upon the request referred to in Subsection (1) no later than one month after the date on which the application that is comparable to the application referred to in Subsection (1), to the last of the supervisory authorities concerned.

(3) If the Czech Republic, according to the agreement with the supervisory authorities of other EU member states, is the reference state of a foreign person, the CNB shall notify this to the foreign person without undue delay.

(4) The procedure for determining the state of reference, if another EU member state's law states that the reference state of a foreign person is more than one EU member state, defines Article 1 of the Commission Implementing Regulation (EU) No 448/2013.

## Section 495

### **Decision making of the CNB**

(1) The CNB shall, without undue delay, inform the European supervisory authority that it can reasonably be assumed that the Czech Republic is to be the reference state of a foreign person who has applied for authorisation pursuant to Section 481 and request its opinion in this respect.

(2) Part of the information under Subsection (1) are reasons as to why the Czech Republic may be reasonably presumed to be the state of reference of the foreign person, and information about the investment strategy for marketing investments in investment funds or foreign investment funds, which the CNB has received as part of the application for licence according to Section 481.

## Section 496

### **Change in reference country determination**

(1) If, within 2 years from the date of the granting of the authorisation to a foreign person authorised under Section 481, there has been such a change in the strategy for marketing investments in investment funds and foreign investment funds, which it manages, which could have an influence on the determination of a state of reference, the foreign person determines its state of reference and notifies it to the CNB and at the same time applies for an authorisation with the supervisory authority of another member state, which it has determined as its state of reference.

(2) The foreign person with the authorisation according to Section 481 states in the notification according to Subsection (1)

- (a) facts justifying the change of the state of reference,
- (b) an EU member state which, under the law of that state, is its reference EU member state, and
- (c) information necessary for the identification of a person performing the office of an administrator in this EU member state.

(3) The foreign person with an authorisation according to Section 481 attaches to the notification according to Subsection (1) a description of the strategy for marketing investment in investment funds and foreign investment funds, which it manages.

## Section 497

(1) Upon change in the designation of the state of reference, the CNB shall, on the basis of a notification under Section 496 (1), determine the designation of the EU member state that is to be the state of reference and shall notify its conclusion without undue delay to the European supervisory authority and request its opinion.

(2) The notification referred to in Subsection (1) shall include information received by the CNB pursuant to Section 496 (2) and (3).

(3) As soon as the CNB receives the opinion of a European supervisory authority, which it has requested according to Subsection (1), it decides whether the change in the state of reference is reasonable. The CNB shall inform about this decision to a foreign person with an authorisation pursuant to Section 481, the main administrator and the European supervisory authority.

(4) If the CNB has decided, according to Subsection (3) contrary to the opinion of a European supervisory authority, it gives reasons for the contradiction in the decision and informs about this a European supervisory authority and the supervisory authority of the new state of reference.

(5) If the CNB has decided that the change of the state of reference is justified, it shall inform the supervisory authority of the new state of reference and without undue delay send to it a copy of the documents related to the authorisation of the foreign person pursuant to Section 481 and with the performance of the supervision over that person.

#### Section 498

##### **A new determination of a state of reference state of reference**

If, within two years from the date of the granting of an authorisation to a foreign person authorised under Section 481, the actual development of its activity indicates that the Czech Republic should not be the state of reference, the CNB shall decide that this foreign person must determine the state of reference within the specified time limit, and, at the same time, request an authorisation from the supervisory authority of another EU member state which it has been designated as its state of reference; It shall at the same time instruct it on the possibility of withdrawing an authorisation under Section 551 (4). For the case under the first sentence, Section 496 and 497 shall apply *mutatis mutandis*.

#### Section 499

##### **A new voluntary determination of a state of reference state of reference**

If, after 2 years from the date of the granting of an authorisation to a foreign person authorised under Section 481, there is such a change in the strategy for marketing investments in investment funds or foreign investment funds that would affect the determination of the state of reference, the foreign person authorised under Section 481 may notify the CNB and, at the same time, apply for authorisation to the supervisory authority of another EU member state which, under the law of that state, will be the reference EU member state. Sections 496 and 497 apply to the case according to the first sentence *mutatis mutandis*.

### TITLE II

#### CHANGE OF AUTHORISATION

#### Section 500

(1) If the holder of an authorisation pursuant to Section 479 to 482 requests modification of the authorisation, the CNB shall issue a new authorisation and revoke the existing authorisation. Section 485 to 488 shall apply *mutatis mutandis*.

(2) The procedure referred to in Subsection (1) shall also apply to additional authorisation pursuant to Section 507.

### TITLE III

#### CHANGE IN THE MATERIAL FACTS DECISIVE FOR GRANTING AUTHORISATION

#### Section 501

(1) The CNB commences proceedings with respect to a change according to Section 467 (1) or a change in the material facts decisive for granting an authorisation, which the CNB has found out from the register according to an act regulating basic registers, in case of a management company according to Section 479 authorised to exceed the relevant threshold, an internally-managed investment fund according to Section 480 authorised to exceed the relevant threshold and a foreign person with an authorisation according to Section 481, if it does not agree with the change in the form as notified.

(2) If the CNB commences the proceedings with respect to the change according to Subsection (1), it decides on it within 1 month from the day when a notification according to Subsection (1) has been delivered to it; if it is necessary with respect to due consideration of the matter, this time-limit is extended by 1 month.

(3) The CNB decides on the change in such a way that it prohibits the proposed change or determines the conditions under which the proposed change may be executed. If the CNB does not render a decision according to Subsection (2), the change is conclusively presumed to be capable of being carried out.

## Section 502

A change, on the basis of which an authorisation for a management company according to Section 479 authorised to exceed the relevant threshold, an internally-managed investment fund according to Section 480 authorised to exceed the relevant threshold and a foreign person with an authorisation according to Section 481, may be performed, if the CNB does not commence the proceedings according to Section 501 (1) within 1 month from the day when a notification of the change has been delivered to it.

# TITLE IV

## REGISTRATION IN THE REGISTERS WITHOUT REVIEW

### Section 503

(1) The CNB enters in a register according to Sections 596 or 597 within 5 working days from the day when an application for registration in a register has been delivered to it, unless this Act provides for otherwise.

(2) An application for registration in the register according to Section 597 may only be filed by a manager, who has an authorisation authorising it to manage an investment fund or a foreign investment fund, for whose registration in this register has been applied.

(3) The CNB does not review the application according to Subsection (1) with respect to truthfulness and accurateness of information contained therein and does not even review the fulfilment of prerequisites for registration in this register.

### Section 504

(1) The CNB enters in the registers according to Sections 596 and 597 a person, to whom the CNB grants an authorisation for an activity or a consent according to this Act, as of the day when the decision, whereby the CNB has granted an authorisation for an activity or a consent according to this Act, takes legal effects; in such a case the application for registration in a register is not to be filed.

(2) The CNB shall also make an entry in the register pursuant to Section 596 (b) or (d) and Section 597 (d) or (e) upon notification by a foreign supervisory authority of another Member State of the intention of marketing of investments or provision of services in the Czech Republic pursuant to Part Nine or Part Ten of this Act. In such a case the application for registration in the register is not to be filed.

### Section 505

Section 503 (1) and (3) does not apply to the proceedings with respect to an application according to Sections 479, 480, 481, 482, 510, 511, 512a and 519.

## TITLE V

### DELETION FROM THE REGISTER

#### Section 506

(1) The CNB shall decide on deletion from the register pursuant to this Act in case of

- (a) a management company, if its authorisation to management of the has been revoked by management company,
- (b) a manager having its registered office in a foreign state, if the right to manage an investment fund ceased to exist,
- (c) the main administrator, if the main administrator's authorisation has been withdrawn,
- (d) an administrator having its registered office in a foreign state if the authorisation to administer the investment fund ceased to exist,
- (e) the depository of the investment fund, if
  1. it does not perform the activity of the depository of an investment fund for more than 24 months,
  2. it has not created all prerequisites for the fulfillment of the obligations of the investment fund's depository, or
  3. it has applied for it and does not act as a depository of the investment fund at the time of submitting the application,
- (f) persons referred to in Section 15 (1), if they have ceased to be a person under Section 15 (1), which is obliged to be entered in the register,
- (g) persons who may be appointed liquidator of a management company, a retail investment fund with a legal person and a main administrator or a forced administrator of a management company and a retail investment fund with a legal person if it
  1. without material reasons, resigned from the office of liquidator or forced administrator,
  2. materially or repeatedly breached duties ensuing from the office of a liquidator or a forced administrator,
  3. does not meet the legal requirements for entry in the relevant register,
  4. has applied for it and does not perform the office of liquidator or forced administrator at the time of submitting the application.

(2) The CNB shall decide on the deletion pursuant to Subsection (1)

- (a) on the date on which the decision to withdraw the authorisation for that person's performance becomes final,
- (b) on the later date specified in the decision to withdraw the authorisation of that person, or
- (c) on another day, for example, the day proposed by the person who requested the deletion.

#### Section 506a

(1) The CNB shall also decide on deletion from the register kept pursuant to this Act in case of an investment fund or a foreign investment fund if:

- (a) it has been requested by a manager of this fund or by the person who has a legitimate interest in it, and if the conditions are fulfilled which, in connection with the termination of its activity in the Czech Republic, result from this Act,
- (b) it does not perform its activity for more than 6 months,
- (c) an application for entry in the Commercial Register has not been filed within 90 days of the date on which it was entered in the Register, or if the application has not been complied with,
- (d) it became apparent that entry in the register was made on the basis of false or incomplete information,
- (e) it does not meet the conditions under this Act,

- (f) the authorisation to manage the internally-managed fund has been revoked to it, and this fund is not to become an investment fund mentioned in Section 9,
- (g) there was a transformation of an internally-managed investment fund pursuant to Section 363,
- (h) it became clear that the investment fund mentioned in Section 9
  - 1. does not have an individual statutory body, and
  - 2. its management company has not been authorised for more than 6 months to manage this investment fund,
- (i) it has been wind up
- (j) it has no depository forf more than three months, or
- (k) there are other reasons arising from this Act.

(2) The CNB shall decide on the deletion pursuant to Subsection (1)

- (a) on the date of winding up of an investment fund with a legal person, relocation of the registered office abroad or on the date of change of the object of the investment fund's legal personality,
- (b) on the date of winding up of the mutual fund or transformation into a foreign investment fund or on the day of the distribution of the liquidation balance,
- (c) on the day of winding up of the trust's administration, the transformation of the trust into a foreign investment fund, or the date on which the custodian has applied for the trust's administration to be terminated,
- (d) as of the date of change of the legal form of the investment fund, as a result of which it is simultaneously registered in another register pursuant to Section 597 (a) to (c), or
- (e) to another day, for example, the day proposed by the person who requested the deletion.

## Section 506b

(1) The CNB shall decide on the deletion from the register kept pursuant to this Act, if it has been proved to it the facts justifying such deletion.

(2) In cases of deletion pursuant to Section 506 (1) (a) to (d) and (f) and Section 506a (1) (a), (c), (f), (g) and (i) the decision shall not be made in writing.

## TITLE VI

### ADDITIONAL AUTHORISATION FOR THE PERFORMANCE OF ACTIVITIES CORRESPONDING TO INVESTMENT SERVICES

## Section 507

(1) The CNB grants an authorisation to a management company to perform activities referred to in Section 11 (1) (c) to (f), if it proves the fulfilment of the same prerequisites as a securities broker in providing the investment services of management of the assets of a customer in relation to the nature, extent and complexity of these activities.

(2) The CNB grants an authorisation to a foreign person with an authorisation according to Section 481, which is not comparable to an internally-managed investment fund, to perform activities referred to in Section 11 (1) (c) to (f), if it proves the fulfilment of prerequisites according to Section 28 of an act regulating business activities on the capital market in providing the investment service of management of the assets of a customer in relation to the nature, extent and complexity of these activities.

## TITLE VII

### CONSENT TO PERFORM ANOTHER BUSINESS ACTIVITY

#### Section 508

(1) A management company, a main administrator and a foreign person authorised under Section 481, which is not comparable to the internally-managed investment fund, may get an authorisation pursuant to other legal regulations only with the consent of the CNB.

(2) The CNB shall give its consent under Subsection (1) if

- (a) the business activity according to other legal regulations will not prevent
  1. the management company, the main administrator or a foreign person authorised under Section 481, which is not comparable to the internally-managed investment fund, in the proper and prudent performance of activities under this Act, and
  2. an effective performance of the supervision of a management company, a main administrator or a foreign person authorised under Section 481 that is not comparable to an autonomous investment fund, and
- (b) it is an activity whose performance of a management company, a main administrator or a foreign person authorised under Section 481, which is not comparable to an autonomous internally-managed investment fund, does not prohibit this law or other legal regulation.

(3) Subsections (1) and (2) does not apply in case of business under other legislation to which the CNB grants permission.

## TITLE VIII

### QUALIFIED SHAREHOLDING OF A MANAGEMENT COMPANY TO OTHER LEGAL PERSONS

#### Section 509

(1) A management company authorised to manage a retail investment fund must have the approval of the CNB to acquire or increase a qualifying shareholding in another legal person.

(2) The CNB shall not grant consent pursuant to Subsection (1) if

- (a) the management company is to become a shareholder with unlimited liability of a business company or another legal person.
- (b) in relation to the proposed acquisition or increase of a qualifying shareholding in another legal person, there are reasonable grounds for concern that such acquisition or increase would be contrary to the requirement of due and prudent performance.

(3) Subsections (1) and (2) do not apply to a shareholding held on the account of an investment fund, managed by this management company, or to a shareholding in an investment fund with legal personality held for no more than 1 year from the day of granting an authorisation to an activity of this management company or from the day of the registration of this investment fund into the register.

## TITLE IX

### REGISTRATION OF A DEPOSITORY OF AN INVESTMENT FUND

#### Section 510

(1) The CNB shall enter on the list of depositaries of an investment fund upon request a person if it has the prerequisites for fulfilling the obligations of the depository of the investment fund under this Act and a directly applicable EU law implementing the UCITS-D<sup>8)</sup> or a directly applicable EU regulation implementing the AIFMD<sup>6)</sup>.

(2) The depository of an investment fund must be registered in the register of the investment fund's depositaries.

## TITLE X

### RECORD OF THE UCITS FUND AND DATA ON THE UCITS FUND SUPPLY

#### Section 511

(1) The CNB shall enter into the register of investment funds pursuant to Section 597 (a) or (b) a retail investment fund as a UCITS fund at the request of its manager, if:

- (a) the registered office and the actual seat of this fund is in the Czech Republic, in case of an investment fund with legal personality, or the fund is created according to Czech law, in case of an investment fund without legal personality,
- (b) the investment fund's manager is authorised to manage UCITS funds or comparable foreign investment funds,
- (c) the person who will be the depository of the investment fund has confirmed the creation of prerequisites for fulfilling the duties of the depository pursuant to this Act,
- (d) it complies with Article 4 of Regulation (EU) 2017/1131 of the European Parliament and of the Council in the case of registration of a UCITS fund to be a money market fund,
- (e) the proposed statute of the investment fund allows for the marketing of investments in this fund in the Czech Republic and has all prescribed essentials ensuing from this Act and from a legal regulation implementing this Act, and
- (f) the manager of the investment fund proves the fulfilment of prerequisites referred to in Section 248 (1), in case of a registration of a UCITS fund, which is to be a feeder fund.

(2) The CNB shall enter into the register of investment funds according to Section 597 (a) information about a sub-fund of a UCITS fund upon an application of its manager, if

- (a) the management of an investment fund whose articles of association admitted the creation of sub-funds, has
  1. paid-up registered capital, its initial capital including the registered capital has a transparent and non-defective origin, and everything indicates that the manager has own capital in the amount allowing for due management of this sub-fund,
  2. the material, organisational and personnel prerequisites for creating sub-funds,
  3. at least 2 managing persons, who will manage the due and prudent performance of the activity of a manager, and these persons fulfil at the same time the prerequisites for approval of managing persons laid down in Section 516 (1),
- (b) the depository of an investment fund whose articles of association have allowed the creation of sub-funds, performs the activity for this sub-fund and has confirmed the creation of prerequisites for the fulfilment of the duties of a depositary ensuing from this Act and from the fact that the investment fund may create sub-funds,

- (c) the proposed statute of the sub-fund or the statute of the investment fund, whose articles of association admitted the creation of sub-funds, if the statute of the sub-fund is incorporated in the statute of this investment fund, allows for the offering of investment shares in this sub-fund in the Czech Republic and has all prescribed essentials ensuing from this Act and from a legal regulation implementing this Act,
- (d) the manager of the investment fund, whose articles of association admitted the creation of sub-funds, proves the fulfilment of prerequisites referred to in Section 248 (1), in case of the registration of information about the sub-fund, which is to be a feeder UCITS fund, and
- (e) the manager of an investment fund whose articles of association have allowed the creation of the sub-funds shall certify that the conditions laid down in Article 4 of Regulation (EU) 2017/1131 of the European Parliament and of the Council are met in the case of registration of data of the sub-fund to be a money market fund.

#### Section 512

(1) The CNB, together with the entry of a retail investment fund as a UCITS fund in the register pursuant to Section 597 (a) or (b) decide on the approval of the depository and the statute of that fund.

(2) The CNB shall enter a retail investment fund as a UCITS fund in the register of investment funds pursuant to Section 597 (a) or (b) and enter the data on the sub-fund of the UCITS fund within 2 months of the date on which the application for the registration was filed, which has the prescribed requirements or does not suffer from other defects.

### TITLE XI

#### REGISTRATION OF THE ELTIF AND INFORMATION ON THE SUB-FUND OF THE ELTIF

##### Section 512a

(1) The CNB shall enter into the register of investment funds pursuant to Section 597 (a), (b) or (c) the ELTIF as a qualified investors' fund at the request of its manager if the assumptions under Articles 5 and 6 of the ELTIF-R are met.

(2) The CNB shall enter into the register of investment funds pursuant to Section 597 (a) or (b) information on the ELTIF's sub-fund at the request of its manager if the requirements under Articles 5 and 6 of the ELTIF-R are met.

##### Section 512b

(1) The CNB, together with the entry of the ELTIF in the register of investment funds pursuant to Section 597 (a), (b) or (c) shall decide on the approval of the manager, the depository and the statute of that fund.

(2) The CNB shall enter the ELTIF in the register pursuant to Section 597 (a), (b) or (c), and the entry of the information of its sub-fund of the ELTIF within 2 months from the date of filing the application for registration, which has the prescribed requirements or suffered from other defects.

## TITLE XII

### REGISTRATION OF AN INVESTMENT FUND WHICH IS NOT INTERNALLY-MANAGED INVESTMENT FUND

#### Section 513

(1) The CNB shall enter into the register of investment funds pursuant to Section 597 (a) a legal person registered in the Commercial Register at its request, if:

- (a) its assets at the time of filing the application is administered by a person registered in the register maintained by the CNB pursuant to Section 596 (f),
- (b) it is not to be an internally-managed investment fund,
- (c) it is to submit the statute of the investment fund,
- (d) it did not conduct any activity other than an activity comparable to that of a qualified investors' fund before making such a request, and
- (e) it proves that it has an individual governing body, which is or is to be a legal person authorised to manage this investment fund

(2) If the CNB grants to a legal person entered in the register maintained by the CNB pursuant to Section 596 (f) an authorisation for the activity of a management company pursuant to Section 479 or an authorisation for the activity of a foreign person pursuant to Section 481, the CNB shall enter at the same time as the decision on granting the authorisation, legal persons, which are comparable to an investment fund and whose assets this person administers for profit as under a trade or similar authorisation, in the register of investment funds according to Section 597 (a), and trusts or similar facilities, if governed by Czech law, comparable to an investment fund, in which it administers assets for profit as under a trade or similar authorisation, in the register of investment funds according to Section 597 (b) or (c).

(3) If the CNB learns in a credible way that a supervisory authority of another member state has granted an authorisation comparable to an authorisation according to Section 481 to a legal person with registered office in a state, which is not a member state, which is registered in the register kept by the CNB according to Section 596 (f), the CNB registers within 5 working days legal persons, which are comparable to an investment fund and whose assets this person administers for profit as under a trade or similar authorisation, in the register of investment fund according to Section 597 (a), and trusts or similar facilities, if governed by Czech law, comparable to an investment fund, in which it administers assets for profit as under a trade or similar authorisation, in the register of investment funds according to Section 597 (b) or (c).

#### Section 514

The CNB shall enter in the register a legal person before its entry in the Commercial Register at its request in the register of investment funds pursuant to Section 597 (a), if it fulfills the prerequisites as stated in Section 513 (1) (b), (c) and (e).

## TITLE XIII

### GRANTING CONSENT TO PERFORM THE OFFICE OF A MANAGING PERSON

#### Section 515

A managing person of a management company, an internally-managed investment fund, a foreign person with an authorisation according to Section 481, and of a main administrator, and a person performing the office according to Section 21 (5), as well as an individual who is authorised by a legal person, who is an individual governing body of an investment fund, to represent it in the governing body of this investment fund, if it is not a member of the governing body or another managing person of this legal person and does not have prior consent of the CNB according to this title, must have prior consent of the CNB to perform its office.

#### Section 516

(1) The CNB grants consent according to Section 515 to an individual,

- (a) who have reached the age of 18 years,
- (b) who does not have limited capacity to make juridical acts,
- (c) who is not concerned with a fact that there is an impediment to the carrying on of a trade according to an act regulating trade business,
- (d) which is trustworthy,
- (e) who is professionally qualified, has sufficient knowledge and experience for due performance of the office,
- (f) who is adequate with respect to due and prudent performance of the activity of a management company, an investment fund, a foreign person with an authorisation according to Section 481 or a main administrator, in which it may perform the office of a managing person,
- (g) who is not prevented from due performance of the office by its vocational, business or other similar activity, for example an activity with a person with a similar subject-matter of business, and
- (h) who is to perform the office of a managing person of a manager of an investment fund or a foreign investment fund, or the office of a person according to Section 21 (5), having the sufficient experience with the administration of assets, on which the investment strategy of the manager of an investment fund and a foreign investment fund is focused.

(2) A management company, an internally-managed investment fund, a foreign person authorised under Section 481 and the main administrator must have at least two managing persons who meet the requirements under Subsection (1).

#### Section 517

(1) The CNB, in examining the facts referred to in Section 516 (1) (e) to (h), takes into consideration in particular the extent of powers connected with the performance of the office of a managing persons, the organisational structure and total personnel of management company, an internally-managed investment fund, a foreign person with an authorisation according to Section 481 and a main administrator.

(2) It shall not be taken into account, that a person under examination is an employee or an elected member of the body of another person that creates a concern together with this person, when assessing the facts mentioned in Section 516 (1) (g).

#### Section 518

If the person referred to in Section 515 fails to commence to perform its office within 6 months from the day when it has been granted the prior consent, or if it does not perform its office continuously for the period longer than 6 months, the prior consent ceases to exist.

## TITLE XIV

### REGISTRATION OF A LIQUIDATOR OR A FORCED ADMINISTRATOR

#### Section 519

(1) The CNB registers in the register of persons who may be a liquidator of a management company, a retail investment fund with legal personality or a main administrator, and in the register of persons who may be a forced administrator of a management company, which manages a retail investment fund or a comparable foreign investment fund, or of a retail investment fund with legal personality, upon its application, an individual,

- (a) who have reached the age of 18 years,
- (b) which has no limited legal capacity to make juridical acts,
- (c) who is not concerned with a fact that there is an impediment to the carrying on of a trade according to an act regulating trade business,
- (d) which is trustworthy,
- (e) who is professionally qualified, and
- (f) who has not been in the last 5 years deleted from this or similar register; this does not apply to deletion upon his own application.

(2) The CNB shall enter a foreign person in the register referred to in Subsection (1) only if it has the authorisation of the competent authority of another EU member state to act as liquidator or forced administrator.

## TITLE XV

### QUALIFIED SHAREHOLDING OF ANOTHER IN A MANAGEMENT COMPANY, AN INTERNALLY MANAGED INVESTMENT FUND AND A MAIN ADMINISTRATOR

#### Section 520

(1) The person or persons acting in concert must its insert notify to the CNB and must have the consent of the CNB

- (a) to acquire a qualifying shareholding in a management company, an internally-managed investment fund or the main administrator, or
- (b) to increase a qualifying shareholding in a management company, an internally-managed investment fund or the main administrator in such a way that it reaches or exceeds 20%, 30%, or 50%, or
- (c) to become persons controlling a management company, an internally-managed investment fund, or a main administrator.

(2) The persons according to Subsection (1) must have the consent of the CNB even in the case that they do not exercise the voting rights attached to the acquired shareholding according to Subsection (1) in a management company, an internally-managed investment fund or a main administrator, or do not exercise a significant influence on their governance; not exercising the voting rights does not lead to a change in the voting rights of these or other persons, not exercising the influence does not lead to a change in the possibility of these or other persons to exercise it on the governance.

(3) Voting rights referred to in Section 34 (4) (a) to (h) of this Act are considered for the purposes of the calculation of the shareholding according to Subsection (1) to be the voting rights ensuing for the shareholding in a management company, an internally-managed investment fund, or a main administrator. Section 122 (10) to (15) of the Act governing the conduct of business on the capital market shall apply *mutatis mutandis*.

## Section 521

### **Necessity of the consent to acquire or increase a qualified shareholding or to take control**

(1) A person or persons acting in concert must obtain the consent according to Section 520 (1) before acquiring or increasing a qualified shareholding in a management company, an internally-managed investment fund, or a main administrator or before them being controlled.

(2) A person who acquires or increases a qualified shareholding in a management company, an internally-managed investment fund, or a main administrator, or takes control over them, without prior consent of the CNB, notifies it without undue delay to the CNB and applies without undue delay for the consent according to Section 520 (1).

(3) The acquisition or increase of a qualified shareholding in a management company, an internally-managed investment fund, or a main administrator, or taking control over them, without prior consent of the CNB, does not render the legal act, on the basis of which these changes in the shareholdings occurred, invalid, but the voting rights attached to thus acquired shareholding must not be exercised or the gained influence must not be exercised on their governance until the granting of this consent.

## Section 522

### **Assessing the application**

(1) In assessing the application, the CNB examines only the fulfilment of prerequisites referred to in Subsection (2) and does not take into account the economic needs of the market.

(2) The CNB grants the application, if the following prerequisites are fulfilled with respect to the potential influence on the exercise of the activity of a management company, an internally-managed investment fund, or a main administrator:

- (a) persons applying for the granting of the consent are trustworthy,
- (b) persons being proposed as managing persons of a management company, an internally-managed investment fund, or a main administrator fulfil without apparent doubts the prerequisites laid down by this Act,
- (c) financial soundness and sufficient amount, transparency of the origin, and non-defectiveness of financial means of the applicant in relation to the performed or planned activities of a management company, an internally-managed investment fund, or a main administrator,
- (d) a management company, an internally-managed fund or a main administrator will further be able to fulfil the rules of prudent and due management and administration of investment funds and foreign investment funds,
- (e) the structure of the consolidated group into which a management company, an internally-managed investment fund, or a main administrator are to be included,
  - 1. does not prevent effective supervision of a management company, an internally-managed investment fund or a main administrator,
  - 2. does not prevent effective exchange of information between the CNB and the supervisory authority of another EU member state, or
  - 3. does not hinder the exercise of the powers of each supervisory authority over this consolidation group and the persons included in this consolidated group,
- (f) there are no reasonable concerns in connection with the proposed acquisition or increase of a qualified shareholding in a management company, an internally-managed investment fund or the main administrator, or with them being controlled, that there might be a breach of an act regulating measures against legitimisation of proceeds of crime and financing of terrorism or that such a breach already occurred, and

(g) in case of an application according 521 (2), it is a case worthy of special consideration.

(3) The CNB may determine in the decision on the application for granting the consent according to Section 520 (1) a time-limit for acquisition of a shareholding in management company, an internally-managed investment fund or the main administrator according to Section 520 (1).

(4) The CNB states in the decision on the application for granting the consent according to Section 520 (1) conclusions ensuing from opinions, which it has received according to Section 489.

### Section 523

(1) The CNB within 2 working days from the day of receiving the application for granting the consent according to Section 520 (1) at the latest confirms to the applicant in writing that it has received it; in case of the incomplete application, the CNB shall notify the applicant in order to remedy such defects. The CNB shall inform the applicant, together with the confirmation according to first sentence, about the day which is the last day of the time-limit for assessing the application laid down in Subsection 2.

(2) The CNB shall decide on the application for granting the consent according to Section 520 (1) within 60 working days from the day of sending a written confirmation of receiving the application for the consent according to Subsection (1) at the latest.

(3) If the CNB fails to take a decision within the time-limit set in Subsection (2), the consent shall be granted. This shall not apply in case of an application for consent submitted pursuant to Section 521 (2).

(4) If it is necessary for the assessment of the application, the CNB shall, without undue delay, no later than the 50th working day of the period specified in Subsection (2), in writing, ask the applicant to submit further information, the receipt of requested information shall be confirmed by the CNB in writing within the time-limit referred to in Subsection (1). The time-limit laid down in Subsection (2) is suspended on the day of sending the request for a period of no more than 20 working days.

(5) The time-limit laid down in Subsection (2) is suspended according to the procedure in Subsection (4) for a period of up to 30 working days,

- (a) if the applicant has its residence, registered office or place of business in a state which is not a member state, or
- (b) if the applicant is not subject to the supervision of an authority of another member state.

(6) Upon receipt of an application pursuant to Subsection (1), the CNB shall apply *mutatis mutandis*, pursuant to Section 489, if a person applying for granting the consent has an authorisation of a supervisory authority of another member to act as a provider of investment services, or it is a controlling person of such person.

### Section 524

#### **Notification of disposal or decrease of a qualified shareholding**

(1) The person or persons acting in concert shall, without undue delay, notify the CNB that

- (a) they are decreasing their qualified shareholding in a management company, an internally-managed investment fund, or a main administrator in such a way that it will drop under 50%, 30%, or 20%, or they are completely disposing of it, or
- (b) they are decreasing their qualified shareholding in a management company, an internally-managed investment fund, or a main administrator in such a way that they are ceasing to control them.

(2) The notification referred to in Subsection (1) shall include

- (a) information necessary for the identification of a person or persons decreasing or disposing of their qualified shareholding in a management company, an internally-managed investment fund, or a main administrator or information necessary for the identification of a person or persons ceasing to control them,
- (b) information necessary to identify a management company, an internally-managed investment fund or a main administrator in which the shareholding is decreased or disposed of, or which will cease to be controlled,
- (c) an indication of the total amount of a management company, an internally-managed investment fund or a main administrator after its decrease, or information about the extent of influence on the governance of a management company, an internally-managed investment fund or a main administrator after its decrease, and
- (d) information necessary for the identification of a person or persons who acquire or increases a share in a management company, an internally-managed investment fund or a main administrator, or information necessary for the identification of a person or persons gaining influence on the governance of a management company, an internally-managed investment fund or a main administrator.

## TITLE XVI

### CHANGE OF THE MANAGER OF A UCITS FUND

#### Section 525

A prior agreement of the CNB is required to change the manager of a UCITS fund.

#### Section 526

The CNB shall approve the change of the manager pursuant to Section 525 if the person who is to become a manager of the UCITS fund creates prerequisites for the fulfillment of the obligations of the management of a UCITS fund resulting from this Act.

## TITLE XVII

### CHANGE OF UCITS FUND'S DEPOSITORY

#### Section 527

Changes in the UCITS fund's depository require prior approval of the CNB.

#### Section 528

The CNB shall approve the change of the depository pursuant to Section 527 if the person who is to become a depository of this UCITS fund establishes the prerequisites for fulfilling the obligations of the depository of a UCITS fund arising from this Act. For a UCITS fund depository, it is assumed that it has the prerequisites to perform the duties of a UCITS fund depository arising from this law.

## TITLE XVIII

### CHANGE OF THE STATUTE OF THE UCITS FUND

#### Section 529

(1) A change in the statute of a UCITS fund requires the prior consent of the CNB, it is not effective.

(2) The CNB grants consent according to Subsection (1), if the proposed change of the statute is in compliance with this Act and legal regulations implementing this Act.

(3) The change of the statute of a UCITS fund not allowing offering investments in this fund in the Czech Republic is not permitted.

(4) The approval of the CNB to change the statute of a UCITS fund is not required in case of a change

- (a) of information directly resulting from the change related to the manager, administrator, fund or its depository,
- (b) directly caused by a change in legislation,
- (c) of information about efficiency or actual or expected economic results of the fund, which requires regular updating, or
- (d) not relating to the position or interests of unitholders of the fund.

#### Section 530

(1) The CNB on the application according to Section 529 (1) within 30 working days from the day of filing the application having all the prescribed essentials and not having other defects. If the CNB does not render the decision within this time-limit, the change of the statute is conclusively presumed to have been approved.

(2) The approval of the change of the statute of a UCITS fund is done by way of approving its new consolidated wording.

## TITLE XIX

### REGISTRATION OF A MONEY MARKET FUND THAT IS NOT A UCITS FUND

#### Section 531

(1) The CNB shall enter in the register of investment funds pursuant to Section 597 (a) or (b) a money market fund as a retail AIF or as a qualified investors' fund at the request of its manager, provided that the conditions laid down in Article 5 of Regulation (EU) 2017/1131 of the European Parliament and of the Council are met.

(2) The CNB shall enter in the register of investment funds pursuant to Section 597 (a) data of a sub-fund of a money market fund that is a retail AIF or a qualified investors' fund, at the request of its manager, provided that the conditions laid down in Article 5 of Regulation (EU) 2017/1131 of the European Parliament and of the Council are met.

(3) The CNB shall decide on the approval of the depository and the statute of this fund at the same time as the entry in the register pursuant to Subsection (1) or (2).

(4) The CNB shall make the entry in the register pursuant to Subsection (1) or (2) within 2 months of the date of submission of the request for registration that has the prescribed requirements and does not have any other defects.

## TITLE XX

### COMMON PROVISIONS

#### Section 532

An application for

- (a) the granting of authorisation according to Sections 479, 480, 481, 482 and 507,
- (b) the granting of authorisation according to Section 508, 509, 515, 520, 525, 527 and 529,
- (c) the withdrawal of authorisation according to Section 551 (1) (d) and Section 646 (1)
- (d) change of authorisation according to Section 647 and
- (e) the entry in the register according to Section 596 and 597 and the change in the entries in these lists, as well as for the change of information registered in these lists,

may only be filed electronically; the application must contain information and documents proving the fulfilment of prerequisites laid down by this Act. The CNB lays down in a regulation the essentials of an application proving the fulfilment of prerequisites laid down by this Act, its form and manner of filing.

#### Section 533

(1) The applicant may prove the fulfilment of prerequisites laid down by this Act with respect to the decision on the application according to this Act by invoking a precisely identified document which he previously submitted to the CNB or which the CNB has at its disposal, if it is up-to-date.

(2) The proving of the fulfilment of prerequisites laid down by this Act with respect to the decision on application for authorisation authorising to exceed the relevant threshold, if a legal person according to Section 15 applies for it, is defined in Article 1 of Commission Implementing Regulation (EU) No 447/2013.

## PART FOURTEEN

### SUPERVISION BY THE CNB

#### TITLE I

### SCOPE OF SUPERVISION

#### Section 534

#### **Personal scope of supervision**

Subject to supervision of the CNB according to this Act is

- (a) a management company,
- (b) an internally-managed investment fund,
- (c) a foreign person with an authorisation pursuant to Section 481 in the scope of activities performed on the basis of an authorisation granted by the CNB,
- (d) a main administrator,

- (e) a foreign person authorised by the supervisory authority of another EU member state, which manages an investment fund in the Czech Republic, to the extent referred to in Section 340 or 344,
- (f) a foreign investment fund with the authorisation of a supervisory authority of another EU member state granted according to the requirements of the UCITS-D<sup>4)</sup> to the extent that the investments in this fund are publicly marketed in the Czech Republic and to which it is not subject to supervision of the supervisory authority of the home state,
- (g) a depository of an investment fund,
- (h) a prime broker of the investment fund,
- (i) a liquidator of a management company, an internally-managed investment fund, which is a retail investment fund, or a main administrator,
- (j) a forced administrator of a management company that manages an investment fund or a foreign investment fund or a forced administrator of an internally-managed investment fund that is a retail investment fund,
- (k) a person who markets investment in investment funds or foreign investment funds in the Czech Republic in the extent of this activity, and
- (l) the legal person referred to in Section 17 (1) or (2) of the second sentence which applied for a particular authorisation until the day on which the proceedings for that application is finally ended.

## Section 535

### **Material scope of the supervision**

The CNB performs the supervision over compliance with

- (a) obligations laid down
  1. by this Act,
  2. on the basis of this Act and
  3. by a directly applicable EU regulation governing management of investment funds<sup>2)</sup> and
- (b) the conditions determined by a decision on the basis of this Act.

## Section 536

The CNB focuses, upon performing the supervision according to this Act, primarily on the protection of interests of investors of a retail investment fund and on potential sources of systemic risk to the proper functioning of the financial market in the Czech Republic.

## Section 537

The CNB ensures that it proceeds, upon performing the supervision according to this Act, in accordance with the instructions and recommendations of a European supervisory authority.

# TITLE II

## SUPERVISORY MEASURES

### **Chapter 1**

#### **Basic provisions**

## Section 538

- (1) The CNB may impose remedial measures regarding the detected deficiencies adequate to the nature of breach and its severity on the person who is subject to its supervision and who has breached a duty or a condition according to Section 535.

(2) The person, on whom the CNB imposed a remedial measure, notifies without undue delay to the CNB the manner of eliminating the deficiencies and rectifying the situation.

(3) The CNB is authorised to also request the provision of a National identification number as information necessary for the identification of a natural person.

### Section 539

The CNB may further

- (a) order the change of the management of an investment fund or a foreign investment fund,
- (b) order the change of the administrator of an investment fund or a foreign investment fund,
- (c) order the change of the depository of an investment fund or a foreign investment fund,
- (d) order a change of the auditor,
- (e) order an extraordinary performance of an audit of the financial statement,
- (f) require the valuation of the assets and liabilities of the investment fund by another person,
- (g) suspend some of the activities, which are subject to its supervision, for a maximum period of 5 years,
- (h) limit the scope of the authorisation or determine the conditions for the performance of individual activities,
- (i) determine conditions for the use of leverage or other conditions,
- (j) limit the scope of an investment strategy of an investment fund, prohibit the offering of investments in an investment fund, or expunge the investment fund from a register,
- (k) decide on dissolution of an investment fund or propose dissolution of an investment fund,
- (l) withdraw an authorisation or consent,
- (m) prohibit a person or a group of persons acting in concert who has granted approval pursuant to Section 520 and who cease to fulfill the prerequisites for such consent to exercise voting rights on a management company, internally-managed fund or main administrator or otherwise exercise significant influence over their management,
- (n) cancel the decision of a manager of an investment fund which is an open-ended mutual fund or a joint-stock company with variable capital to suspend the issuance or redemption of unit certificates or investment shares issued by the fund,
- (o) disclose information about the nature of the offence and the identification of the person who acted in this way, including the identification of the person who acted on behalf of a legal person,
- (p) take measures for more effective monitoring of potential sources of system risks, or
- (q) introduce forced administration.

### Section 540

(1) The fulfilment of the remedial measure imposed in accordance with Section 538 (1) or another measure according to Section 539 is enforced by the CNB through coercive fines, which may be imposed up to the amount of CZK 5 000 000.

(2) The coercive fine according to Subsection (1) may also be imposed repeatedly for the same breach of duties. The sum of the fines imposed for the same breach of duties cannot exceed CZK 20 000 000.

(3) The income from the coercive fines forms part of the income of the state budget.

## Chapter 2

### Change of a manager of an investment fund or a foreign investment fund

#### Section 541

(1) The CNB may order the change of a manager of an investment fund or a foreign investment fund by deciding to transfer the management of an investment fund or a foreign investment fund managed by a management company, a foreign person referred to in Section 14 or a foreign person with an authorisation under Section 481 to another management company, a foreign person mentioned in Section 14 or a foreign person authorised under Section 481, if

- (a) the CNB has withdrawn the authorisation for the activity of a management company from the existing manager or the authorisation for the activity to a foreign person according to Section 481, or if the CNB finds out that the authorisation granted by a supervisory authority of another member state referred to in Section 14 has been withdrawn from the existing manager,
- (b) material changes in the facts decisive for granting the authorisation for the activity of the existing manager have occurred,
- (c) an actual manager seriously or repeatedly breaches the established obligation
  1. by this Act,
  2. under this Act,
  3. by the law of a foreign state in the field of management of investment funds and foreign investment funds, in case of a foreign investment fund or a foreign person, or
  4. by a directly applicable EU regulation governing the management of investment funds<sup>2)</sup>,
- (d) the existing manager the existing manager has been dissolved with liquidation or in a comparable manner according to the law of a foreign state,
- (e) it has been ruled on the bankruptcy of the existing manager, or a comparable ruling according to the law of a foreign state has been issued,
- (f) an insolvency petition has been rejected due to insufficient amount of assets of the existing manager, or a comparable decision according to the law of a foreign state has been issued, or
- (g) the forced administration of the existing manager has been introduced.

(2) A prior consent of the person, to which the management of this fund is to be transferred, is required for the transfer of the management of an investment fund or a foreign investment fund according to Subsection (1). An agreement between the existing manager and the person, to which the management of this fund is to be transferred, shall be taken into consideration.

## Chapter 3

### Change of the administrator of investment fund or foreign investment fund

#### Section 542

(1) The CNB may order the manager of an investment fund or a foreign investment fund to change the administrator of this fund, if the administrator has materially or repeatedly breached a duty or a condition according to Section 535.

(2) The CNB may order the manager of an investment fund or a foreign investment fund to change the administrator of that fund, if

- (a) if forced administration of the administrator has been introduced, or
- (b) if the interests of the investors of this fund are jeopardised.

(3) The obligation arising from the administration agreement terminates 1 month after the day when the order to change the administrator has taken legal effects.

(4) The manager will conclude a contract with another administrator within the time-limit stated in Subsection (3) unless the manager will perform the administration itself.

(5) The manager will ensure the performance of the administration of an investment fund or a foreign investment fund without undue delay after the lapse of time-limit according to Subsection (3).

## **Chapter 4**

### **Change of the depository of an investment fund or a foreign investment fund**

#### **Section 543**

(1) The CNB may order the manager of an investment fund or a foreign investment fund to change the depository of this fund, if the depository materially or repeatedly breached a duty or a condition according to Section 535.

(2) The CNB may order the manager of an investment fund or a foreign investment fund to change the depository of that fund, if

- (a) if forced administration of the depository has been introduced, or
- (b) if the interests of the investors of this fund are jeopardised.

(3) The obligation under the depository agreement shall expire on the expiration of one month after the effective date of the decision on the regulation of the change of the depository.

(4) The manager will conclude a contract with another depository within the time-limit stated in Subsection (3).

## **Chapter 5**

### **Change of an auditor**

#### **Section 544**

(1) The CNB may order a change of an auditor verifying the financial statement or the consolidated financial statement of an investment fund or a foreign investment fund or its manager at the expenses of this manager,

- (a) if the CNB finds out material or repeated deficiencies in the audit of a financial statement or the consolidated financial statement of this fund or this manager, or
- (b) if the auditor does not comply with its notification duty according to an act regulating the activity of auditors.

(2) The manager ensures the change of the auditor and notifies to the CNB information about the change within one month after the day when the order to change the auditor has taken legal effects.

## **Chapter 6**

### **Extraordinary performance of an audit of a financial statement**

#### **Section 545**

(1) The CNB may order to the manager an extraordinary performance of an audit of a financial statement of an investment fund,

- (a) if the CNB finds out material or repeated insufficiencies in an audit of a financial statement, or
- (b) if the auditor does not comply with its notification duty according to the act regulating the activity of auditors.

(2) With respect to the findings, the CNB determines the conditions for the performance of the extraordinary audit of the financial statement, especially the scope and the manner of the performance of the extraordinary audit.

(3) The manager ensures the performance of the extraordinary audit and notifies to the CNB information about the auditor, who will perform the extraordinary audit in the range stated by the implementing legislation, within 1 month after the day when the order to perform an extraordinary audit has taken legal effects. This auditor must be a different person from the auditor, who verified the financial statement.

(4) The CNB may within 1 month of the notification of information according to Subsection (3) refuse the auditor, who was notified to it by the manager, and determine a different auditor, who will perform the extraordinary audit.

(5) The manager will ensure the performance of the audit without undue delay after the termination of the period according to Subsection (4).

(6) The costs of the extraordinary audit are at the expense of the manager. If, based on the extraordinary audit, the material or repeated insufficiencies in the audit of the financial statement are not confirmed or it is proven that the notification duty of the auditor according to Subsection (1) (b) was not breached, the CNB will reimburse to the manager the reasonable costs incurred on the performance of the extraordinary audit.

## **Chapter 7**

### **Verification of the evaluation of the assets and debts of an investment fund by another person**

#### **Section 546**

(1) If the manager performs the administration of an investment fund, which is not a UCITS fund, or of a comparable foreign investment fund, managed by the manager, the CNB may, if it finds out material or repeated breach of duties or noncompliance with the conditions according to Section 535, order a verification of

- (a) the evaluation of assets and debts of this fund by another person,
- (b) the usage of procedures for the evaluation of assets and debts of an investment fund by another person, or
- (c) the impartiality and independence of the one evaluating by another person.

(2) The CNB may order to an investment fund, which invests in real estate or participates in a real estate company, to ensure new evaluation of the real estate by an independent expert or a member of the expert committee, if the CNB finds out material or repeated breach of duties or incompliance with the conditions according to Section 535.

(3) The costs of the verification of the evaluation according to Subsections (1) and (2) are at the expense of the manager. If, based on the verification of the evaluation according to Subsections (1) and (2), the material insufficiencies are not confirmed, the CNB will reimburse to the manager the reasonable costs incurred in relation to this evaluation.

## **Chapter 8**

### **Limiting the scope of the authorisation or determining conditions for the performance of individual activities**

#### **Section 547**

The CNB may limit the scope of the authorisation for the activity of a management company, a foreign person according to Section 481, an internally-managed investment fund or a main administrator, or may determine conditions for the performance of individual activities of this person, if the CNB finds out material or repeated breach of duties or non-compliance with the conditions according to Section 535.

## **Chapter 9**

### **Terms of use of leverage or other conditions**

#### **Section 548**

(1) If the CNB deems it necessary for the proper functioning of the financial market in the Czech Republic, it may impose on a management company authorised to exceed the relevant threshold, a foreign person with an authorisation according to Section 481 or an internally-managed investment fund authorised to exceed the relevant threshold

- (a) conditions for the use of leverage upon managing investment funds or foreign investment funds, or
- (b) other conditions that the manager is obligated to comply with for the use of leverage upon managing investment funds or foreign investment funds.

(2) The procedure of the CNB according to Subsection (1) is further defined by Article 112 of Commission Delegated Regulation (EU) No 231/2013.

## **Chapter 10**

### **Limiting the scope of the investment strategy, prohibiting the offering of investments, or expungement from register**

#### **Section 549**

(1) If the CNB finds out shortcomings in the activity of a management company or a foreign person with a licence according to Section 481, it may

- (a) limit the scope of the investment strategy of another investment fund than a UCITS fund or a comparable foreign investment fund managed by this person,
- (b) prohibit the marketing of investments in such a fund.

(2) If the CNB finds out shortcomings in the activity of an internally-managed investment fund, it may

- (a) limit the scope of the investment strategy of this fund, or
- (b) prohibit the marketing of investments in that fund.

(3) The person referred to in Subsections (1) and (2) shall ensure that the statutes of an investment fund other than a UCITS fund or a comparable foreign investment fund it manages comply with a decision of the CNB to limit the investment strategy of that fund within 30 days of the effective date of the decision on the limitation of the fund's investment strategy.

(4) In the Czech Republic, the CNB may prohibit the marketing of investments to a foreign investment fund comparable to a retail AIF or qualified investors' fund whose home EU member state is not a EU member state or which is managed by a person established in a non-member state, if the fund manager fails to fulfill one of the obligations imposed on it under the AIFMD<sup>5).</sup>

## **Chapter 11**

### **Dissolution of an investment fund**

#### **Section 550**

(1) The CNB may decide on the dissolution with liquidation of a retail investment fund, having the legal form of a mutual fund, if

- (a) the average amount of the fund capital of this fund has not reached for the past 6 months the amount corresponding to at least EUR 1 250 000,
- (b) the amount of the fund capital of this fund has not reached the amount corresponding to at least EUR 1 250 000 within 6 months of its coming into existence, or
- (c) the CNB has withdrawn the authorisation for the activity of a management company from the manager of this fund or the authorisation for the activity from a foreign person according to Section 481, or if the CNB finds out that the authorisation from a supervisory authority of another member state referred to in Section 14 has been withdrawn from the manager without deciding at the same time on the change of the manager according to Section 541.

(2) The CNB may decide on dissolution with liquidation of a qualified investors' fund, having the legal form of a mutual fund, or on termination of the administration of a trust, which is a qualified investors' fund, if

- (a) regarding the qualified investors' fund not referred to in Section 281,
  - 1. the average amount of the fund capital of this fund has not reached for the past 6 months the amount corresponding to at least EUR 1 250 000, or
  - 2. the amount of the fund capital of this fund has not reached the amount corresponding to at least EUR 1 250 000 within 12 months of day of its coming into existence,
- (b) regarding the qualified investors' fund referred to in Section 281,
  - 1. the average amount of the fund capital of this fund has not reached for the past 6 months the amount corresponding to at least EUR 1 000 000, or
  - 2. the fund capital of this fund has not reached the amount corresponding to at least EUR 1 000 000 within the time-limit determined by the statute and, where applicable, by the memorandum of association, or
- (c) the CNB has withdrawn the authorisation for the activity of a management company from the manager of this fund or the authorisation for the activity from a foreign person according to Section 481, or if the CNB finds out that the authorisation from a supervisory authority of another member state listed in Section 14 has been withdrawn from the manager without deciding at the same time on the change of the manager according to Section 541.

## Chapter 12

### Withdrawal of the authorisation

#### Section 551

##### Obligatory withdrawal of the authorisation

(1) The CNB withdraws an authorisation for the activity of a management company, an authorisation for the activity of an internally-managed investment fund, an authorisation for the activity of a foreign person according to Section 481, or an authorisation for the activity of the main administrator,

- (a) if it has been decided on bankruptcy of the management company, the internally-managed investment fund or the main administrator, or if a comparable decision according to the law of a foreign state has been issued regarding the foreign persons with authorisation according to Section 481,
- (b) if the insolvency petition has been rejected due to insufficient amount of the assets of the management company, the internally-managed investment fund or the main administrator, or if a comparable decision according to the law of a foreign state has been issued regarding the foreign persons with authorisation according to Section 481,
- (c) if the application for registration in the Commercial Register is not filed within 90 days of the day, when the decision on granting this authorisation has taken legal effects, or if this application is not granted, if the authorisation was granted to the legal person prior to its registration in the Commercial Register, or
- (d) if the management company, the internally-managed investment fund, the foreign person with authorisation according to Section 481, or the main administrator have requested for withdrawal of authorisation, if this person no longer performs the activity for which an authorisation according to this Act is required.

(2) The CNB withdraws an authorisation for the activity of an internally-managed investment fund, if such fund does not have a depository for more than 3 months.

(3) The CNB shall withdraw an authorisation to operate a management company that will be authorised to manage the UCITS funds or comparable foreign investment funds if it does not own at least one UCITS fund within 12 months of the grant of this authorisation or for more than 6 months.

(4) The CNB shall withdraw such authorisation from a foreign person authorised under Section 481 if:

- (a) it does not follow the decision of the CNB according to Section 498, or
- (b) it has been granted a comparable authorisation by the supervisory authority of another EU member state.

#### Section 552

##### Optional withdrawal of the authorisation

(1) The CNB may withdraw an authorisation to operate a management company, an authorisation to operate an internally-managed investment fund, an authorisation to operate a foreign person granted pursuant to Section 481, or an authorisation to operate a main administrator, if

- (a) the imposed remedial measure has not lead to rectification,
- (b) it is necessary for the protection of interests of the investors, which are not qualified investors,
- (c) the authorisation was granted on the basis of false or incomplete information,

- (d) material changes in the facts decisive for granting the authorisation occurred, or
- (e) management company, foreign person authorised under Section 481, internally-managed investment fund or main administrator
  - 1. do not comply with the provisions regarding the capital adequacy,
  - 2. do not start collecting financial means or things whose value can be expressed in monetary terms within 12 months of the day of granting this authorisation,
  - 3. do not perform their activity for more than 6 months, or
  - 4. materially or repeatedly breach a duty laid down by this Act, on the basis of this Act or by the directly applicable EU regulation governing investment funds<sup>2)</sup>.

(2) The CNB may withdraw an authorisation for the activity of a management company or an authorisation for the activity of an internally-managed investment fund if the further duration of the forced administration of the management company or of the internally-managed investment fund, which is a retail investment fund, would not achieve the purpose.

(3) The CNB may withdraw the authorisation to operate an internally-managed investment fund, if

- (a) in case of a retail investment fund,
  - 1. the average amount of the fund capital of this fund has not reached the amount corresponding to at least EUR 1 250 000, or
  - 2. the amount of the fund capital of this fund does not reach the amount corresponding to at least EUR 1 250 000 within 6 months of its coming into existence, (b) in case of a qualified investors' fund,
    - 1. the past 6 months the average amount of the fund capital of this fund does not reach the amount corresponding to at least EUR 1 250 000, or
    - 2. the amount of the fund capital of this fund does not reach the amount corresponding to at least EUR 1 250 000 within 12 months of its coming into existence,
- (c) in case of a qualified investors' fund referred to in Section 281,
  - 1. for the past 6 months the average amount of the fund capital of this fund does not reach the amount corresponding to at least EUR 1 000 000, or
  - 2. the fund capital of this fund does not reach the amount corresponding to at least 1 000 000 EUR within the time-limit determined by the statute and, where applicable, by the memorandum of association.

## Section 553

### **Withdrawal of authorisation for the purposes of designation of the mutual fund and the trust**

(1) The CNB may withdraw the authorisation granted for the purposes of Section 104 (2) and Section 148 (4) if there has been a material change in the facts decisive for the granting of the authorisation under which the authorisation was granted or it has become apparent that the authorisation was granted on the basis of false or incomplete information.

(2) If the CNB has decided to withdraw an authorisation granted for the purposes of Section 104 (2) and Section 148 (4), it shall at the same time specify the time limit for changing the designation of the mutual fund or trust so that it does not contain a name, trademark or a characteristic feature of the trademark of this person.

(3) By the enforceability of the decision on withdrawal of the authorisation referred to in Subsection (1) the person from which this authorisation has been withdrawn loses the right to decide who will be the manager, the administrator and the depositary of a mutual fund or a trust, whose designation includes the name or trademark or a characteristic feature of the trademark of this person, as well as the right to decide on the changes in the person of this manager, administrator or depositary. The enforceability of this decision shall at the same time renew the scope of an authority otherwise authorised under this Act or other legal regulation to decide in such cases.

## Section 554

### **Common provisions for the purpose of withdrawal of authorisation**

(1) A person, from whom an authorisation for the activity of a management company, or an authorisation for the activity of a foreign person granted according to Section 481 has been withdrawn, is regarded as the manager of an investment fund or a foreign investment fund until

- (a) the payment of shares to the unitholders, shareholders or beneficiaries of the dissolved investment funds and foreign investment funds,
- (b) the transfer of management of the undissolved investment funds and foreign investment funds to another manager, and
- (c) the settlement of its obligations from the activities according to Section 11 (1) (c) to (f), if some of the activities are performed by this person for another.

(2) A person, from whom an authorisation for the activity of an internally-managed investment fund was withdrawn while being a joint-stock company with variable registered capital or a limited partnership on investment certificates or a retail investment fund, is being dissolved with liquidation and its liquidator is appointed by the CNB; provisions of this Act regarding the liquidation of an investment fund with legal personality apply *mutatis mutandis*. This person is regarded as an internally-managed investment fund as of the day of withdrawal of this authorisation until its expungement from the Commercial Register.

(3) A person, from whom the authorisation for the activity of an internally-managed investment fund has been withdrawn, is regarded as an internally-managed investment fund until the day of entry of the change of the subject-matter of its business activity in the Commercial Register, if it was a qualified investors' fund prior to the withdrawal of this authorisation and it is not the case according to Subsection (2).

(4) If the person, from whom the authorisation for the activity of an internally-managed investment fund was withdrawn, is to become an investment fund listed in Section 9 (1), Subsections (2) and (3) do not apply.

(5) If the CNB decided on the commencement of proceedings for withdrawal of an authorisation for the activity of a management company, an authorisation for the activity of an internally-managed investment fund, an authorisation for the activity of a foreign person according to Section 481 or an authorisation for the activity of the main administrator, the CNB publishes this fact on its internet pages.

## Chapter 13

### **Withdrawal of an approval**

## Section 555

The CNB may withdraw the approval granted under this Act if

- (a) the remedial measure imposed did not lead to rectification,

- (b) it became clear that the approval was granted on the basis of false or incomplete information, or
- (c) material changes in the facts on the basis of which the approval was granted occurred.

## **Chapter 14**

### **Cancellation of the decision of a manager on the suspension of issuance or redemption of unit certificates or investment shares**

#### **Section 556**

(1) The CNB cancels the decision of a manager of an investment fund, which is an open-ended mutual fund or a joint-stock company with variable registered capital, on the suspension of issuance or redemption of unit certificates or investment shares issued by this fund, if such suspension of issuance or redemption of these unit certificates or investment shares jeopardises the interests of the owners of these unit certificates or investment shares.

(2) If the CNB decides in the administrative proceedings according to Subsection (1) on preliminary measure, which has an impact on the suspension of issuance or redemption of unit certificates or investment shares, the CNB publishes this fact on its internet pages.

(3) The first act in the administrative proceedings according to Subsection (1) is the issuance of the decision. A legal remedy against this decision does not have a suspensory effect.

## **Chapter 15**

### **Measures to more effectively monitor possible sources of systemic risk**

#### **Section 557**

(1) The CNB issues a measure of a general nature according to Subsection (2), if it is useful with respect to more effective monitoring of potential sources of systemic risks for the proper functioning of the financial market in the Czech Republic.

(2) The CNB determines the time-limit and the periodicity for the fulfilment of notification duties by way of derogation from this Act or a legal regulation issued on its basis by way of a measure of a general nature to managers of investment funds, administrators of investment funds, a group of generically determined managers of investment funds or a group of generically designated administrators of investment funds, or the CNB determines further notification duties for a manager or an administrator.

(3) Section 172 of the Administrative Code do not apply to the issuance of the measure according to Subsection (2). The measure of a general nature becomes effective on the day of its publishing on the Official Board of the CNB. Unless it has become ineffective sooner, the measure of a general nature becomes ineffective upon the lapse of 6 months of the day it became effective.

## Chapter 16

### Forced administration

#### Introduction and termination of forced administration

##### Section 558

(1) The CNB may introduce forced administration of a management company or an internally-managed investment fund, which is a retail investment fund, if the preceding remedial measures for the detected deficiencies or imposed fines did not lead to the rectification and such management company or internally-managed investment fund repeatedly or materially breached a duty or a condition according to Section 535.

(2) The CNB may further introduce forced administration of a management company or an internally-managed investment fund, which is a retail investment fund, if the interests of the investors of this fund or the interests of other customers of this management company are jeopardised.

##### Section 559

(1) The decision on the introduction of forced administration includes

- (a) information necessary for the identification of the forced administrator,
- (b) the amount of remuneration of the forced administrator or the manner of its determination and its maturity, and
- (c) potential restrictions on dealing with the fortune of the management company or the investment fund or the restrictions on other activities of management investment company or this investment fund.

(2) The proceedings regarding the introduction of forced administration may be commenced by the issuance of a decision on the introduction of forced administration.

(3) The decision on the introduction of forced administration is delivered to the business company, with respect to which the forced administration is introduced, and to the determined forced administrator.

##### Section 560

The decision on the introduction of forced administration is enforceable by the delivery to the forced administrator. Remonstrance filed against this decision does not have a suspensory effect.

##### Section 561

(1) By introducing the forced administration, the performance of office of members of the governing body of the management company or the investment fund is suspended, and the competence of the governing body of the management company or the investment fund passes on to the forced administrator.

(2) The effects of introducing forced administration according to Subsection (1) do not have an impact on the right of members of the governing body of the management company or the investment fund to submit a petition against the decision on the introduction of forced administration according to an act regulating administrative justice.

## Section 562

(1) Forced administration is terminated

- (a) the date stated in the final decision of the CNB or the final judgment of the court on the termination of the forced administration,
- (b) a declaration of bankruptcy of the assets of a management company or investment fund with respect to which the forced administration has been introduced,
- (c) issuing a decision authorising the reorganization of a management company or investment fund with respect to which the forced administration has been introduced, or
- (d) on the day as of which the liquidator of the management company or the investment fund is appointed, with respect to which the forced administration has been introduced.

(2) The prior consent of the CNB shall be required for the dissolution with liquidation of a management company or an investment fund under forced administration, on which decides the competent body of the management company or the investment fund.

## Forced administrator

### Section 563

(1) A forced administrator of a management company or an investment fund shall perform its function with professional care.

(2) Only a person, who is registered in the register of persons allowed to be a forced administrator of a management company, who manages a retail investment fund or a comparable foreign investment fund, and of a retail investment fund with legal personality, maintained by the CNB, may be a forced administrator of a management company or an investment fund.

(3) A forced administrator of a management company may not be a person,

- (a) whose interests are in conflict with the interests of the unitholders, shareholders and beneficiaries of the investment fund or the foreign investment fund managed by this management company, or with the interests of other customers of this management company,
- (b) who is connected personally or through assets with this management company, or
- (c) who participated within the past 5 years in the obligatory audit of this management company.

(4) The forced administrator of an investment fund can not be the one who,

- (a) whose interests are in conflict with the interests of the owners of the unit certificates or the investment shares issued by this fund,
- (b) who is connected personally or through assets with this investment fund, or
- (c) who participated within the past 5 years in the obligatory audit of this investment fund.

## Section 564

(1) The forced administrator

- (a) accepts without undue delay the remedial measures for the detected shortcomings in the activity of the management company or the investment fund,
- (b) ensures the protection of rights of the unitholders, shareholders and beneficiaries of the investment fund managed by the management company, with respect to which the forced administration has been introduced, or of the shareholders of the investment fund, with respect to which the forced administration has been introduced, and

- (c) within 6 months of the introduction of forced administration, convenes a meeting of the supreme body of the management company or the investment fund, with respect to which the forced administration has been introduced, and
  1. submits a proposal for the removal of the existing and the election of new persons on the bodies elected by this supreme body, and a proposal for the remedial measures for the detected shortcomings in the activity of the management company or the investment fund, or
  2. proposes dissolution of the management company or the investment fund.

(2) The CNB may, upon an application of the forced administrator, extend the time-limit for convening of a meeting of the supreme body according to Subsection 1 (c) up to 1 year, if reasons worthy of special consideration are given.

#### Section 565

(1) The forced administrator may, with the prior consent of the CNB

- (a) suspend the issuance or redemption of securities and book-entry securities issued by this investment fund or foreign investment fund managed by a management company, with respect to which the forced administration has been introduced, or suspend the issuance or redemption of securities and book-entry securities issued by an investment fund, with respect to which the forced administration has been introduced, or
- (b) file an insolvency petition for the assets of the management company or the investment fund, with respect to which the forced administration has been introduced, if the forced administrator detects the existence of a reason for filing such petition.

(2) The reimbursement of cash expenses of the forced administrator of the management company or investment fund and the remuneration of such forced administrator is paid from the assets of the management company or the investment fund, with respect to which the forced administration has been introduced; if the assets of the management company or the investment fund is not sufficient for the payment of the reimbursement of cash expenses of the forced administrator and the remuneration of the forced administrator of this management company or the investment fund, it will be paid by the state.

(3) The CNB lays down in a regulation the rules for determining the amount of the remuneration of the forced administrator and the cases in which the state reimburses cash expenses and remuneration of the forced administrator.

#### Section 566

(1) The performance of a forced administrator's function shall be terminated by

- (a) a resignation of the forced administrator pursuant to Subsection (2),
- (b) removing the forced administrator according to Subsection (3),
- (c) a termination of the forced administration under Section 562, or
- (d) the death of the forced administrator.

(2) The forced administrator shall notify the CNB of its resignation as a forced administrator at least 1 month in advance.

(3) The CNB shall remove the forced administrator if it has seriously or repeatedly failed to fulfill its obligation or ceased to fulfill the conditions prescribed by law for the exercise of this function.

(4) If the performance of a forced administrator function is terminated pursuant to Subsection (1) (a), (b) or (d), the CNB shall decide on the appointment of another forced administrator without undue delay.

(5) The decision on the appointment of another forced administrator shall be delivered to the commercial company in which the forced administration is introduced and to the forced administrator appointed pursuant to Subsection (4).

## Section 567

### **Data entered in the Commercial Register**

(1) The following is entered in the Commercial Register

- (a) information about the day of introduction of the forced administration,
- (b) information necessary for the identification of the forced administrator,
- (c) information necessary for the identification of the new forced administrator if a new forced administrator was appointed,
- (d) restrictions on dealing with the fortune of an investment fund or a foreign investment fund managed by the management company, with respect to which the forced administration has been introduced, or on dealing with the assets of an investment fund, with respect to which the forced administration has been introduced, or the restrictions on other activities of the management company or the investment fund, and
- (e) information about the day of termination of the forced administration.

(2) The forced administrator files the application for registration in the Commercial Register regarding the information listed in Subsection 1 (a), (b) and (d) without undue delay after receiving the decision on the introduction of forced administration.

(3) The newly appointed forced administrator files an application for registration regarding the information referred to in Subsection 1 (c) without undue delay after receiving the decision on its appointment as the forced administrator.

(4) The management company or the investment fund, with respect to which the forced administration has been introduced, files an application for registration in the Commercial Register regarding the information listed in Subsection 1 (e) without undue delay after the termination of forced administration.

(5) The newly appointed forced administrator files an application for expungement of the entry of the information referred to in Subsection 1 (b) together with the application for registration according to Subsection (3).

## Section 568

### **Financial collateral and final settlement**

(1) Provisions of this Act regulating the introduction of forced administration do not have an impact on the exercise of rights and fulfilment of duties arising from the arrangements on financial collateral under the conditions laid down by the act regulating the financial collateral or under comparable conditions according to the law of another state, if the financial collateral was arranged and came into existence prior to the introduction of forced administration.

(2) Subsection (1) also apply in the case that the financial collateral was arranged or came into existence on the day of introducing the forced administration, but after this fact occurred, unless the receiver of the financial collateral knew or should and could have known about this fact.

(3) Provisions of this Act regulating the introduction of forced administration do not have an impact on the fulfilment of the final settlement according to the act regulating the business activities on the capital market, as long as the final settlement had been closed prior to the introduction of forced administration.

## TITLE III

### SUPERVISION OF THE CNB IN THE CASES INVOLVING FOREIGN LAW ASPECTS

#### Section 569

(1) If a foreign person according to 14 (1), which manages a UCITS fund through a branch or without placing a branch in the Czech Republic, does not fulfil any of its duties laid down in Section 340, whose fulfilment is subject to supervision of the CNB, the CNB will notify the person of this fact and ask it to remedy the situation and, at the same time, will inform of this the supervisory authority of another member state, which granted authorisation to this person.

(2) If a foreign person, having an authorisation granted by a supervisory authority of another member state in compliance with requirements of UCITS-D<sup>4)</sup>, does not fulfil in offering investments in a foreign investment fund comparable to a UCITS fund in the Czech Republic managed by it any of its duties according to Sections 305 to 307, whose fulfilment is subject to supervision of the CNB, the CNB will notify the person of this fact and ask it to remedy the situation and, at the same time, will inform of this the supervisory authority of another member state, which granted an authorisation to this person.

(3) If the measures adopted in relation to the foreign person according to Subsection (1) or (2) by the supervisory authority of another member state, which granted an authorisation to this person, have not led to remedy the situation, or if they have not been adopted within a reasonable time-limit, the CNB may

- (a) after informing the supervisory authority of another member state, which granted an authorisation to this person, impose on the foreign person according to Subsection (1) or (2) a remedial measure or another measure or sanction according to this Act, with the provision of Section 538 (2) being applicable *mutatis mutandis*, or
- (b) inform a European supervisory authority of its doubts that the supervisory authority of another member state, which granted an authorisation to this person, acted on the basis of information according to Subsection (1) or (2) in an adequate manner.

(4) If case of danger in delay, the CNB may in order to procure the protection of investors or customers of the foreign person referred to in Section 14 (1) in the Czech Republic impose on this person a remedial measure or another measure or sanction according to this Act without prior notification to the supervisory authority of another member state, which granted an authorisation to this person; Section 538 (2) apply *mutatis mutandis*. If the European Commission decides after consultation with the competent supervisory authorities of other member states that the remedial measure or another measure is to be changed or cancelled, the CNB is bound by this decision.

#### Section 570

(1) If a foreign person according to 14 (2), which manages a retail AIF or a qualified investors' fund through a branch or without placing a branch in the Czech Republic, does not fulfil any of its duties laid down in Section 344, whose fulfilment is subject to supervision of the CNB, the CNB will notify the person of this fact and ask it to remedy the situation and, at the same time, will inform of this the supervisory authority of another member state, which granted an authorisation to this person.

(2) If a foreign person, having an authorisation granted by a supervisory authority of another member state in compliance with the requirements of the AIFMD<sup>5)</sup>, a foreign person authorised by a supervisory authority of another EU member state, granted according to the requirements of the AIFMD<sup>5)</sup>, does not fulfil upon marketing investments in a foreign investment fund comparable to a Retail AIF or qualified investors' fund in the Czech Republic managed by it any of its duties, whose fulfilment is subject to supervision of the CNB, the CNB will notify the person of this fact and ask it to remedy the situation and, at the same time, will inform of this the supervisory authority of another member state, which granted authorisation to this person.

(3) If the measures adopted in relation to the foreign person according to Subsection (1) or (2) by the supervisory authority of another member state, which granted an authorisation to this person, have not led to remedy to the situation, or if they have not been adopted within a reasonable time-limit, the CNB may, after informing the supervisory authority of another member state, which granted an authorisation to this person, impose on the foreign person according to Subsection (1) or (2) a remedial measure or another measure or sanction according to this Act. The provision of Section 538 (2) will apply *mutatis mutandis*.

## Section 571

### **Breach of the law of another state**

If a supervisory authority of another member state notifies that a manager being subject to supervision of the CNB does not fulfil notification duties towards this supervisory authority or breaches a duty ensuing from the law of the EU in the area of management of investment fund<sup>1),2)</sup> whose fulfilment is subject to supervision of the CNB, the CNB will impose on the manager a remedial measure according to this Act or another measure according to Section 539 (h). If a foreign person with an authorisation according to Section 481 is this manager, the CNB will request necessary information from the supervisory authority of another state in which this person has its registered office. The provision of Section 538 (2) shall apply *mutatis mutandis*.

## Section 572

### **Supervision of the manager of a foreign investment fund comparable to the UCITS fund**

(1) If the CNB learns that a foreign investment fund comparable to a UCITS fund in which the investments are marketed in the Czech Republic does not meet the requirements of the law of the EU in the area of management of investment fund<sup>1),2)</sup>, the fulfillment of which is not subject to supervision of the CNB, the CNB shall notify it to the supervisory authority of the home state of this fund.

(2) If the measures adopted in relation to the foreign investment fund according to Subsection (1) by the supervisory authority of the home state of this fund, have not led to remedy to the situation, or if they have not been adopted within a reasonable time-limit, the CNB may

- (a) after informing the supervisory authority of the home state of the fund, impose remedial measures pursuant to this Act or other measures pursuant to Section 539 (h) to protect the interests of investors in the Czech Republic, with the fact that Section 538 (2) shall apply *mutatis mutandis*, or
- (b) refer in this matter to the European supervisory authority.

## Section 573

### **Supervision over the manager of a foreign investment fund in other cases**

(1) If the CNB learns that the management of a foreign investment fund comparable to a retail AIF or a qualified investors' fund in which the investments are marketed in the Czech Republic does not meet the requirements of the law of the EU in the area of management of investment fund<sup>1), 2)</sup>, whose fulfilment is not subject to supervision of the CNB, the CNB will notify it to the supervisory authority of another member state, which granted authorisation to this manager.

(2) If the measures adopted in relation to the manager according to Subsection (1) by the supervisory authority of another member state, which granted authorisation to this manager, have not led to remedy to the situation, or if they have not been adopted within a reasonable time-limit, the CNB may, after informing the supervisory authority of another member state, impose a remedial measure according to this Act or another measure according to Section 539 (h) to protect the interests of investors in the Czech Republic or to ensure the due functioning of the financial market in the Czech Republic. The provision of Section 538 (2) will apply *mutatis mutandis*.

## Section 574

### **Suspicion of unlawfully granted authorisation**

(1) If the CNB has reasonable grounds to suspect that the supervisory authority of another member state has granted authorisation to a foreign person with registered office in a state, which is not a member state, to an activity on the basis of the AIFMD<sup>5)</sup> in violation of the requirements ensuing from the law of the EU, it will notify this fact to the supervisory authority of another member state.

(2) If the measure adopted in relation to the foreign person according to Subsection (1) by the supervisory authority of another member state, which granted authorisation to this person, have not led to remedy to the situation, or if they have not been adopted within a reasonable time-limit, the CNB may, after informing the supervisory authority of another member state, impose a remedial measure according to this Act or another measure according to Section 539 (h) to protect the interests of investors in the Czech Republic or to ensure the due functioning of the financial market in the Czech Republic. The provision of Section 538 (2) will apply *mutatis mutandis*.

## TITLE IV

### **COOPERATION OF SUPERVISORY AUTHORITIES OF MEMBER STATES, EUROPEAN SUPERVISORY AUTHORITY AND EUROPEAN SYSTEMIC RISKS BOARD AND SETTLEMENT OF DISPUTES BETWEEN SUPERVISORY AUTHORITIES**

## Section 575

### **Provision of information by the CNB upon request or on the basis of notification**

If the supervisory authority of another EU member state has informed the CNB that it has reasonable suspicion that the investment fund or foreign investment fund manager, that is subject to the supervision of the CNB, has breached its obligation under EU law in the area of management of investment funds<sup>1), 2)</sup>, the CNB shall inform the supervisory authority and the European Supervisory Authority of the result of the adopted measure.

## Section 576

### **Cooperation in the exercise of supervision or in the on-the-spot controls upon request of the supervisory authority of another member state**

(1) The CNB will carry out, upon a request of the supervisory authority of another member state for cooperation in the exercise of supervision including an on-the-spot control, the requested activity itself or will provide cooperation in the performance thereof to the requesting supervisory authority or to the authorised experts or auditors.

(2) If the CNB carries out the requested activity itself, it allows the participation of authorised persons of the requesting supervisory authority.

(3) If the requesting authority carries out the requested activity itself, the CNB may demand that its authorised persons participate in this activity.

(4) In the following, the CNB's procedure according to Subsections (1) to (3) is further defined in Articles 6 to 13 of the Commission Regulation (EU) No 584/2010.

## Section 577

### **Refusal of the request**

(1) The CNB may refuse a request for the provision of information or a request for cooperation in the exercise of supervision or in the on-the-spot controls in the area of management and administration of investment funds and foreign investment funds,

- (a) if such provision could adversely affect the sovereignty and security of the Czech Republic or public order in the Czech Republic,
- (b) if a judicial proceeding has been instituted in this matter against persons, with whom the request is concerned,
- (c) if a judgment relating to this matter and persons, with whom the request is concerned, has taken legal effects.

(2) The CNB will inform the requesting supervisory authority about the reasons for refusing the request according to Subsection (1), if it refuses the request.

## Section 578

### **Decision on withdrawal of licence to an activity or on refusal of registration of a UCITS fund in the register**

(1) Prior to the decision whereby the CNB withdraws authorisation to the activity of a management company managing a foreign investment fund comparable to a UCITS fund, the CNB will request a statement of the supervisory authority of this fund.

(2) Prior to the decision whereby the CNB refuses registration of a UCITS fund in the respective register to a person according to Section 14 (1), the CNB will request a statement of the supervisory authority of the home state of this person.

(3) The CNB will reply upon request of the supervisory authority of another member state materially comparable to the request for the statement according to Subsection (2) within 10 working days from the day when this request has been delivered to it.

Section 579

**Settlement of disputes between supervisory authorities by a European supervisory authority**

The CNB may refer to a European supervisory authority an application for settlement of a dispute between the CNB and a supervisory authority of another member state on the basis of Article 19 of the regulation of the European Parliament and of the Council establishing a European Supervisory Authority<sup>15)</sup>, if

- (a) this authority has not, within a reasonable time-limit, admitted its request for cooperation in the exercise of supervision or in the on-the-spot controls,
- (b) this authority has not, within a reasonable time-limit, admitted its application for provision of information,
- (c) this authority has not, within a reasonable time-limit, provided cooperation to it in the exercise of supervision or in the on-the-spot controls,
- (d) this authority has not, within a reasonable time-limit, agreed with the CNB on the exchange of information according to Section 316 (2) (b) or Section 481 (1) (f),
- (e) the CNB does not agree with how this authority assessed the fulfilment of conditions comparable to conditions referred to in Section 318 (2) (b) or Section 327 (1) (a) point 5 or 6 by a depository which is a foreign person according to Section 327 (1) (a),
- (f) the CNB does not agree that this authority assessed the fulfilment of conditions comparable to conditions referred to in Section 318 (2) (a) or (b) by a manager authorised to exceed the relevant threshold, with registered office in another member state, or by a foreign person with an authorisation according to Section 481, in case of marketing investments in an investment fund, whose home state is not a member state, managed by the manager,
- (g) the CNB does not agree on the manner the authority determined or changed the reference state of a person referred to in Section 481,
- (h) the CNB does not agree that this authority has granted authorisation to a foreign person comparable to an authorisation according to Section 481,
- (i) the CNB does not agree with how this authority assessed that the foreign person applying for the granting of authorisation comparable to an authorisation according to Section 481 fulfils the condition referred to in Article 37 (7) (a) to (e) or (g) of the directive of the AIFMD<sup>5)</sup>,
- (j) the CNB does not agree that this authority allowed or did not allow an exception from fulfilling duties, which is comparable to an exception from fulfilling duties according to Section 492,
- (k) the CNB does not agree on the manner how the authority adopted the measure pursuant the notice of the CNB according to Sections 569 (2), Section 570 (1) and (2), Section 573 (1) or Section 574 (1)
- (l) the CNB does not agree with the authority's adoption of measure against a manager of an investment fund or a foreign investment fund authorised to exceed the relevant threshold with an authorisation to manage under Section 479, 480 or 481, or
- (m) this authority has otherwise hampered the exercise of supervision according to this Act.

## TITLE V

### INFORMATION OBLIGATIONS OF THE CNB

#### Chapter 1

##### **Information obligations of the CNB in relation to the European Commission**

###### Section 580

(1) The CNB shall provide information via the Ministry of Finance to the European Commission

- (a) the number and types of cases in which it has refused according to Section 329 (5) to communicate information referred to in Section 328 (2) to a supervisory authority of another member state,
- (b) the number and types of cases in which it has not allowed a management company or a foreign person with an authorisation according to Section 481 to transfer a mutual fund, which it manages, into the management of a foreign person referred to in Section 14 (1), and (c) the measures for remedy or other measures or administrative sanctions according to this Act which it has imposed on a foreign person referred to in Section 14 (1) according to Section 569 (3) or (4).

(2) The CNB shall provide the European Commission via the Ministry of Finance with information about factual and legal difficulties usually encountered in states, which are not member states, by

- (a) managers of UCITS funds or comparable foreign investment funds when marketing investments in these funds, or
- (b) management companies in managing foreign investment funds, in offering investments in investment funds and foreign investment funds, managed by them, or in providing investment services.

(3) The CNB shall provide the European Commission via the Ministry of Finance with information about the types of bonds and similar securities or book-entry securities representing a right to payment of an outstanding amount, into which it is possible to invest up to 25 % of the value of the assets of a UCITS fund, and about basic characteristics of possible warranties for these securities or book-entry securities.

(4) The CNB shall inform the European Commission, via the Ministry of Finance, of the changes in the information it has provided pursuant to Section 663.

(5) The CNB shall provide via the Ministry of Finance to the European Commission, once a year, information on any investment fund or foreign investment fund manager authorised to exceed the relevant threshold, that is not comparable to the UCITS fund, information on such funds and information on foreign investment funds, in which investments are marketed in the Czech Republic, Within the scope of the information referred to in Section 69 (2) (a) to (f) of the AIFMD<sup>5)</sup>.

## Chapter 2

### Information obligations of the CNB in relation to the European supervisory authority

#### Section 581

##### About permissions

(1) The CNB shall provide to the European supervisory authority quarterly with information about granted and withdrawn authorisation to the activity of a management company authorised to exceed the relevant threshold or to manage UCITS funds, to the activity of a foreign person according to section 481, and to the activity of an internally-managed investment fund, which is authorised to exceed the relevant threshold or which is a UCITS funds.

(2) The CNB shall provide the European supervisory authority with information about whether it has granted or not granted, changed or withdrawn authorisation to the activity of a foreign person according to Section 481. If the CNB has not granted authorisation to an activity to a foreign person according to Section 481, it will provide a European supervisory authority with information necessary for the identification of the applicant and with grounds for not granting.

#### Section 582

##### Information on cross-border management and performing the administration

The CNB shall provide the a European supervisory authority with information whether a foreign person with an authorisation according to Section 481 may start, in another member state, to perform an activity, which is included in the management or administration of a foreign investment fund comparable to a retail AIF or to a qualified investors' fund.

#### Section 583

##### Information about cross-border marketing of investments

(1) The CNB shall provide a European supervisory authority with information whether a management company authorised to exceed the relevant threshold or a foreign person with an authorisation according to Section 481

- (a) may in compliance with Section 320 (1), Section 321 (1), Section 325 (1) start marketing investments, in the Czech Republic or in another member state, to a foreign investment fund, whose home state is not a member state,
- (b) intends to start marketing investments, in the Czech Republic or in another member state, to another foreign investment fund, whose home state is not a member state, or
- (c) intends to cease to market investments, in the Czech Republic or in another member state, to a foreign investment fund, whose home state is not a member state.

(2) The CNB shall provide a European supervisory authority with information about whether a foreign person with an authorisation according to Section 481

- (a) may in compliance with Section 317 (1) start marketing investments, in the Czech Republic or in another member state, to a retail AIF, qualified investors' fund or to a comparable foreign investment fund, and
- (b) intends to start marketing investments, in the Czech Republic or in another member state, to a retail AIF, qualified investors' fund or to a comparable foreign investment fund, and
- (c) intends to cease to market investments, in the Czech Republic or in another member state, to a retail AIF, qualified investors' fund or to a comparable foreign investment fund.

## Section 584

### **Information about a foreign person with registered office in a state which is not a member state**

The CNB shall provide the European supervisory authority with information whether a foreign person with a licence according to Section 481 has breached a duty imposed by the provisions of this Act or by a legal regulation issued on its basis, implementing the UCITS-D<sup>5)</sup> and the provisions of Commission Delegated Regulation (EU) No 231/2013, whereas it gives reasons for the breach.

## Section 585

### **Informing a European supervisory authority in case of reasonable suspicion**

If the CNB reasonably suspects that a manager of an investment fund or a foreign investment fund who is authorised to exceed the relevant threshold and which is subject to supervision by a supervisory authority of another EU member state has breached its obligation under EU law in the area of alternative fund managers<sup>5), 6)</sup>, it shall inform the European supervisory authority, whereas it gives reasons for the suspicion.

## Section 586

### **Information provided in relation to the European Commission**

The CNB shall provide the European supervisory authority with the facts according to Section 580 (1) to (4).

## Section 587

### **Imposition of conditions for the use of leverage**

(1) The CNB shall inform the European supervisory authority that it intends to impose on a management company authorised to exceed relevant threshold, a foreign person with an authorisation according to Section 481 or an internally-managed investment fund authorised to exceed relevant threshold, conditions for the use of leverage or limitations, which need to be observed with respect to the use of leverage according to Section 548 within 10 working days before this limitation should become effective. The CNB further includes in the information

- (a) details of the proposed measure pursuant to Section 548,
- (b) reasons for the adoption of the measure, and
- (c) when this measure should become effective.

(2) The CNB shall inform the European supervisory authority, if it intends to impose conditions on a management company authorised to exceed relevant threshold, a foreign person with an authorisation according to Section 481 or an internally-managed investment fund authorised to exceed relevant threshold for the use of leverage or limitations, which need to be observed with respect to the use of leverage according to Section 548, which at variance with the opinion of a European supervisory authority, whereas it gives reasons for the adoption of such a measure.

## Section 588

### **Measures of a general nature**

The CNB shall inform a European supervisory authority about a measure of a general nature adopted according to Section 557.

## Section 589

### **Instructions and recommendations**

The CNB shall communicate to a European supervisory authority within 2 months from issuing its instruction or recommendation as to whether it will follow the instruction or recommendation; if the CNB does not intend to follow it, it will communicate to a supervisory authority why it does not intend to follow it.

## Chapter 3

### **Information duties of the CNB in relation to European Systemic Risks Board**

## Section 590

The CNB shall provide information referred to in Section 587 (1) to the European Systemic Risks Board.

## Chapter 4

### **Information obligations of the CNB in relation to the competent supervisory authorities of other EU member states**

## Section 591

### **Informing the supervisory authority of another EU member state in case of reasonable suspicion**

If the CNB has reasonable grounds to suspect that a manager of a foreign investment fund, which is subject to supervision of a supervisory authority of another member state, has breached a duty ensuing from the law of the EU in the area of alternative fund managers<sup>1),2)</sup> it informs of this a European supervisory authority and the supervisory authority of the member state concerned with the reasonable breach of duty; the CNB gives due reasons for the suspicion.

## Section 592

### **Duty to inform about a remedial measure**

The CNB will inform the supervisory authority of another member state, which granted an authorisation to a foreign person referred to in Section 14, without undue delay, about the nature of the remedial measure or other measure or sanction imposed according to Section 569 (3) or Section 570 (3).

## Section 593

### **Information in case of investment funds that are not a UCITS fund**

(1) The CNB shall notify the supervisory authority of another EU member state in which they are marketinged investment fund that is not a UCITS fund or comparable foreign investment fund, whose manager is a management company authorised to exceed the relevant threshold or a foreign person with an authorisation pursuant to Section 481, that investments in this fund must not be marketed in the EU member states.

(2) The CNB shall provide to the supervisory authority of the home country of a foreign investment fund that is not comparable with the UCITS fund information that a management company authorised to exceed the relevant threshold or a foreign person authorised under Section 481 may start marketing investments in the fund in the Czech Republic or in another EU member state.

#### Section 594

##### **Determination of the conditions for using the leverage**

The CNB shall also provide information referred to in Section 587 (1) to the supervisory authority of the member state of a foreign investment fund.

#### **Informing in case of UCITS funds**

#### Section 595

(1) Articles 12 and 13 of the Commission Regulation (EU) No 584/2010 defines when the CNB shall notify the supervisory authority of another EU member state in cases of marketing investments to UCITS funds and activities of the management companies of the UCITS funds.

(2) The CNB shall provide the supervisory authority of the home state of a feeder fund, which is a foreign investment fund comparable to a UCITS fund, with information about every decision and measure relating to the master fund of this feeder fund or the manager, administrator, depositary, or the auditor of this master fund, of which it will learn from its own activity or which it itself will make or impose, and further about every fact, of which it has learned from the manager, administrator, depositary or auditor of this master fund.

### TITLE VI

#### REGISTERS

#### Section 596

The CNB maintains registers of

- (a) management companies,
- (b) management companies having their registered office in a foreign state who are authorised to manage an investment fund,
- (c) main administrators,
- (d) depositaries of the investment fund,
- (e) persons referred to in Section 15 (1), who must be registered in a register,
- (f) persons who may be appointed as a liquidator of a management company, a retail investment fund with a legal personality and a main administrator, and
- (g) persons who may be appointed by the forced administrator of a management company which manages a retail investment fund or a comparable foreign investment fund and a retail investment fund with a legal personality.

#### Section 597

The CNB maintains a register of

- (a) investment funds with legal personality,
- (b) mutual funds,
- (c) investment funds having the legal form of a trust,

- (d) foreign investment funds into which the investments may be publicly marketed in the Czech Republic, if it is not a case referred to in (e), and
- (e) foreign investment funds comparable to a retail AIF or a qualified investors' fund whose management is authorised to exceed the relevant threshold and in which the investments in the Czech Republic are to be marketed, according to the intention, only in a public form.

## Section 598

### **Management of registers**

(1) Lists pursuant to Section 596 and 597 shall be kept in electronic form, in the public administration information system. The administrator of this system is the CNB, which also determines the scope and structure of these lists as well as what list data is to be published.

(2) Written data on the specified strategy, which are included in the list kept pursuant to Section 596 (f) and Article 5 (2) of the directly applicable EU regulation implementing the AIFMD. Part of the list maintained pursuant to Section 597 (a) there are also data necessary to identify the sub-fund when such an investment fund creates sub-funds.

(3) The CNB shall publish on its website data from the lists pursuant to Section 596 and 597 in Czech and English so as to be publicly available.

(4) Lists pursuant to Section 596 and 597, which are kept by the CNB pursuant to this Act, are not public registers or public lists.

## **PART FIFTEEN**

### **ADMINISTRATIVE OFFENCES**

#### **TITLE I**

#### **ADMINISTRATIVE OFFENCES OF LEGAL PERSONS AND OF INDIVIDUALS CARRYING ON BUSINESS ACTIVITES**

#### **Chapter 1**

##### **Administrative offences of a manager**

## Section 599

(1) A manager of an investment fund or a foreign investment fund commits an administrative offence by

- (a) failing to fulfil any of the duties laid down pursuant to Articles 3 to 38 of Commission Regulation (EU) No 583/2010, Article 1 and Annex I of Commission Regulation (EU) No 584/2010, Articles 2 to 111 of Commission Delegated Regulation (EU) No 231/2013, as amended, Articles 5, 6, 7 (a) or (b) or Articles 12 to 14a of Regulation (EU) No 345/2013 of the European Parliament and of the Council, as amended, Articles 5, 6, 7 (a) or (b) or Article 13 to 15a of Regulation (EU) No 346/2013 of the European Parliament and of the Council, as amended, Articles 3 to 31 of Regulation (EU) 2015/760 of the European Parliament and of the Council, Article 13 or 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council, Articles 2 to 24 of Commission Delegated Regulation (EU) No 438/2016, as amended, or pursuant to Articles 4 to 6, 9 to 21 or Articles 23 to 36 of Regulation (EU) 2017/1131 of the European Parliament and of the Council, as amended in relation to the performance of an activity included in the management of an investment fund or a foreign investment fund,

- (b) failing to manage such a fund with due professional care in violation of Section 18,
- (c) failing to perform an activity duly and prudently in violation of Section 19 (1),
- (d) failing to introduce, maintain or apply the managing and controlling system in violation of Section 19 (2),
- (e) failing to ensure that the managing and controlling system fulfil the requirements ensuing from Section 20 (1), (2), or (3),
- (f) failing to act according to Section 20 (4),
- (g) failing to introduce, maintain or apply the reporting mechanism requirements ensuing from Section 20a,
- (h) failing to ensure that its personnel fulfil the requirements ensuing from Section 21, (i) breaching any of the rules ensuing from Section 22,
- (j) delegating of an individual activity, included in the management of this fund, to another, in violation of any of the conditions referred to in Section 23 to 25,
- (k) failing to fulfil any of the duties ensuing from Section 33 (1) or breaching the prohibition according to Section 33 (2) in performing any of the activities referred to in Section 11 (1) (c) to (f) for another,
- (l) disposing of financial means of this fund in violation of Section 74 (2) or (3),
- (m) failing to fulfil any of the duties referred to in Sections 76 or 673 after the termination of a respective depositary agreement,
- (n) failing to inform a competent depositary in violation of Section 88 (3) about the creation or termination of an obligation from a contract referred to in Section 88 (1),
- (o) failing to provide the CNB with the relevant document according to Section 455 (1), or
- (p) failing to provide the CNB with any information or any of the facts according to Section 458, Section 459 (1), Section 460 (1), Section 461 (3) or (4), Section 462, Section 463, Section 464 (1), Section 466, Section 467 (2) first sentence, Section 467 (5), Section 468, Section 471 (1), Section 473, or Section 475 (1).

(2) The manager not authorised to exceed the relevant threshold, managing only qualified investors' funds and comparable foreign investment fund, commits an administrative offence if, in violation of Section 28, Section 291 (2) or Section 293 (2), the manager fails to fulfil any of the duties laid down in Articles 7 to 10 or Articles 12 and 13 of the EUVECA-R.

(3) A manager referred to in Section 34 (1) commits an administrative offence by

- (a) failing to ensure to make available any information referred to in Section 34 (1) and (2) and Section 35 (1) (a) to (e),
- (b) failing to ask the governing body of the controlled legal person according to Section 36 (1), (3) or (4),
- (c) failing to ensure to include information referred to in Section 34 (2) in the annual report of an investment fund managed by it, if the manager follows Section 234 (2) (d), or (d) failing to notify the CNB of any information according to Section 471 (2).

(4) A manager referred to in Section 34 (1) or Section 35 (3) commits an offence if

- (a) failing to ensure to make available any information referred to in Section 35 (1) (f) to (h),
- (b) failing to ask the governing body of the controlled legal person according to Section 36 (2),
- (c) failing to prevent an actions or events according to Section 37 (1), or
- (d) failing to notify the CNB of any information according to Section 471 (3).

(5) The investment fund manager commits an administrative offence by:

- (a) becoming a depositary of this fund in violation of Section 61,
- (b) failing to issue or update the statute of this fund in violation of Section 189,
- (c) evaluating the assets or debts of this fund without having created organisational preconditions according to Section 195,

(d) failing to include the word “fund” in the business name or other name or designation of this fund in violation of Section 634 (5), or (e) failing to ensure that the business name or another name or designation of this fund fulfil the requirements according to Section 635.

(6) A fine will be imposed for an administrative offence pursuant to Subsection (1), (g), (k), (l), (m), (n), (o) or (p) of Subsections (3), (4) or (5) in the amount up to

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statement or consolidated financial statement, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this administrative offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an offence pursuant Subsection (1) (a), (b), (c), (d), (e), (f), (h), (i) or (j) or Subsection (2), a fine may be imposed up to:

- (a) CZK 300 000 000,
- (b) 10 % of the total annual turnover of a legal person according to its last regular financial statement or consolidated financial statement, if the amount of the fine thus determined exceeds CZK 300 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 300 000 000.

(8) For the offence referred to in Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 600

(1) A manager of a retail investment fund commits an administrative offence by:

- (a) changing the fund's investment strategy in violation of Section 207,
- (b) failing to disclose the facts pursuant to Section 213,
- (c) failing to introduce, maintain or apply any of the rules, techniques or limits according to Section 215 (1), or
- (d) failing to ensure that the fund's statute contains information pursuant to Section 219 or 220.

(2) A manager of a retail investment fund and a manager of a qualified investors' fund authorised to exceed the relevant threshold commits an administrative offence by failing to ensure at least one depositary for this fund in violation of Section 68 or 83 (1).

(3) The manager of a qualified investors' fund not authorised to exceed the relevant threshold commits an administrative offence by failing to ensure at least one depositary for this fund in violation of Section 83 (1).

(4) The manager of an investment fund, for which the prime broker provides services or whose assets the prime broker possesses, commits an administrative offence by failing to ensure the provision of necessary information or documents to a competent depositary by the prime broker in violation of Section 89.

(5) The management company of a mutual fund commits an administrative offence by:

- (a) not ensuring that the designation of a mutual fund meets the requirements of Section 104, 129 or 143,
- (b) acting in violation of Sections 123 to 125 upon the change of type or form of unit certificates or upon exclusion of unit certificates from trading on a European regulated market,
- (c) failing to draw up the minutes in respect of its resolution on termination of issuing or redeeming unit certificates in violation of section 134 (3),
- (d) failing to realise the assets or to discharge debts according to Section 376 (1), or
- (e) failing to include the information according to Section 428 (1) or Section 432 (1) in the statute.

(6) A fine for an administrative offence pursuant to Subsection (1), (b) or (d), Subsections (2), (3), (4) or (5) will be imposed for an administrative offence in the amount up to

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statement or consolidated financial statement, if the amount of the fine thus determined exceeds CZK 150 million, or
- (c) a double amount of the unjustified benefit obtained by committing the administrative offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) An administrative offence pursuant Subsection (1) (a) or (c) may be fined up to:

- (a) CZK 300 000 000,
- (b) 10 % of the total annual turnover of a legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 300 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this administrative offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 300 000 000.

(8) For the administrative offence referred to in Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 601

(1) The manager of an investment fund as a trust commits an administrative offence by failing to ensure that the designation of this fund fulfil the requirements according to Section 104 and the manager of an investment fund, which is a joint-stock company with registered capital, commits an administrative offence by failing to ensure that the designation of their sub-funds fulfil the requirements according to Section 166 (1) or Section (104).

(2) A manager of a retail AIF or a comparable foreign investment fund, using the leverage, commits an administrative offence by failing to prove to the CNB upon its request any of the facts according to Section 218.

(3) The manager of a feeder fund commits an administrative offence by

- (a) investing in violation of Section 248 (1),
- (b) failing to control the activities of the manager of the master fund according to Section 248 (2),
- (c) failing to hand over information according to Section 256 to the depositary of this fund.

(4) A manager of a master fund commits an administrative offence by failing to inform the manager of the feeder fund, the administrator of the feeder fund, the depositary of the feeder fund, the CNB or a competent supervisory authority of another member state.

(5) A manager of a retail investment fund, which, according to its statute, invests in real estate or participation in a real estate company, commits an administrative offence by not appointing a experts' committee under Section 268.

(6) A fine will be imposed for an administrative offence under Subsection (1) or (2), Subsection (3) (b) or (c), Subsections (4) or (5), up to

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the administrative offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsection (3) (a) a fine may be imposed up to:

- (a) CZK 300 000 000,
- (b) 10 % of the total annual turnover of a legal entity according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 300 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this administrative offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 300 000 000.

(8) For the administrative offence referred to in Subsections (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 602

(1) The manager of a qualified investors' fund commits an administrative offence by failing to introduce, maintain or apply any of the rules, techniques or limits according to Section 284 (1).

(2) The manager of a qualified investors' fund or a comparable foreign investment fund authorised to exceed the relevant threshold, using the leverage, commits an administrative offence by failing to prove to the CNB the fact according to Section 287.

(3) A manager of a mutual fund or a foreign UCITS fund comparable to a mutual fund, which was created by a consolidation, commits an administrative offence by failing to notify the depository of this fund of the fact according to Section 393 (1).

(4) A manager of a mutual fund, or a foreign investment fund comparable to the UCITS fund, which was created by a consolidation, commits an administrative offence by failing to provide additional monetary compensation according to Section 396 (1).

(5) A manager of a receiving UCITS fund or a receiving foreign investment fund comparable to a UCITS fund commits an administrative offence by failing to notify the depository of this fund of the fact according to Article 409 (1).

(6) A fine may be imposed for an administrative offence under Subsections (2), (3), (4) or (5) up to:

- (a) CZK 150 000 000,

- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this administrative offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) A fine may be imposed for an administrative offence under Subsection (1) up to:

- (a) CZK 300 000 000,
- (b) 10 % of the total annual turnover of a legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 300 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this administrative offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 300 000 000.

(8) For the administrative offence referred to in Subsections (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

### Section 603

(1) The manager of a receiving mutual fund or a receiving foreign investment fund comparable to a UCITS fund commits an administrative offence by failing to provide additional monetary compensation according to Section 412 (1).

(2) The manager of a joint-stock company, into which a mutual fund has transformed, commits an administrative offence by failing to provide additional monetary compensation according to Section 423 (1).

(3) A manager of a feeder fund commits an offence by investing in the assets of this fund in violation of Section 433 (3).

(4) Anyone who exercises an activity comparable to the activity of a manager for a transformed investment fund without legal personality commits an administrative offence by failing to provide additional monetary compensation according to Section 453 (1).

(5) A manager of a UCITS fund, following Sections 666 to 675 commits an administrative offence by failing to fulfil any of the duties according to section 671 (1).

(6) A fine may be imposed for an administrative offence under Subsection (1), (2), (4) or (5) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this administrative offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) A fine may be imposed for an administrative offence under Subsection (3) up to:

- (a) CZK 300 000 000,

- (b) 10 % of the total annual turnover of a legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 300 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this administrative offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 300 000 000.

(8) For the offence referred to in Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Chapter 2

### Administrative offences of an administrator

#### Section 604

(1) The administrator of an investment fund or a foreign investment fund commits an administrative offence by

- (a) failing to fulfil any of the duties laid down pursuant to Articles 3 to 38 of Commission Regulation (EU) No 583/2010, Article 1 and Annex I of Commission Regulation (EU) No 584/2010, Articles 2 to 111 of Commission Delegated Regulation (EU) No 231/2013, as amended, Articles 5, 6, 7 (a) or (b) or Articles 12 to 14a of Regulation (EU) No 345/2013 of the European Parliament and of the Council, as amended, Articles 5, 6, 7 (a) or (b) or Article 13 to 15a of Regulation (EU) No 346/2013 of the European Parliament and of the Council, as amended, Articles 3 to 31 of Regulation (EU) 2015/760 of the European Parliament and of the Council, Article 13 or 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council, Articles 2 to 24 of Commission Delegated Regulation (EU) No 438/2016, as amended, or pursuant to Articles 4 to 6, 9 to 21 or Articles 23 to 36 of Regulation (EU) 2017/1131 of the European Parliament and of the Council, as amended, in relation to the performance of an activity included in the administration of an investment fund or a foreign investment fund,
- (b) failing to administer such a fund with due professional care in violation of Section 45,
- (c) failing to perform an activity duly and prudently in violation of Section 46 (1),
- (d) failing to introduce, maintain or apply the managing and controlling system in violation of Section 46 (2),
- (e) failing to ensure that its governing and supervisory system meets the requirements of Section 47 (1), (2) or (3)
- (f) not acting pursuant to Section 47 (4)
- (g) not establish, maintain or apply a reporting mechanism pursuant to Section 47a and 20a,
- (h) failing to ensure that its personnel fulfil the requirements ensuing from Section 48,
- (i) violating any of the rules of conduct under Section 49,
- (j) delegation of performance of an individual activity, included in the administration of this fund, to another, in violation of any of the conditions referred to in Sections 50 to 52,
- (k) failing to ensure to keep records according to Section 54,
- (l) failing to provide the CNB with any of the documents pursuant to Section 455 (2) or Section 457,
- (m) failing to notify the CNB of any of the information or any of the facts pursuant to Section 456, 457, Section 459 (2), Section 460 (2), Section 467 (2) second sentence, Section 467 (3), Section 469 or Section 475 (2), or
- (n) not informing the consumer prior to the conclusion of the contract or before the consumer makes a binding offer, in the text form of the facts under Section 1843 of Civil Code.

(2) The administrator of a qualified investors' fund or of a comparable foreign investment fund managed by a manager referred to in Section 28 commits an administrative offence by failing to fulfill one of the obligations in the scope of administration of this fund in breach of Section 56, Section 291 (2) or Section 293 (2) laid down in Articles 7 to 13 of the EUVECA-R<sup>7</sup>.

(3) The fund manager commits an administrative offence by:

- (a) not keeping a list of unitholders pursuant to Section 109, Section 110 (2) or Section 111,
- (b) keeping accounting in contravention of Section 114,
- (c) failing to ensure the publication of any of the documents or facts pursuant to Section 137 (1) or Section 138,
- (d) not paying to the unitholders their shares in the liquidation balance pursuant to Section 376 (2),
- (e) not disclosing information pursuant to Section 428 (3), or
- (f) not preparing extraordinary financial statements under Section 434.

(4) The administrator of an investment fund commits an administrative offence by:

- (a) delegating the evaluation of the assets or debts of this fund, to another, in violation of Section 197 (1), Section 198 (1) or Section 199,
- (b) not disclosing the information pursuant to Section 432 (3)
- (c) failing to notify the CNB of the fact according to Section 465, or
- (d) not ensuring that its name meets the requirements of Section 635.

(5) An administrator of a retail investment fund commits an administrative offence by:

- (a) failing to disclose any of the documents or data referred to in Section 222, Section 233 (1) or Section 237 (1),
- (b) failing to provide an investor with any of the documents or information according to Section 224 (1), Sections 225, 226, 231, 232 or Section 233 (3),
- (c) failing to prepare a communication of key investor information pursuant to Section 227 to 230, an annual report of this fund pursuant to Section 234 or a semi-annual report of that fund pursuant to Section 238,
- (d) not updating any of the information contained in the key investor information, contrary to Section 228, or
- (e) not providing any of the documents pursuant to Section 233 (2) or Section 237 (2) to the unitholder or shareholders of the fund.

(6) For an administrative offence pursuant to Subsection (1) (g), (l), (m) or (n), Subsection (2) (3) (4) or (5) may be imposed a fine up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsection (1) (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) may be imposed a fine up to:

- (a) CZK 300 000 000,
- (b) 10 % of the total annual turnover of a legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 300 000 000, or

(c) a double amount of the unjustified benefit obtained by committing this offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 300 000 000.

(8) For the administrative offence referred to in Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 605

(1) An administrator of a retail investment fund, which has the legal form of a joint-stock company, commits an offence by failing to disclose the articles of association of this fund in violation of Section 223.

(2) An administrator of a UCITS fund, a retail AIF that is an open-ended mutual fund or a joint-stock company with variable capital or a comparable foreign investment fund, if the investment in this fund is marketed in the Czech Republic, commits an offence by not publishing any of information pursuant to Section 239.

(3) An administrator of a retail investment fund which does not buy securities or book-entry securities issued by it or a comparable foreign investment fund if the investment in this fund is marketed in the Czech Republic commits an offence by failing to disclose any of the information pursuant to Section 240.

(4) The administrator of a retail AIF, a qualified investors' fund or a comparable foreign investment fund, whose manager is authorised to exceed the relevant threshold, commits an administrative offence by

- (a) not disclosing to the investor any of the information referred to in Section 241 (1), (3) or (4), or
- (b) not updating any of the data, contrary to Section 241 (2).

(5) An administrator of a retail investment fund or a comparable foreign investment fund commits an administrative offence by drawing up a promotional communication of this fund in violation of Sections 242 or 243.

(6) A fine may be imposed for an administrative offence under Subsections (1) to (5) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 606

(1) A feeder fund administrator commits an administrative offence by:

- (a) not providing the investor with a document pursuant to Section 224 (2)

- (b) failing to include any information according to Section 244 in the promotional communication of this fund,
- (c) not publishing a notice pursuant to Section 249 (1)
- (d) failing to provide to the sunitholder or shareholders of this fund a notice or any of the information pursuant to Section 249 (2)
- (e) deducting amounts in breach of Section 250 (1), or
- (f) failing to provide a unitholder or a shareholder of this fund or a person in the similar position with a documents according to Section 251 (3).

(2) The administrator of a qualified investors' fund whose management is authorised to exceed the relevant threshold commits an administrative offence by

- (a) not draw-up the annual report of this fund pursuant to Section 290 (1) or Section 291,
- (b) failing to provide the unitholder or shareholde with an annual report of the fund contrary to Section 290 (2), or
- (c) failing to provide the investor, at its request, with the information referred to in Section 290 (3).

(3) An administrator of a foreign investment fund comparable to a UCITS fund, if the investment in this fund is marketinged in the Czech Republic, commits an administrative offence by

- (a) not disclosing any of the documents or data referred to in Section 307, or
- (b) failing to notify the CNB of any of the information or some of the facts pursuant to Section 461 (1) or (2).

(4) The administrator of a UCITS fund which is to be dissolved by a consolidation or an amalgamation, commits commits an offence by not processing, publishing or providing a notice pursuant to Section 388 or 404.

(5) The administrator of a mutual fund which is to be dissolved by a consolidation or an amalgamation, commits an administrative offence by failing to publish any of the documents or notifications according to Section 391 (1) or Section 407 (1).

(6) A fine may be imposed for an administrative offence under Subsections (1) to (5) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 607

(1) The administrator of a mutual fund, which was created by a consolidation, commits an administrative offence by failing to procure the exchange according to Section 395.

(2) The administrator of the receiving mutual fund commits an administrative offence by not procure the exchange under Section 411.

(3) The administrator of a transforming mutual fund commits an administrative offence by failing to publish any of the documents according to Section 420 (1) or notifications according to Section 420 (2) first sentence.

(4) The administrator of a joint-stock company, into which a mutual fund has been transformed, commits an administrative offence by failing to procure the exchange according to Section 422.

(5) The administrator of a master fund commits an administrative offence by

- (a) failing to send the notification referred to in Section 435 (2), or
- (b) failing to notify the CNB of any of the information or facts pursuant to Section 470 (3).

(6) A fine may be imposed for an administrative offence under Subsections (1) to (5) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal entity according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an offence under Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 608

(1) The administrator of a transformed retail investment fund commits an administrative offence by not publishing one of the documents pursuant to Section 450 (1).

(2) The administrator of a transforming qualified investors' fund commits an administrative offence by failing to publish the project of transformation according to Section 450 (2).

(3) The administrator of the transformed mutual fund commits an administrative offence by not publishing a notice pursuant to Section 450 (3).

(4) An administrator of a feeder fund whose master fund is a foreign investment fund commits an administrative offence by

- (a) failing to provide the CNB with any of the documents pursuant to Section 455 (3) or Section 470 (1) or (2), or
- (b) failing to notify the CNB of any of the data or facts pursuant to Section 470 (1) or (2).

(5) A fine may be imposed for an administrative offence under Subsections (1) to (4) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(6) For an administrative offence under Subsections (1), (2), (3) or (4), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

### **Chapter 3**

#### **Offences of a manager and administrator**

##### **Section 609**

(1) The manager of a master fund and the administrator of a master fund commit an administrative offence by applying a deduction, a surcharge or a fee in violation of Section 253 (2).

(2) The manager and the administrator of a mutual fund commit an offence by failing to fulfill any of the conditions imposed by the CNB pursuant to Section 428 (2) or Section 432 (2).

(3) A fine may be imposed for an administrative offence under Subsections (1) and (2) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal entity according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(4) For an administrative offence under Subsection (1) or (2) the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

### **Chapter 4**

#### **Administrative offences of investment fund with legal personality, management company, internally-managed fund, foreign persons authorised by the CNB and the main administrator**

##### **Section 610**

(1) An investment fund with a legal person commits an offence by:

- (a) failing to manage another investment fund a foreign investment fund in violation of Section 8 (3), or
- (b) performing administration of another investment fund or a foreign investment fund in violation of Section 40 (3).

(2) The management company mentioned in Section 29 (1) (a) or (b) and a foreign person with an authorisation pursuant to Section 481 referred to in Section 29 (1) (c) commits an administrative offence by

- (a) failing to keep capital in the amount according to Section 30 (1), or
- (b) failing to increase capital according to Section 31 (1).

(3) A management company, an internally-managed investment fund and a foreign person with an authorisation pursuant to Section 481 commits an administrative offence by failing to ensure that its capital does not fall under the minimum amount of initial capital in violation of Section 30 (3).

(4) The management company referred to in Section 29 (1) (b) the internally-managed investment fund referred to in Section 29 (2) (b) and a foreign person with an authorisation pursuant to Section 481 referred to in Section 29 (1) (c) or in Section 29 (2) (c) commits an administrative offence by failing to comply with the obligation under Section 31 (5).

(5) A fine may be imposed for an administrative offence under Subsections (1) to (4) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(6) For an administrative offence under Subsection (1), (2), (3) or (4) the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 611

(1) A management company authorised to exceed the relevant threshold, and a foreign person with an authorisation under Section 481, which is not comparable to the internally-managed investment fund, commits an administrative offence by placing capital in violation of Section 32 (1).

(2) An internally-managed investment fund authorised to exceed the relevant threshold, and a foreign person with an authorisation under Section 481, comparable to an internally-managed investment fund, commits an administrative offence by placing the assets by which the capital was increased contrary to Section 32 (2).

(3) The main administrator commits an administrative offence by not ensuring that its capital does not fall below the minimum amount of the initial capital set out in Section 57.

(4) A management company authorised to manage UCITS funds and comparable foreign investment funds or authorised to exceed the relevant threshold, and a foreign person with an authorisation pursuant to Section 481 that is not comparable to an internally-managed investment fund commits an administrative offence by failing to notify the CNB of the fact under Section 331 (1) or (2) or 335 (1) or (2).

(5) A fine may be imposed for an administrative offence under Subsections (1) to (4) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal entity according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(6) For an administrative offence under Subsection (1), (2), (3) or (4) the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Chapter 5

### Administrative offences of a depositary and a prime broker

#### Section 612

(1) The depositary of an investment fund commits an administrative offence by

- (a) failing to act according to Section 62 in exercising the activity of a depositary,
- (b) provides an financial instrument in violation of Section 63,
- (c) failing to introduce, maintain or apply the procedures according to Section 64 (1),
- (d) fails to notify the facts according to Section 64 (2)
- (e) performing an activity from the exercise of which there might be a conflict of interests, without having introduced the organisational prerequisites according to Section 65 (2),
- (f) evaluating the assets and debts of the investment fund or making calculation of the current value of a unit certificate or an investment share issued by the investment fund, without having introduced the organisational prerequisites according to Section 65 (3),
- (g) failing to discuss the fact according to Section 66 with the manager of this fund, (h) does not establish, maintain, or apply a reporting mechanism pursuant to Section 66a and 20a,
- (i) failing to have created the prerequisites according to Section 69 (2),
- (j) not having in custody fungible financial instruments in the assets of this fund according to Section 71 (1) (a),
- (k) not having in safekeeping the assets of this fund, whose nature allows for it, according to Section 71 (1) (b),
- (l) failing to ensure keeping records of the assets of this fund pursuant to Section 71 (1) (c),
- (m) failing to open, maintain or keep records of financial accounts, to deposit financial means or to keep control over the movement of financial means according to Section 72,
- (n) fails to carry out the control pursuant to Section 73 (1) or (3)
- (o) fails to execute an order pursuant to Section 73 (2)
- (p) failing to inform the incoming depositary of this fund, to hand over to this depositary all documents or to release to it the financial means or assets of this fund according to Section 75 (1),
- (q) delegating the performance of an individual activity, included in the activities referred to in Section 71 (1), to another in violation of any of the requirements referred to in Sections 77 or 78,
- (r) failing to be registered in the register of depositaries of an investment fund in violation of Section 510 (2),
- (s) fails to notify the CNB of the fact according to Section 474, or
- (t) fails to fulfill any of its obligations or violates any of the prohibitions laid down pursuant to Articles 3 to 38 of Commission Regulation (EU) No 583/2010, Article 1 and Annex I of Commission Regulation (EU) No 584/2010, Articles 2 to 111 of Commission Delegated Regulation (EU) No 231/2013, as amended, Articles 5, 6, 7 (a) or (b) or Articles 12 to 14a of Regulation (EU) No 345/2013 of the European Parliament and of the Council, as amended, Articles 5, 6, 7 (a) or (b) or Article 13 to 15a of Regulation (EU) No 346/2013 of the European Parliament and of the Council, as amended, Articles 3 to 31 of Regulation (EU) 2015/760 of the European Parliament and of the Council, Article 13 or 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council, Articles 2 to 24 of Commission Delegated Regulation (EU) No 438/2016, as amended, or pursuant to Articles 4 to 6, 9 to 21 or Articles 23 to 36 of Regulation (EU) 2017/1131 of the European Parliament and of the Council, as amended in relation to the performance of the depositarie's activities.

(2) A depositary of a UCITS fund, which follows Sections 666 to 675, commits an administrative offence by

- (a) not having in custody fungible investment instruments in the assets of this fund according to Section 669 (a),

- (b) not having in safekeeping the assets of this fund, whose nature allows for it, according to Section 669 (b),
- (c) failing to ensure to keep records of the assets of this fund according to Section 669 (c),
- (d) failing to open or maintain financial accounts for this fund according to Section 669 (d),
- (e) failing to keep control over the movement of financial means according to Section 669 (e),
- (f) failing to procure settlement of trades with the assets of the UCITS fund according to Section 669 (f),
- (g) failing to make a control according to Section 670 (1) or (3),
- (h) fails to execute an order pursuant to Section 670 (2),
- (i) failing to inform the incoming depositary of this fund, to hand over to this depositary all documents or to release to it the financial means or assets of this fund according to Section 672 (1), or
- (j) delegating the performance of an individual activity, included in the activities referred to in Section 669 (a) to (c), to another, in violation of any of the requirements referred to in Sections 77 (1) or (2).

(3) The depositary of the master fund commits an administrative offence if it

- (a) failing to inform the manager of the feeder fund, the depositary of the feeder fund, the CNB or a competent supervisory authority of another member state according to Section 260 (1), or
- (b) failing to inform the depositary of the feeder fund according to Section 260 (2).

(4) A depositary of a mutual fund or a foreign investment fund comparable to a UCITS fund which was dissolved by a consolidation, commits an administrative offence by

- (a) does not control any of the facts referred to in Section 393 (2) first sentence, or
- (b) does not process a report or does not provide it pursuant to Section 393 (2) second sentence.

(5) A depositary of a mutual fund or a foreign investment fund comparable to a UCITS fund which was dissolved by a consolidation or which was created by a consolidation, commits an administrative offence by failing to control the compliance of information according to Section 393 (3).

(6) A fine may be imposed for an administrative offence under Subsections (1) to (5)

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal entity according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsection (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 613

(1) A depositary of a mutual fund which was dissolved by an amalgamation, commits an administrative offence by

- (a) failing to control any of the facts according to Section 409 (2) first sentence, or
- (b) failing to draw up a report or to provide it according to Section 409 (2) second sentence.

(2) The depositary of a mutual fund or a foreign investment fund comparable to a UCITS fund participating in an amalgamation commits an administrative offence by failing to control the compliance of information according to Section 409 (3).

(3) The prime broker of an investment fund commits an administrative offence by

- (a) providing an financial instrument in violation of Section 90,
- (b) performing an activity of a depository of this fund without the prerequisites according to Section 91 (1) being fulfilled, or
- (c) failing to notify the fact according to Section 91 (2).

(4) A fine may be imposed for an administrative offence under Subsections (1) to (3) up to

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(5) For an administrative offence under Subsection (1), (2) or (3), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## **Chapter 6**

### **Administrative offences of legal and natural persons carrying on business activities**

#### **Section 614**

(1) A legal person or a natural persons carrying on business activities commit an administrative offence by

- (a) illegally performing or marketing activities pursuant to this Act which require the permission of the CNB, entry in the list maintained by the CNB, approval of the CNB or communication of the supervisory authority of the EU member state,
- (b) stating incorrect information or concealing any of the facts in connection with an application for a decision, appointment, granting an authorisation, granting consent, approval of designation, registration in a register, change in the registered in formation in the registers or withdrawal of authorisation according to this Act,
- (c) collecting and attempting to collect financial means or things whose value can be expressed in monetary terms in violation of Sections 98 or 205,
- (d) allowing or facilitating a prohibited activity for another in violation of Section 99,
- (e) marketing an investment to a qualified investors' fund contrary to Article 272 (1) or (4), Article 6 of the EuVECA-R, Article 6 or Article 30 (3) of the ELTIF-R or without meeting the requirements of Article 28 (2) or Article 30 (1) of the ELTIF-R,
- (f) marketing an investment in a retail AIF, a qualified investors' fund or a comparable foreign investment fund before any of the circumstances under Section 309, 311, 315 (1), 316 (1), 317 (1), (2) or (3), 318 (1), 319 (1), 320 (1), 320 (2) (c), Section 324 (1) or Section 325 (1) or (3), contrary to the prohibition under Section 314 (3), second sentence, Section 316 (5) or Section 319 (5),
- (g) publicly marketing an investment in an investment fund or in a foreign investment fund before any of the facts under Section 300 (1), 301 (1), 305 (1), 308, 310, 315 (2) Section 317 (4), Section 322 (3), Section 323, Section 325 (4) or Section 325a, or contrary to a prohibition pursuant to Section 300 (2) or Section 305 (2)

- (h) failing to provide cooperation to a liquidator in violation of Section 353,
- (i) performing the office of a managing person in violation of Section 515,
- (j) failing to notify the CNB of any of the facts pursuant to Section 524 (1)
- (k) using the designation “management company” in its business name in violation of Section 634 (1),
- (l) using the designation “main administrator” in its name or business name in violation of Section 634 (2),
- (m) using the designation “investment fund” in its name or business name in violation of Section 634 (3),
- (n) using the designation “mutual fund” in violation of Section 643 (4), or
- (o) using the term “mutual fund”, “retail AIF”, “retail investment fund”, “ETF” within the meaning of Section 50f(3) of the Act on Capital Markets Business, “EuVECA” within the meaning of Article 4 of Regulation (EU) No 345/2013 of the European Parliament and of the Council, “EuSEF” within the meaning of Article 4 of Regulation (EU) No 346/2013 of the European Parliament and of the Council or “qualified investor fund”, or a shape derived from any of these designations, as well as a designation liable to create a likelihood of confusion with any of these designations in violation of Section 636 (1) or (3).

(2) A legal or natural person carrying on business activities commit, as a person having been delegated to perform an activity, or as a person having been delegated to perform an act or acts from this activity, an administrative offence by

- (a) delegating the performance of an act or some acts to another in violation of any of the conditions referred to in Section 26 (1) or Section 53 (1), or
- (b) failing to control the performance of an act or acts, which it delegated to another to perform, according to Section 26 (2) or Section 53 (2).

(3) A legal person or a natural person carrying on business activity commit, as a foreign person referred to in Section 14 (1), an administrative offence by

- (a) in violation of Section 44 (1), performing an administration of the UCITS fund which does not manage,
- (b) manage a UCITS fund without any of the conditions according to Section 338 (2) or Section 339 being fulfilled, or
- (c) failing to fulfil any of the duties referred to in Section 340.

(4) A legal or natural person carrying on business activity commit, as a foreign person, referred to in Section 14 (2), an administrative offence by

- (a) performing administration of a retail AIF or a qualified investors’ fund, which it does not manage, in violation of Section 44 (2),
- (b) managing a retail AIF or a qualified investors’ fund, without any of the conditions according to Sections 342 or 343 being fulfilled, or
- (c) failing to fulfill one of the obligations mentioned in Section 344.

(5) A legal or natural person carrying on business activities commit, as a person not referred to in Section 69 or Section 666, an administrative offence by becoming a depositary of an investment fund in violation of Section 69 or section 666.

(6) A fine may be imposed for an administrative offence under Subsection (1), (2), (3), (4) or (5) up to

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or

(c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsections (1), (2), (3), (4) or (5), instead of a fine or along with a fine may be

- (a) ordered a publication of information on the nature of the offence and on the person that has thus acted, or
- (b) imposed a prohibition of activity instead of publishing the information referred to in point (a) or, together with the disclosure of the information referred to in point (a), for a period of up to 5 years in case of the offence referred to in Subsection (1) (b) or (i).

#### Section 615

(1) A legal or natural person carrying on business activities commit, as a person not referred to in Section 86, an administrative offence by becoming a prime broker in violation of Section 86.

(2) A legal or natural person carrying on business activities, as a person valuing the assets and liabilities of an investment fund, commits an offence by

- (a) not follow the procedures pursuant to Section 194 (a), or
- (b) contrary to Section 194 (b), evaluating assets and liabilities of the investment fund without being impartial or independent of the person for whom it evaluates.

(3) A legal or natural person carrying on business activities, commits as a member of an expert committee an administrative offence by performing its office in violation of Section 269 (2).

(4) A legal or natural person carrying on business activities commits as a liquidator of a management company an administrative offence by failing to perform its office with due professional care in violation of Section 348.

(5) Natural person carrying on business activities, as a person referred to in Section 515, commits an administrative offence by failing to notify the CNB of a fact according to Section 476.

(6) A fine may be imposed for an administrative offence under Subsections (1) to (5)

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) An administrative offence under Subsections (1), (2), (3), (4) or (5), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 616

(1) A legal or natural person carrying on business activities, as a person who acquires or increases a qualifying holding in a management company, an internally-managed investment fund or a main administrator, or controls them, an administrative offence by failing to notify the CNB of the fact in violation of Section 521 (2) or failing to apply for consent.

(2) A legal person or an individual carrying on business activity commit, as a person on whom a remedial measure has been imposed, an administrative offence by failing to notify the CNB of any information or any of the facts according to Section 538 (2).

(3) A legal or natural person carrying on business activities acting as a forced administrator of a management company or investment fund commits an administrative offence by

- (a) failing to perform its office with due professional care in violation of Section 563 (1), or
- (b) performing any of the acts referred to in Section 565 (1) without prior consent of the CNB.

(4) The legal person as a person referred to in Section 15 (1) commits an administrative offence by:

- (a) contrary to Section 15 (1) third sentence, exceeding the relevant threshold without fulfilling any of the obligations laid down in Section 17 (1) to (4),
- (b) failing to notify the CNB of any of the information or some of the facts pursuant to Section 462, Section 463 (2) (b) or Section 475,
- (c) acting in violation of the prohibition pursuant to Section 637 (1), or
- (d) failing to fulfill the obligation laid down in Section 637 (2).

(5) A fine will be imposed for an administrative offence under Subsection (1), (2) or (3) or Subsection (4) (a) or (b) up to:

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(6) A fine may be imposed for an administrative offence pursuant to Subsection (4) (c) or (d) up to:

- (a) CZK 300 000 000,
- (b) 10 % of the total annual turnover of a legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 300 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing this offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 300 000 000.

(7) For an administrative offence under Subsection (1), (2), (3), (4) or (5) the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## Section 617

(1) A natural person carrying on business activities acting as a person referred to in Section 639 commits an administrative offence by not maintaining confidentiality in violation of Section 639.

(2) A fine may be imposed for an administrative offence under Subsection (1)

- (a) CZK 150 000 000,
- (b) 10 % of the total annual turnover of the legal person according to its last regular financial statements or consolidated financial statements, if the amount of the fine thus determined exceeds CZK 150 000 000, or
- (c) a double amount of the unjustified benefit obtained by committing the offence if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(3) For the administrative offence under Subsection (1), the disclosure of information about the nature of the administrative offence and the person thus acted may be ordered instead of a fine or along with a fine.

## TITLE II

### OFFENCES OF NATURAL PERSONS

#### Section 618

(1) A natural person commits an administrative offence by

- (a) illegally performs or marketings activities pursuant to this Act which require the permission of the CNB, entry in the list maintained by the CNB, approval of the CNB or communication of the supervisory authority of the EU member state,
- (b) stating incorrect information or concealing any of the facts in connection with an application for a decision, appointment, granting an authorisation, granting consent, approval of designation, registration in a register, change in the registered information in the registers, notification or withdrawal of authorisation according to this Act,
- (c) collecting and attempting to collect financial means or things whose value can be expressed in monetary terms in violation of Sections 98 or 205,
- (d) allowing or facilitating a prohibited activity for another in violation of Section 99,
- (e) marketings an investment to a qualified investors' fund contrary to Article 272 (1) or (4), Article 6 of the EuVECA-R, Article 6 or Article 30 (3) of the ELTIF-R or without meeting the requirements of Article 28 (2) or Article 30 (1) of the ELTIF-R,
- (f) marketings an investment in a retail AIF, a qualified investors' fund or a comparable foreign investment fund before the occurrence any of the circumstances under Section 309, 311, 315 (1), 316 (1), 317 (1), (2) or (3), 318 (1), 319 (1), 320 (1), 320 (2) (c), 324 (1) or Section 325 (1) or (3), contrary to the prohibition under Section 314 (3) second sentence, Section 316 (5) or Section 319 (5), if it will not make public or upgrade data according to Section 241
- (g) publicly marketings an investment in an investment fund or a foreign investment fund before any of the facts under Section 300 (1), 301 (1), 305 (1), 308, 310, 315 (2) 317 (4), 322 (3), 323, 325 (4) or 325a or in violation of the prohibition pursuant to Section 300 (2) or Section 305 (2)
- (h) failing to provide cooperation to a liquidator in violation of Section 353,
- (i) performing the office of a managing person in violation of Section 515,
- (j) fails to notify the CNB of any of the facts pursuant to Section 524 (1)
- (k) contrary to Section 634 (1), uses in its name or business name the designation "management company",
- (l) in violation of Section 634 (2) uses in its name or business name the designation "main administrator",

- (m) in violation of Section 634 (3), uses in its name or business name the designation “investment fund”,
- (n) in violation of Section 634 (4), uses in its name or business name the designation “mutual fund”, or
- (o) in breach of Section 636 (1) or (3), uses in its name the term “mutual fund”, “UCITS fund”, “retail AIF”, “retail investment fund”, “ETF” within the meaning of Section 50f (3) of the Act on Capital Markets Business, “EuVECA” within the meaning of Article 4 of Regulation (EU) No 345/2013 of the European Parliament and of the Council, “EuSEF” within the meaning of Article 4 of Regulation (EU) No 346/2013 of the European Parliament and of the Council or “qualified investors’ fund”.

(2) A natural person commits as a person having been delegated to perform an activity, or as a person having been delegated to perform an act or acts from this activity, an administrative offence by

- (a) delegating the performance of an act or acts to another in violation of any of the conditions referred to in Section 26 (1) or Section 53 (1), or
- (b) failing to control the performance of an act or acts, which it delegated to another to perform, according to Section 26 (2) or Section 53 (2).

(3) The natural person commits as a foreign person referred to in Section 14 (1) an administrative offence by

- (a) in violation of Section 44 (1), administering a UCITS fund which it does not manage,
- (b) managing a UCITS fund without any of the conditions fulfilled under Section 338 (2) or 339, or
- (c) failing to fulfill any of the obligations as set out in Section 340.

(4) A natural person commits as a foreign person referred to in Section 14 (2) an administrative offence by

- (a) performing administration of a Retail AIF or a qualified investors’ fund, which it does not manage, in violation of Section 44 (2),
- (b) manages a retail AIF or a f qualified investors’ fund, without the fullfilling conditions under Section 342 or 343, or
- (c) fails to fulfill one of the obligations mentioned in Section 344.

(5) A natural person, as a person not mentioned in Section 69 or 666, commits an administrative offence by failing to become a depository of an investment fund in contravention of Section 69 or 666.

(6) A fine may be imposed for an administrative offence under Subsection (1), (2), (3), (4) or (5) up to

- (a) CZK 150 000 000, or
- (b) a double amount of the unjustified benefit obtained by committing this offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsection (1), (2), (3), (4) or (5), instead of a fine or along with a fine, it may be

- (a) ordered the disclosure of information on the nature of the administration offence and who has committed such offence, or
- (b) instead of disclosure of information accoding to letter (a) imposed a prohibition to undertake an activity for a period of up to 5 years, independently or together with a fine for an administrative offence according to Subsection (1) (b) or (i).

## Section 619

(1) A natural person commits as a person not referred to in Section 86 an administrative offence by becoming a prime broker in violation of Section 86.

(2) A natural person, as a person evaluating the assets and debts of an investment fund, commits an administrative offence by

- (a) not using the procedures pursuant to Section 194 (a), or
- (b) evaluating the assets and debts of an investment fund in violation of Section 194 (b) without being impartial or independent of the person for whom it evaluates.

(3) A natural person, as a member of an expert committee commits an administrative offence by performing its office in violation of Section 269 (2).

(4) A natural person, as a liquidator of a management company, commits an administrative offence, because it performs its office with due professional care in violation of Section 348.

(5) A natural person, as a person mentioned in Section 515, commits an administrative offence by failing to notify the CNB of the fact according to Section 476.

(6) A fine may be imposed for an offence under Subsections (1) to (5) up to

- (a) CZK 150 000 000, or
- (b) a double amount of the unjustified benefit obtained by committing this administrative offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(7) For an administrative offence under Subsection (1), (2), (3), (4) or (5), it can instead of a fine or along with a fine, lead to an ordered disclosure of information about the nature of the offence and who has thus acted.

## Section 620

(1) A natural person as a person without the prior consent of the CNB acquires or increases a qualifying holding in a management company, internally-managed investment fund or main administrator, or controls them, an administrative offence by failing to notify the CNB of the fact in violation of Section 521 (2) or failing to apply for consent.

(2) A natural person commits, as a person on whom a remedial measure has been imposed, an administrative infraction by failing to notify the CNB of any information on the remedial measures or any of the facts according to Section 538 (2).

(3) A natural person, as a forced administrator of a management company or investment fund, commits an administrative offence by

- (a) failing to perform its office with due professional care in violation of Section 563 (1), or
- (b) carrying out any of the acts referred to in Section 565 (1) without the prior consent of the CNB.

(4) A fine may be imposed for an administrative offence under Subsection (1), (2) or (3) up to

- (a) CZK 150 000 000, or
- (b) a double amount of the unjustified benefit obtained by committing this offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(5) An administrative offence under Subsections (1), (2) or (3) may, instead of a fine or along with a fine, lead to an order to disclose information about the nature of the offence and the individual, who has acted in such a manner.

### Section 621

(1) A natural person commits as a person referred to in Section 639 an administrative offence by failing to keep confidentiality in violation of Section 639 (1).

(2) A fine may be imposed for an administrative offence under Subsection (1)

- (a) CZK 150 000 000, or
- (b) a double amount of the unjustified benefit obtained by committing this offence, if the amount of the unjustified benefit can be ascertained and the amount of the fine thus determined exceeds CZK 150 000 000.

(3) An offence under Subsection (1) may, instead of a fine or along with a fine, lead to an order to disclose information about the nature of the offence and the individual who has thus acted.

## TITLE III

### COMMON PROVISIONS

### Section 622

(1) The legal person referred to in the second sentence of Section 17 (2) or in Section 17 (3) shall be liable for an administrative offence under this Act as an investment fund manager authorised to exceed the relevant threshold.

(2) Administrative offences under this Act shall be heard by the CNB.

(3) The income ensuing from fines imposed on the manager in performing the activities referred to in Section 11 (1) (c) to (f) are the income of the Guarantee fund of the securities brokers; these incomes are considered for the purposes of administration of their payments to be means of a public budget. The income ensuing from activities referred to in Section 11 (1) (c) to (f) shall be collected and enforced by the customs office.

### Section 622a

(1) Should the CNB impose an administrative penalty consisting in an order to publish information on the nature of the offence and on the person thus acted, it shall determine in a decision imposing such an administrative penalty also

- (a) the type of public media in which such information is to be published,
- (b) the content of the information to be published, and
- (c) the time limit within which the information is to be published.

(2) The administrative penalty for the publication of the information pursuant to Subsection (1) shall regulate that the person who has been charged with the administrative penalty has to publish the information referred to in Subsection (1) (b) in the type of public media designated pursuant to Subsection (1) (a) within the time limit referred to in Subsection (1) (c), indicating its name or name and place of residence or registered office. Information enabling the identification of a natural or legal person, which is different from the person on whom has been the administrative penalty imposed, and different from the CNB, as stated in the published information, must be anonymized prior to the publication.

## PART SIXTEEN

### COMMON, TRANSITIONAL AND FINAL PROVISIONS

#### TITLE I

##### COMMON PROVISIONS

###### Section 623

###### **Member state, home state, host state and supervisory authority**

If this Act uses a term

- (a) “member state”, it means a member state of the EU or another contracting state of the Agreement on the European Economic Area,
- (b) “another member state”, means a member state other than the Czech Republic,
- (c) “home state of a foreign investment fund”, means a state according to whose law was the foreign investment fund created or founded, or a state in which the foreign investment fund has its registered office,
- (d) “host state of a manager”, means another member state, in which the manager manages a foreign investment fund,
- (e) “supervisory authority”, means the authority responsible for supervising the financial market,
- (f) “supervisory authority of another state”, means an authority in another state than a member state which supervises the financial market in this state, and
- (g) “European supervisory authority”, means a European Supervisory Authority (European Securities and Market Authority) established by directly applicable EU legislation regulating establishing a European Supervisory Authority (European Securities and Markets Authority<sup>15)</sup>.

###### Section 624

###### **Managing person, qualified shareholding, close connection and indirect share**

(1) A managing person means for the purposes of this Act a governing body, a member of the governing body, a director of a legal person or a person, who actually manages the activity of a legal person in another way. If the governing body or the member of the governing body is a legal person, the managing person means a natural person authorised by this legal person to represent it or its member on the governing body.

(2) A qualified shareholding means for the purposes of this Act a direct or indirect share in the registered share capital or voting rights of a legal person or the sum thereof, which represents at least 10 % or enables to exercise significant influence upon its governance. For the purposes of calculating qualified shareholding, no investment shares without voting rights shall be taken into account. Article 162 (2) shall not be taken into account in assessing whether a voting right is attached to an investment share.

(3) A close connection means for the purposes of this Act

- (a) a relationship between two or more persons, whereas one of the persons has a direct or indirect share in registered capital in the other person, whose sum represents at least 20 %,
- (b) a relationship between two or more persons, whereas one of the persons has a direct or indirect share in voting rights in the other person, whose sum represents at least 20 %, %
- (c) a relationship between two or more persons, whereas one person controls the other person or other persons, or
- (d) a relationship between two or more persons, who are controlled by the same person.

(4) An indirect share means for the purposes of this Act a share in registered capital or voting rights of a legal person held through another person or persons acting in concert.

## Section 625

### **Relation to terminology of directly applicable EU regulation in area of management of investment funds**

(1) Where a directly applicable EU regulation governing management of investment funds<sup>2)</sup> uses in relation to the performance of an activity, which is according to Section 5 (1) included in the management of an investment fund or a foreign investment fund, the terms “manager”, “management company” or “investment company”, it means, according to the circumstances, the manager of an investment fund or foreign investment fund.

(2) If directly applicable EU regulation in the field of management of investment funds<sup>2)</sup> uses in relation to the performance of an activity, which is according to Section 38 (1), (2) and (3) included in the administration of an investment fund or a foreign investment fund the terms “manager”, “management company” or “investment company”, it means, according to the circumstances, the administrator of an investment fund or the administrator of a foreign investment fund.

## Section 626

### **Comparability with the law of a foreign state**

(1) If this Act invokes comparability in legal status of a person person or comparability of a particular legal institution regulated by the law of another state to the status of a particular person or with a legal concept regulated by this Act or other legal regulation, the status and legal concepts are comparable, if they are materially similar. A different legal form alone does not mean that the legal status or legal institutions are not comparable.

(2) If this act invokes to a foreign investment fund its comparability with a UCITS fund, the foreign investment fund shall be comparable to a UCITS fund if its home EU member state is another EU member state and has been granted authorisation in respect of its management by satisfying the requirements set out in Article 5 of the UCITS-D<sup>4)</sup>.

(3) The foreign investment fund, which is not comparable with the UCITS fund and for which the CNB has not decided that it is comparable to a retail AIF, is considered for the purposes of Sections 294 to 327 comparable to a qualified investors’ fund.

## Section 627

### **Derivative, financial derivative and open position**

(1) For the purposes of this Act, a derivative is an financial instrument referred to in Section 3 (1) (d) to (k) of the Act on Capital Market Business.

(2) For the purposes of this Act, a financial derivative is, an instrument referred to in Section 3 (1) (d) to (f) of the Act on Capital Market Business.

(3) For the purpose of this Act, an open position means an aggregate of obligations accounted in the off-balance sheet accounts following from trades with derivatives, which are not negotiated, made and kept in order to minimise risks.

#### Section 628

##### **Real estate**

If this law uses the term “real estate”, it means the real estate, including its accessories.

#### Section 629

##### **Memorandum of association**

If this Act invokes the term “memorandum of association”, it further means articles of association and a founding deed or another document of a comparable nature, depending on the legal form of a legal person, even if established under the law of another state. Section 630.

##### **Shareholder and unitholder**

(1) If this Act uses the term “shareholder”, it further means a shareholder of a joint-stock company and a member of a cooperative or another person in a comparable position as a shareholder, depending on the legal form of a legal person, even if established according to the law of another state.

(2) If this Act uses in relation to a foreign investment fund the term “unitholder”, it means a person in a comparable position as a shareholder.

#### Section 631

##### **Subscribed security**

(1) For the purposes of this Act, “subscribed securities” shall be understood

- (a) a security or a book-entry security, to which a share in the registered capital or in comparable value of a legal person or in voting rights of a legal person is attached, and
- (b) a security or a book-entry security issued by a legal person, to which a right to acquire the security or book-entry security referred to in letter a) is attached.

(2) A subscriber security for the purposes of this Act does not mean a founders' share.

#### Section 632

##### **Harm**

If this Act imposes a duty to compensate harm, it does not cover a duty of a tortfeasor to compensate immaterial harm.

## Section 633

### **Assets and debts of the investment fund in relation to the mutual fund, trust and sub-fund**

(1) Where this Act or other legal regulation applies to the term “investment fund assets”, it means in relation to a mutual fund the assets in this mutual fund, in relation to a trust the assets in this trust and in relation to a sub-fund assets of this sub-fund.

(2) If this Act or other legal regulation uses the term “the debts of investment fund”, it means in relation to a mutual fund the debts of this mutual fund, in relation to a trust the debts of this trust and in relation to a sub-fund debts of this sub-fund.

## Section 634

### **Designation**

(1) Anyone who is not a management company must not use the words “management company” in its name.

(2) Anyone who is not a main administrator must not use the words “main administrator” in its name.

(3) Anyone who is not an investment fund with legal personality must not use the words “investment fund” in its name.

(4) The words “mutual funds” may be used, in case of a name, only in the name of a mutual fund.

(5) A company name or another name of an investment fund contains the word “fund”.

(6) If Sections 634 to 636 use the term “name”, this means the other designation used in the business, including the addition to the name.

## Section 635

### **The credibility of capital market and prohibition of deceptiveness**

A company name or another name or a designation of an investment fund must not lower the credibility of the capital market and supervision in this area and must not be deceptive or misleading, especially in regard to an investment strategy of this fund and risks attached to investments in this fund.

## Section 636

### **Special protection of some designations**

(1) Without prejudice to the directly applicable EU regulation governing investment funds<sup>2)</sup>, whoever is not a manager or administrator of a given investment fund may not use in its business, for example in promotional or other communications, the terms “mutual fund”, “UCITS fund”, “retail AIF”, “retail investment fund”, “ETF” within the meaning of Section 50f(3) of the Act on Capital Markets Business, “EuVECA” within the meaning of Article 4 of Regulation (EU) No 345/2013 of the European Parliament and of the Council, “EuSEF” within the meaning of Article 4 of Regulation (EU) No 346/2013 of the European Parliament and of the Council or “qualified investors’ fund”.

(2) Whoever marketings investment in an investment fund or a foreign investment fund may use the designation used by the fund in connection with the marketing of such investments, for example in promotional or other communications.

(3) The prohibition referred to in Subsection (1) shall also apply to the forms of words derived from the sign as well as to signs liable to create a likelihood of confusion with the indications referred to in Subsection (1).

## Section 637

### **Use of Information on Supervision of the CNB**

(1) A person referred to in Section 15 (1) shall be prohibited from indicating in its activity, for example in promotional or other communications, that it is subject to supervision by the CNB or that the exercise of its activity is subject to supervision of the CNB, another fact, albeit true in itself, may, in view of the circumstances and context in which it was made, lead to the conclusion that the CNB supervises it or exercises over its activities.

(2) A person registered in the register kept by the CNB pursuant to Section 596 (f) is obliged to state on all its orders, business letters, invoices, contracts and on its website an indication that it is not subject to supervision of the CNB.

(3) If the CNB exercises supervision over a person referred to in Section 15 (1) or over its activities under another legal regulation, Subsections (1) and (2) shall apply only in case of the provision of the information on supervision of the CNB according to this Act.

(4) When marketing investments in an investment fund or a foreign investment fund in the Czech Republic, Subsections (1) and (2) shall not apply.

## Section 638

### **Language**

(1) If this Act requires disclosure, provision or making documents and other information available, they are disclosed, provided or made available in the Czech language, unless this Act provides for otherwise.

(2) If this Act requires or allows disclosure, provision or making documents and other information on the websites available, these documents or other information must be disclosed, provided or made available for at least three years from the day when the document or other information ceases to be up-to-date, unless this Act provides for otherwise. Provisions of another legal regulation regulating conditions under which the communication of key investor information document of a retail AIF may be provided and disclosed apply *mutatis mutandis* to the determination as to whether the communications and information referred to in Section 249 (1), communication on consolidation and communication on amalgamation in another than paper form may be provided to a unitholder or a shareholder on an information medium not having the paper form, and disclosed only on the website of the concerned investment fund.

(3) The CNB may lay down in a regulation that

- (a) a key investor information document, statute, annual report, semi-annual report of fund, and of the investment fund or a comparable foreign investment fund document, and
- (b) information on amounts, for which the unit certificates or investment shares, issued by a UCITS fund, are issued or redeemed, or comparable information in case of issuance and redemption of securities or book-entry securities, issued by a foreign investment fund,

should be disclosed in the Czech Republic in another language than the Czech language, if it is in the interest of investors with their registered office or residence in the Czech Republic.

(4) If a translation of the document referred to in Subsection (3) (a) is published in relation to a UCITS fund or a comparable foreign investment fund, the administrator of the fund shall be liable for harm resulting from its incorrect or incomplete translation, this does not apply to publication pursuant to Section 598 (3).

### **Confidentiality**

#### **Section 639**

(1) A duty to maintain confidentiality with respect to matters involving the interests of a manager, an administrator, a depositary or a prime broker or investors of an investment fund or a foreign investment fund lies with the person, who is or was a managing person or a person exercising office according to Section 21 (5), a liquidator, a forced administrator, or an insolvency administrator of

- (a) a management company or investment fund with legal personality,
- (b) main administrator,
- (c) the investment fund 's depositary, or
- (d) the prime broker.

(2) The same duty to maintain confidentiality lies with the person, who otherwise exercise or exercised its employment, vocation or office for the person referred to in Subsection 1 (a) to (d).

#### **Section 640**

The breach of duty of confidentiality is not possible if the person referred to in Section 639 provides information in matters pursuant to Section 639 for the purposes of

- (a) civil proceedings,
- (b) judicial administrative,
- (c) criminal proceedings,
- (d) tax administration,
- (e) financial market supervision,
- (f) provision of information to the Ministry of Finance upon fulfilling duties according to an act regulating measures against legitimisation of proceeds of crime and financing of terrorism or an act regulating implementation of international penalties in order to maintain international peace and safety, protection of human rights and fight against terrorism,
- (g) banking information system of the CNB pursuant to the Act regulating the activities of the CNB,
- (h) the balance of payments of the Czech Republic compiled by the CNB,
- (i) execution proceedings,
- (j) insolvency proceedings,
- (k) provision of information to the Security Information Service upon fulfilling duties according to an act regulating the activity of the Security Information Service, or
- (l) monitoring and imposing penalties by the organizer of a European regulated market.

Section 641

**Competence of Czech courts and authorities in case of a dispute between investors and management companies**

The Czech courts or, if another legal regulation provides so, the Czech authorities are competent in the matters of disputes from agreements between investors of a retail AIF, a comparable foreign investment fund, a qualified investors' fund or a comparable foreign investment fund, and a management company authorised to exceed the relevant threshold, which manages this fund, or between a foreign person with the authorisation according to Section 481 which manages this fund.

TITLE II

TRANSITIONAL PROVISIONS

**Chapter 1**

**Basic provision**

Section 642

**Authorisation for the activity of a management company**

(1) The authorisation for the activity of a management company granted according to the existing legal regulations to a management company, which manages a UCITS fund or a comparable investment fund as of the day when this act takes effect, is considered, from the day when this act takes effect, to be the authorisation for the activity of a management company granted according to this Act authorising a management company to

- (a) to manage UCITS funds and comparable foreign investment funds, and
- (b) to perform administration
  - 1. within the scope of activities pursuant to Section 38 (1) and
  - 2. if it has an authorisation according to Section 644 (3), to the extent of activities according to Section 38 (2) (a) or (b) in relation to UCITS funds or comparable foreign investment funds.

(2) An authorisation for the activity of a management company according to the existing legal regulations to a management company, which manages a Retail AIF, which is not a qualified investors' fund, or a comparable foreign investment fund, as of the day when this act takes effect, is considered, from the day when this act takes effect, to be the authorisation for the activity of a management company granted according to this Act authorising a management company to

- (a) exceed relevant threshold,
- (b) manage retail AIFs and comparable foreign investment funds, and
- (c) to perform an administration
  - 1. within the scope of activities pursuant to Section 38 (1) a
  - 2. if it has the relevant authorisation according to Section 644, also in the scope of activity pursuant to Section 38 (2) (a) or (b) in relation to retail AIFs and comparable foreign investment funds.

(3) The authorisation for the activity of a management company according to the existing legal regulations to a management company, which manages a qualified investors' fund, or a comparable foreign investment fund, as of the day when this act takes effect, is considered, from the day when this act takes effect, to be the authorisation for the activity of a management company granted according to this Act authorising a management company to

- (a) exceed the relevant threshold,

- (b) manage qualified investors' funds or comparable foreign investment funds, and
- (c) perform an administration
  - 1. within the scope of activities pursuant to Section 38 (1) and
  - 2. if the relevant authorisation is according to Section 644, also in the scope of activity pursuant to Section 38 (2) (a) or (b) in relation to a qualified investors' fund or a foreign investment fund comparable to a qualified investors' fund.

#### Section 643

##### **Authorisation for the activity of an investment fund**

(1) The authorisation for the activity of an investment fund whose assets will not be managed on the basis of a contract granted under the existing legislation to an investment fund which is not, as of the effective date of this Act, a qualified investors' fund, is considered as an authorisation for an internally-managed investment fund which is a retail AIF granted under this Act authorising the internally-managed investment fund

- (a) to exceed the relevant threshold, and
- (b) to perform its administration.

(2) An authorisation for the activity of an investment fund whose assets will not be managed on the basis of a contract granted under the existing legislation to an investment fund which as of the effective date of this Act qualified investors' fund shall be considered as an authorisation for an internally-managed investment fund that is a qualified investors' fund granted under this Act authorising an internally-managed investment fund

- (a) to exceed the relevant threshold, and
- (b) to perform its administration.

#### Section 644

##### **Authorisation of a management company to provide investment services**

(1) The authorisation of a management company to manage assets of a customer, if part of it is a financial instrument, on the basis of discretion within the framework of a contractual arrangement (portfolio management), granted according to the existing legal regulations, is considered, from the day when this act takes effect, to be the authorisation for the activity according to Section 11 (1) (c) granted according to this Act.

(2) The authorisation of a management company to provide investment consulting relating to financial instruments, granted according to the existing legal regulations, is considered, from the day when this act takes effect, to be the authorisation for an activity according to Section 11 (1) (f) granted according to this Act.

(3) The authorisation of a management company to keep in custody and to administer financial instruments including connected services, in relation to investments in a collective investment fund, granted according to the existing legal regulations, is considered, from the day when this Act takes effect, to be the authorisation for an activity according to Section 11 (1) (d) granted according to this Act.

## Section 645

### **Statement of authorisation**

(1) The CNB executes, upon an application of the management company, whose authorisation according to the existing legal regulations is considered according to Section 642 to be the authorisation for the activity of a management company granted according to this Act, an extract with information about the extent of its authorisation for the activity according to this Act.

(2) The CNB executes, upon an application of the investment fund, whose authorisation according to the existing legal regulations is considered according to Section 643 to be the authorisation for the activity of an internally-managed investment fund granted according to this Act, an extract with information about the extent of its authorisation for the activity according to this Act.

## Section 646

### **The relevant threshold in relation to withdrawal of an authorisation for an activity**

(1) If a management company referred to in Section 642, which manages only a retail AIF that is a qualified investors' fund or a comparable foreign investment fund, applies for withdrawal of an authorisation for an activity at the CNB and proves that it does not exceed the relevant threshold, the CNB withdraws its authorisation for the activity. If an investment fund referred to in Section 643 (2) applies at the CNB for withdrawal of authorisation for an activity and proves that it does not exceed the relevant threshold, the CNB withdraws its authorisation for the activity.

(2) The decision on withdrawal of authorisation according to Subsection (1) takes legal effect at the earliest as of the day when the CNB starts keeping the register of management companies according to Section 596 (a). The CNB registers the management company or investment fund, whose authorisation it has withdrawn, in the register kept according to this Act as a person according to Section 15 (1), as of the day when this decision takes legal effect.

## Section 647

### **The relevant threshold in relation to the change of authorisation for an activity**

(1) If a management company referred to in Section 642, which manages only a retail AIF which is a qualified investors' fund or a comparable foreign investment fund, requests the CNB to change its authorisation for an activity and proves that it does not exceed the relevant threshold, The CNB renders a new authorisation and cancels the existing authorisation. If the investment fund referred to in Section 643 (2) applies at the CNB for the change of authorisation for an activity and proves that it does not exceed the decisive limit, the CNB renders a new authorisation and cancels the existing one.

(2) The decision on the change of an authorisation according to Subsection (1) takes legal effect at the earliest as of the day when the CNB starts keeping the register of management companies according to Section 596 (a).

## Section 648

### **The relevant threshold in case of qualified investors' fund managed before the 22<sup>th</sup> of July 2013**

a manager who is not authorised to exceed the relevant threshold, which is authorised by the CNB to manage the qualified investors' funds, may manage qualified investors' funds, in which the assets exceeds the relevant threshold,

- (a) which were managed before the 22<sup>th</sup> of July 2013, in which no further financial means or things whose value can be expressed in monetary terms have been collected from investors after this day, and if the assets in these funds are not used after this day for further investments, or
- (b) provided that the time-limit for subscribing securities or book-entry securities issued by it lapsed before the 22<sup>th</sup> of July 2013, unless there are further securities or book-entry securities being subscribed after the 22<sup>th</sup> of July 2013, if these qualified investors' funds are created for a period which will lapse on the 22<sup>th</sup> July 2016 at the latest, and if the manager fulfils in relation to these funds the duties according to Section 34 to 37, Sections 236 to 238 and Sections 290 to 292.

#### Section 649

### **Amount of contributions and investments in a qualified investors' fund according to the existing legal regulations**

A person who is according to the existing legal regulations a shareholder or a unitholder of a qualified investors' fund as of the day when this Act takes effect, but does not fulfil any of the prerequisites laid down in Section 272 (1), the prerequisite laid down in Section 272 (1) (i) is considered to be fulfilled. However, this applies only during the period of time when his relationship as a shareholder or a unitholders lasts towards the qualified investors' fund, whose shareholder or unitholder is as of the day when this act takes effect.

#### Section 650

### **Mutual fund**

(1) It is forbidden to change the statute of a mutual fund that was created for a definite period and which was granted an authorisation before 15<sup>th</sup> July 2011 so that the period for which it was established was more than 10 years from the date of the granting of the authorisation, if this happens, it is not taken into account.

(2) On the day on which the CNB starts to keep a register of mutual funds pursuant to Section 597 (b), the authorisation to establish a mutual fund granted under the existing legislation shall lapse.

(3) Legal relations from bearer documentary unit certificates issued by the day when this act takes effect are considered according to the existing legal regulations.

(4) The administrator of a mutual fund issuing documentary unit certificates, having the form of a bearer security, does not have a duty to keep a list of unitholders of this fund.

#### Section 651

### **Authorisation to operate an investment fund with a concluded contract for management**

(1) The rights and duties from a contract for management of an investment fund lasting as of the day when this act takes effect are not prejudiced by this Act. Until the day when Act No. 89/2012 Sb. takes effect, the creation, change and termination of a contract for management is governed by Act No. 189/2004 Sb. as amended by the day when this act takes effect.

(2) If the provisions of this act invoke an investment fund with legal personality, which is not an internally-managed investment fund, such a fund is also understood to be an investment fund, which has, as of the day when this Act takes effect, concluded a contract for management according to the existing legal regulations, until the termination of an obligation from a particular contract for management.

(3) Until the 22th of July 2014, the internal relations of an investment fund, which is as of the day when this act takes effect an investment fund, which have a concluded contract for management according to Act No. 189/2004 as amended by the day when this act takes effect, must correspond to the requirements laid down in Section 9 (1), otherwise a court, upon an application of the CNB or of a person proving to have a legal interest, dissolves this fund and orders its liquidation. Prior to the ruling the court provides the investment fund with a reasonable period of time to rectify the situation.

(4) Authorisations for an activity of an investment fund, which has concluded a contract for management, granted according to the existing legal regulations terminate and this fund is considered to be an investment fund register in the register according to Section 597 (a) as of the day when the CNB starts keeping the register of investment funds with legal personality according to Section 597 (a).

## Section 652

### **Relations in the management company and the investment fund**

(1) A management company which has been granted an authorisation to operate a management company under existing legislation shall specify its relations and the relations of investment funds it manages to comply with requirements ensuing from this Act and a legal regulation implementing it, by the 22th of July 2014 at the latest. Until such time it observes the rules of the activity and management ensuing from this act and a legal regulation implementing it with the necessary modifications.

(2) An investment fund which was granted an authorisation for an activity of an investment fund according to the existing legal regulations harmonises its relations with requirements ensuing from this Act and a legal regulation implementing it, by the 22th of July 2014 at the latest. Until such time it observes the rules of the activity and management ensuing from this act and a legal regulation implementing *mutatis mutandis*.

## Section 653

(1) A management company which has been granted an authorisation for an activity of a management company according to the existing legal regulations, shall harmonise statute and disclosure of key investor information document of the investment fund which it manages, with requirements ensuing from this Act and a legal regulation implementing it, by the 22th of July 2014 at the latest.

(2) An investment fund which was granted an authorisation for an activity of a investment fund according to the existing legal regulations, shall harmonise statute and disclosure of key investor information document of the investment fund which it manages, with requirements ensuing from this Act and a legal regulation implementing it, by the 22th of July 2014 at the latest.

## Section 654

### **Another business activity**

Registration of another business activities of a management company according to the existing legal regulations is considered as the prior consent of the CNB under Section 508.

## Section 655

### **Annual and consolidated report**

(1) The provisions of this Act and a legal regulation implementing it, regulating an annual report, which lay down the requirements, which have not followed from the existing legal regulations, apply in the first accounting period directly following after the accounting period, in which this act takes effect.

(2) For the accounting period in which this Act comes into force, the management company shall prepare a consolidated annual report according to the existing legal regulations.

(3) The annual report and the consolidated annual report of the management company, the investment fund and the mutual fund, which shall be prepared for the accounting period in which this Act enters into force, shall contain the essentials set out in regulation No. 194/2011 Coll., as amended by the day when this act takes effect.

## Section 656

### **Marketing investment to an investment fund or a foreign investment fund**

(1) The provision of this Act for the marketing of investment in the Czech Republic do not apply to investments in investment funds or in foreign investment funds, whose home state is a member state, which are offered in the Czech Republic on the basis of a valid prospectus approved by the CNB<sup>16)</sup> or by a supervisory authority of another member state, which was published before the 22th of July 2013.

(2) Investment in a retail AIF, a qualified investors' fund or a comparable foreign investment fund marketed in the Czech Republic on the effective date of this Act may be marketed in the Czech Republic according to the existing legal regulations by the 22th of July 2014. This does not prejudice the marketing of these investments according to this Act.

## Section 657

### **Foreign depository of a retail AIF**

(1) Until the 22th of July of 2017, a depository of a retail AIF may also be a foreign bank with registered office in another member state, which has not placed its branch in the Czech Republic, if it fulfils the requirements following with respect to a depository of a retail AIF from this act and investment shares or unit certificates issued by this fund are not marketed publicly in the Czech Republic.

(2) Until the 22th of July of 2017, a depository of a qualified investors' fund may also be a foreign bank with registered office in another member state, which has not placed its branch in the Czech Republic, if it fulfils the requirements following with respect to a depository of a qualified investors' fund from this act.

## Section 658

### **Contract for the performance of the activity of a depository**

(1) A contract for the performance of the activity of a depository concluded by a management company according to the existing legal regulations is considered to be a depository agreement from the day when this act takes effect. (2) The notice period in case of the contract for the performance of the activity of a depository concluded according to the existing legal regulations is 6 months, unless the parties agree otherwise.

## Section 659

### **Consent granted according to the existing legal regulations**

A prior consent to the performance of the office of a managing person of a management company, a consent to acquire a qualified shareholding in a management company or an investment fund, a consent to reach or exceed the shareholding of 20%, 33% or 50% in a management company or an investment fund and a consent to a person or persons acting in concert to become the persons controlling a management company or an investment fund, granted according to Act No. 189/2004 Sb. as amended by the day when this Act takes effect, are considered, from the day when this Act takes effect, to be the consent to the performance of the office of a managing person of a management company, the consent to acquire a qualified shareholding in a management company or an internally-managed fund, the consent to reach or exceed the shareholding of 20%, 33% or 50% in a management company or an investment fund and the consent to a person or persons to become the persons controlling a management company or an internally-managed investment fund, granted according to this Act.

## Section 660

### **Proceedings instituted according to the existing legal regulations**

(1) Proceedings for imposition of a remedial measure or proceedings for imposition of a sanction instituted by the day when this act takes effect, but not terminated upon a final and conclusive decision until such day, are to be finished according to the existing legal regulations. Remedial measures and sanctions will be imposed according to the existing legal regulations.

(2) Proceedings for granting a consent to acquire a qualified shareholding in a management company or an investment fund, a consent to reach or exceed the shareholding of 20%, 33% or 50% in a management company or an investment fund, a consent to a person or persons acting in concert to become the persons controlling a management company or an investment fund, and for a prior consent to the performance of the office of a managing person of a management company or an investment fund, instituted by the day when this act takes effect, but not terminated upon a final and conclusive decision until such day, are to be finished according to this Act; the time-limits which started running before the day when this act takes effect, start running after the day when this act takes effect again.

(3) Proceedings for an authorisation for an activity of a management company and an authorisation for an activity of an investment fund, whose assets will not be managed on the basis of a contract for management, instituted by the day when this act takes effect, but not terminated upon a final and conclusive decision until such day, are to be finished according to this Act; the time-limits which started running before the day when this act takes effect, start running after the day when this act takes effect again. The CNB notifies the applicant within 15 working days from the day when this act takes effect according to which provision of this Act it intends to continue in the proceedings with respect to his application and calls upon him to submit objections to such procedure and to harmonise the application with requirements of this Act.

(4) The objections submitted according to Subsection (3), are to be decided upon according to this Act.

## Section 661

### **Authorisation to a foreign person**

(1) Until a date to be determined by a EU regulation issued pursuant to Article 67 (6) of the AIFMD<sup>5)</sup>, as the day from which Articles 35 and 37 to 41 of the AIFMD apply, in the scope they invoke, the provisions, of this Act do not apply, that invoke

- (a) the state of reference,
- (b) the management of a foreign investment fund, whose home EU member state is another EU member state, a foreign person authorised under Section 481,
- (c) the marketing of investments in an investment fund or a foreign investment fund in another EU member state by a foreign person with an authorisation under Section 481, and
- (d) authorisation of the supervisory authority of another EU member state comparable to the authorisation under Section 481.

(2) A foreign person who has been granted an authorisation pursuant to Section 481 before the date referred to in Subsection (1) shall, within 3 months of that date, submit to the CNB that it fulfills the condition under Section 481 (1) (a). If it does not submit it or if it fails to meet this condition, the CNB shall withdraw the authorisation.

## Section 662

### **Registers**

(1) The CNB harmonises registers kept according to Section 13 (1) (d) to (f), (j) to (l) and (s) of Act No. 15/1998 Coll., as amended by the day when this Act takes effect, with requirements of this act for keeping registers by the CNB according to Sections 593 and 597 by the 30th of September 2013; until such time, it keeps the registers according to Section 13 (1) (d) to (f), (j) to (l) and (s) of Act No. 15/1998 Coll. as amended by the day when this Act takes effect.

(2) A mutual fund registered in the register of mutual funds pursuant to Section 13 (1) (d) of Act No. 15/1998 Coll. as amended by the day when this Act takes effect, is considered to be a mutual fund registered in the register according to Section 597 (b). (3) A person who has a duty to be registered in a respective register kept by the CNB according to Section 15 (1), must apply for registration in this register by the 22th of July 2014 at the latest.

## Section 663

### **Provision of information to the European Commission**

The CNB provides, by the 22th of July 2014, a European supervisory authority, and via the Ministry of Finance also the European Commission, with information about the types of investment funds and foreign investment funds, whose investments may be marketed publicly, and information about the requirements for public marketing of investments in such funds, laid down by this Act, in case of requirements not ensuing from the AIFMD<sup>5)</sup>.

## Section 664

### **Provisions relating to new private law**

(1) Until the day when act no. 89/2012 Sb. takes effect, the provisions of this Act invoking a trust, a trustee or a beneficiary or from which follows that a governing body of a legal person or its member may be another legal person will not apply to the extent to which they are invoked.

(2) Until the day when act no. 90/2012 Sb. takes effect, the provisions of this Act invoking various kinds of shares of a limited liability company or a common share certificate, a limited partnership company with investment certificates or an investment certificate or a joint-stock company with variable registered capital, a founders' share or an investment share will not apply in the extent in which they are invoked.

(3) Until the day the act no. 89/2012 Sb. takes effect, for the purposes of this Act

- (a) fortune means assets and liabilities,
- (b) a business establishment means an enterprise,
- (c) a branch of a business establishment means an organisation unit,
- (d) usufructuary lease of a business establishment means lease of an enterprise,
- (e) legal personality means the capacity to have rights and duties,
- (f) making of a juridical act means a legal act,
- (g) legal capacity to make juridical acts means the capacity to make legal acts,
- (h) damage means harm, and
- (i) loan means a simple loan of money.

#### Section 665

(1) The Ministry of finance will promulgate in the Collection of Laws by means of a communication information on the day when the directive amending the UCITS-D in relation to the activities of the UCITS fund depository, the remuneration system of the fund manager and sanctions<sup>17)</sup> becomes effective.

(2) Until the first day of the twentieth calendar month following the day referred to in the communication according to Subsection (1), Section 63 and Sections 68 to 82 will not apply to the depository of a UCITS fund. Until that day, Sections 666 to 675 are to be followed; this does not prevent following Section 63 and Sections 68 to 82 in relation to the depository of a UCITS fund, if the statute of this fund so provides.

(3) Until the day referred to in the communication according to Subsection (1)

- (a) the management of a UCITS fund or a comparable foreign investment fund will harmonise its relations and relations of this fund with requirements according to Section 63 and Sections 68 to 82, and
- (b) the remuneration system according to Section 20 (1) (j) does not have to be part of the managing and controlling system of the manager of a UCITS fund or a comparable foreign investment fund.

(4) A regulation issued according to Section 670 (4) will be repealed upon expiry of the preceding day referred to the communication according to Subsection (1).

### Chapter 2

#### **Transitional provisions for the UCITS fund' depository**

#### Section 666

Only a bank with its registered office in the Czech Republic or a foreign bank with a branch located in the Czech Republic may be the depository of a UCITS fund.

#### Section 667

#### **Governing Law in respect of the performance of the activity of a depository**

A contractual provision of a depository agreement between the parties in respect of the performance of the activity of a depository according to Section 668 (1) and (2) is governed by Czech law.

## Section 668

### **Content of the depository agreement**

(1) The UCITS fund's depository and the UCITS's fund manager shall define in the depository agreement the method of mutual communication, including the manner in which records are kept of that communication, and the manner of protecting confidential information and personal data.

(2) The parties to the depository agreement referred to in Subsection (1) shall furthermore agree on

- (a) the term of validity and conditions under which the contract may be amended or under which the contract can be withdrawn from,
- (b) a list of UCITS funds to which the contract relates, where the depository agreement relates to more than one UCITS fund managed by the same management company,
- (c) rules governing the performance of the depository's activities, including rules on the custody, safekeeping and keeping records of the assets of the UCITS fund,
- (d) procedures for changing the statute of a UCITS fund and the definition of such changes about which the depository must be informed or on which the manager of this fund and the depository must agree in advance,
- (e) the rules enabling the depository to fulfil controlling duties referred to in Section 669 to 673,
- (f) rules allowing the manager of a UCITS fund to control the depository's activities with regard to its contractual obligations and rules allowing the manager of the UCITS fund to perform its obligations, and
- (g) rules necessary to facilitate the change of the depository and the procedure to provide relevant information to another depository in the event of a change in the depository.

## Section 669

### **Basic duties and a right to procure safekeeping by establishing an account**

Within the framework of the activity of a depository, the depository of a UCITS fund

- (a) has in safekeeping substitutable investment instruments from the assets of a UCITS fund by way of keeping records of such substitutable investment instruments in an ownership account maintained by the depository of the UCITS fund for this fund in the central register of book-entry securities, in a separate register of investment instruments, in a register relating to them or in a similar register maintained according to the law of another state; a depository agreement of the depository of a UCITS fund allows to procure the safekeeping of substitutable investment instruments by establishing an ownership account for this fund with the central register of book-entry securities or comparable facility founded according to the law of another state,
- (b) has in custody the financial instruments and other assets of a UCITS if its nature allows for it,
- (c) ensures keeping records of the assets of the UCITS fund, if its nature allows for it,
- (d) creates or keeps monetary accounts for the UCITS fund,
- (e) keeps records of the movement of financial means of a UCITS fund,
- (f) arranges settlement of transactions in the assets of the UCITS fund within the usual time frame.

## Section 670

### **Controlling duties**

(1) As part of the depository's activities, the UCITS fund's depository controls whether, in compliance with this Act, the statute of a UCITS fund and provisions of a depository agreement

- (a) unit certificates or investment shares were issued, cancelled or redeemed,
- (b) current value of a unit certificate or an investment share was calculated,

- (c) assets and liabilities of this fund were valued,
- (d) a consideration from trades with assets of this fund was reimbursed in usual time periods,
- (e) revenue following from this fund is used and
- (f) orders of the manager are made to acquire or dispose of the assets from the assets of that fund, and it is sufficient if the depository controls how those orders have been executed, if the reason for the special consideration is appropriate for this method of control, as the orders were executed, the custodian controls further on orders related to
  1. trades which value does not exceed CZK 500 000 and aggregate daily value corresponds to 0.1 % of the value of the fund's assets,
  2. trades concluded on the market referred to in Section 3 (1) (a) of a government regulation governing the investment of investment funds and techniques for their management, or
  3. trades in securities or book-entry securities issued by a retail investment fund or a comparable foreign investment fund.

(2) Within the framework of the depository's activities, the fund's depository shall execute the orders of the fund manager according to the statutes of the fund and according to the depository agreement.

(3) Within the framework of the activity of a depository, the depository of a UCITS fund controls the state of assets of the UCITS fund that cannot be in safekeeping according to Section 669 (a) or in custody according to Section 669 (b).

(4) The CNB shall lay down, by decree regulation, the qualitative requirements of fulfilment of duties of the depository of a UCITS fund within the scope of Subsections (1) and (3).

## Section 671

### **Basic duties and the right to set establish an account**

(1) In connection with the performance of the activity of a depository, a manager of the UCITS fund

- (a) disposes of financial means only through an account established or kept by the depository of this fund or an the account created according to Subsection (2),
- (b) informs the depository of the UCITS fund about the content of an agreement, whereby the acquisition of a value into assets of this fund, with the exception of acquisition of a financial instrument, is negotiated, without undue delay after its conclusion, and, if the agreement is in a written form, further submits its original or copy,
- (c) submits to the UCITS fund's depository valuation of movable assets, excluding financial instruments or real estate owned by the fund, without undue delay after their valuation,
- (d) ensures that the fund's depository has an up-to-date statute of the fund, and
- (e) informs the fund's depository of any upcoming change in the fund's statute and that the change in the statute has been approved by the CNB or, where applicable, the supervisory authority of another EU member state.

(2) In connection with the performance of the depository's activities, the manager of a UCITS fund is authorised to establish, with consent of the depository of this fund, a monetary account with a bank, a foreign bank or a savings and crediting cooperative with registered office in a state, whose law requires compliance with prudential rules according to the law of the EU, or rules which the CNB deems comparable.

## Section 672

### **Obligations of the former depository**

(1) If the depository of the UCITS fund ceased to perform the activity of a depository of this fund, it is obligated, without undue delay, to properly inform the new depository of this fund about its previous activity and to submit to the new depository all documents associated with the performance of the activity of a depository of this fund and to release to him all of the financial means of this fund and the assets of this fund, which it holds; its liability for the time of performance of the activity of a depository of this fund does not terminate.

(2) Until the time of handing over of all documents and release of all of the financial means and assets of the UCITS fund, the person, who ceased to perform the activity of a depository is presumed to be the depository of this fund; Section 675 do not apply to the person, who ceased to perform the activity of a depository.

## Section 673

### **Obligations of a manager**

The manager of a UCITS fund, without undue delay after termination of relevant depository agreement,

- (a) suspends the issuance and redemption of unit certificates or investment shares issued by this fund and suspends disposing of the assets of this fund, held in the power of a person, who has ceased to perform the activity of a depository for this fund, with the exception of reimbursement of obligations arisen before termination of the obligation from the depository agreement and reimbursement of necessary operational and salary expenses, until the new depository agreement becomes effective,
- (b) submits information on suspension of disposing of the assets of this fund according to letter (a) and on suspension of issuance and redemption of unit certificates or investment shares issued by this fund to the CNB and publish it on the website of this fund, and
- (c) performs acts in order to establish a new depository.

## Section 674

Section 77 (1) and (2) apply to the delegation of the performance of an individual activity to another according to Section 669 *mutatis mutandis*, whereas the reference to Section 78 (1) (b) is not taken into consideration; a depository agreement further contains a declaration that liability of the depository is not affected by the fact that it has delegated safekeeping, custody and record keeping of the assets of a UCITS fund or its part to another.

## Section 675

(1) A depository of a UCITS fund causing harm to the manager of this fund, this fund, a unitholder of this fund or a shareholder of this fund upon performing the activity of a depository is obligated to compensate it regardless of its fault.

(2) The compensation for harm caused by breaching duties of the manager of a UCITS fund during management of property of this fund may be claimed regardless of Subsection (1).

## TITLE III

### FINAL PROVISIONS

#### Section 676

##### **Repealing Provisions**

Following legal regulations are repealed:

1. Act No. 189/2004 Coll., on Collective Investment.
2. Regulation No. 358/2010 Coll., on the submission of statements and other information by the management company and the retail investment fund to the CNB.
3. Regulation No. 193/2011 Coll., on minimum requirements of the statute of a retail investment fund and Cconditions for the use of markings of the short-term money market fund and the money market fund.
4. Regulation No. 194/2011 Coll., on more detailed regulation of some rules in collective investment.
5. Regulation No. 195/2011 Coll., on the activities of the depository of the retail investment fund and on the arrangements of the depository agreement of the UCITS fund.

#### Section 677

##### **Efficiency**

This Act shall enter into force on the day of its publication.

### **Transitional provisions introduced by Act No. 336/2014 Coll., Art. II**

1. The scope of the authorisation for the activity of a management company, internally-managed investment fund or the main administrator issued before the date of entry into force of this Act corresponds to the comparable scope of such authorisation pursuant to Act No. 240/2013 Coll., in the version in force as of the effective date of this Act. At the request of a management company, internally managed investment fund, or the main administrator, the CNB shall draw up an extract that includes the extent of the authorization to operate pursuant to Act No. 240/2013 Coll., in the version in force as of the effective date of this Act.
2. Proceedings on applications for an authorisation for the activity of a management company, a internally-managed investment fund or a main administrator commenced before the date of entry into force of this Act and which are not legally terminated by this date shall be completed pursuant to Act 240/2013 Coll. in the version in force as of the effective date of this Act. Any time periods in which these proceedings commenced before the date of entry into force of this Act and has not expired by this date shall run again from the date of entry into force of this Act. The CNB shall notify the applicant within 15 working days of the date of entry into force of this Act, on how it intends to proceed in the proceedings on its application with respect to the entry into force of this Act, and invite it to comply with the requirements of this Act.
3. The management company, the internally-managed investment fund and the main administrator shall comply and the investment funds they manage shall also comply with the requirements of Act No. 240/2013 Coll. Until 31<sup>st</sup> of March 2015.
4. The depository agreement shall comply with Article 73 (1), (f) and Section 670 (1) (f) of this Act, as of the effective date of this Act, until 31<sup>st</sup> of March 2015.

### **Transitional provisions introduced by Act No. 148/2016 Coll., Art. VI**

1. An investment fund that is a joint-stock company with a variable registered capital and which was established before the date of entry into force of this Act shall shall comply with the requirements of Act No. 240/2013 Coll. 12 months after the date of entry into force of this Act.
2. The court, upon a proposal of the CNB or of a person with an legal interest, shall dissolve pursuant to point 1, the investment fund, that does not comply with Act No. 240/2013 Coll. as of the effective date of this Act in time-period under point 1 and order its liquidation. The court shall give the investment fund a reasonable period of time to remedy prior the decision.
3. The depository agreement shall comply with Article 70 (2) of the Act No. 240/2013 Coll., as of the effective date of this Act, until 18<sup>th</sup> of March 2015.

### **Transitional provisions introduced by Act No. 204/2017 Coll., Art. XIII**

1. Person registered as of the effective date of this Act in the register according to the Section 596 (f) of the Act No. 240/2013 Coll., before the effective date of Art. XII points 1 and 2 of this Act shall be deleted from the list, the CNB shall notify these persons on their deletion.
2. The manager of the investment fund shall comply with the Section 39 (5) of the Act No. 240/2013 Coll., as of the effective date of this Act, until 6 months after 6 months after the effective date of this Act.
3. The statut of the open-ended mutual fund, that is a qualified investors' fund and which was established before the effective date of this Act, may be amended only in compliance with the Section 146 (1) of the Act No. 240/2013 Coll. as of the effective date of this Act, only with the consent of all the unitholders.

4. Sections 187 and 455 (1) of the Act No. 240/2013 Coll., as of the effective date of this Act, shall be used for the first time in the accounting period beginning in 2008 or later.

5. Administrative proceedings initiated before the date of entry into force of this Act pursuant to Act No. 240/2013 Coll., as amended by effective preliminary accounting of this Act, and on the date this Act comes into effect, which is perfect pursuant to Act No. 240/2013 Coll., as amended effective before the effective date of this Act.

#### **Transitional provisions introduced by Act No. 33/2020 Coll., Art. XIII**

The effects of the CNB's consent to the performance of the management office of the governing director granted by Act No. 240/2013 Coll., as amended effective before the effective date of this Act, are preserved also for the performance of another management office of the same person in the same fund or company and new consent is not required; provision of section 518 of the Act No. 240/2013 Coll. shall apply *mutatis mutandis*.

#### **Transitional provisions introduced by Act No. 119/2020 Coll., Art. X**

1. Investment funds and sub-funds that do not have an appointed promoter as of the date of entry into effect of this Act may appoint a promoter within 24 months of the date of entry into effect of this Act, if a simple majority of all unitholders, shareholders, members of a cooperative or beneficiaries of this fund or sub-fund decides so. Only the owners of investment shares issued for this sub-fund shall vote on the appointment of the promoter of the sub-fund of a joint stock company with variable capital. The provisions of the act regulating legal relations of business companies and cooperatives on the election of a member of the statutory body of a business corporation shall apply *mutatis mutandis*.

2. The voting right attached to an investment share issued before the date of entry into effect of this Act shall expire on 1 August 2021, unless it is stated as of this date in the articles of association that the voting right is attached to the issued investment shares.

**List of footnotes:**

<sup>1)</sup> Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain Definition.

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended by Directives 2010/78/EU and 2013/14/EU.

Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organizational requirements, conflicts of interest, rules of conduct, risk management and the content of the agreement between the depositary and the management company.

Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions relating to the merger of funds, master-feeder structures and the notification procedure.

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as amended by Directive 2013/14/EU of the European Parliament and of the Council.

Article 2 (2) of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification).

<sup>2)</sup> Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and the conditions to be complied with to provide key Investor information or prospectus on a durable medium other than paper or through a website.

Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard UCITS notification and certification, the use of electronic communications between the competent authorities The purposes of notification and procedures for on-the-spot verification and the investigation and exchange of information between the competent authorities.

Commission Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council as regards exemptions, general conditions of operation, depositary, leverage, transparency And supervision as amended by Commission Delegated Regulation (EU) 2018/1618.

Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds as amended by Regulation (EU) 2017/1991 of the European Parliament and of the Council.

Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds as amended by Regulation (EU) 2017/1991 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 laying down the procedure for alternative investment fund managers who decide to be covered by Directive 2011/61/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013 laying down the procedure for determining the non-EU AIFM's reference EU member state under Directive 2011/61/EU of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries, as amended by Commission Delegated Regulation (EU) 2018/1619

Commission Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council as regards regulatory technical standards specifying the types of alternative investment fund managers.

Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investments funds.

Articles 13 and 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds, as amended by Commission Delegated Regulation (EU) 2018/990. Commission Delegated Regulation (EU) 2018/480 of 4 December 2017 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors.

<sup>3)</sup> Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitization transactions.

<sup>4)</sup> Directive 2009/65/EC of the European Parliament and of the Council.

<sup>5)</sup> Directive 2011/61/EU of the European Parliament and of the Council.

<sup>6)</sup> Commission Delegated Regulation (EU) No 231/2013.

<sup>7)</sup> Regulation (EU) No 345/2013 of the European Parliament and of the Council.

<sup>8)</sup> Commission Regulation (EU) implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the depository of a UCITS.

<sup>9)</sup> Regulation (EU) No 346/2013 of the European Parliament and of the Council.

<sup>10)</sup> Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards according to Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

<sup>11)</sup> Commission Regulation (EU) No 583/2010.

<sup>15)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

<sup>16)</sup> Article 36c of Act No. 256/2004 Sb., on Capital Market Business, as amended.

<sup>17)</sup> Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) depository activities, remuneration principles and sanctions.

<sup>18)</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council.

<sup>19)</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council.