

TEXT

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To all who present it and understand it.

Sabed: That the General Courts have approved and I come to sanction the following Law.

EXPLANATORY STATEMENT

I

As with the rest of developed financial systems, collective investment is the natural channel for the participation of Spanish households in the capital markets. Its dual status as a formula for de-intermediated financing and a privileged saving instrument for retail investors make it a priority focus for Spanish financial policy. Indeed, the good functioning of collective investment has direct implications for the two fundamental objectives of financial policy: efficiency in the allocation of savings to investment opportunities and risk management. and the protection of less informed investors. Law 46/1984, of 26 December, regulating the institutions of collective investment that is now repealed, established a legal regime aimed at facilitating the full development of collective investment in Spain, which the previous regulation had been unable to promote, within the framework of a financial system, which then initiated the final phase of its reform and modernisation process. The balance sheet of Law 46/1984 in these nearly twenty years is very positive. It has not only achieved its primary objective, offering solid foundations for a spectacular growth of Spanish collective investment. It has also enabled us to accommodate the countless and profound changes that our macroeconomic environment and our financial system have experienced during this period, from the entry into the EEC to the introduction of the euro. The most recent amendments were introduced in Law 37/1998 of 16 November, of reform of the Law 24/1988, of July 28, of the Market of Securities, in Law 44/2002, of November 22, of Measures of Reform of the Financial System as well as in Law 46/2002, of December 18, of partial reform of the Tax on the Income of the Physical Persons and by which the laws of the Taxes on Societies and on the Income of Non-Residents are modified.

However, the plasticity of the legal framework should not postpone an in-depth reform of the legal regime of the Spanish collective investment, the need for which is based on several weighty reasons.

The first of these is of a formal nature and responds to the will to institute in a clear, orderly and complete legal headquarters the substantive aspects of the legal regime of the Collective Investment Institutions.

Despite the technical complexity of the matter, both in the financial aspects and in the administrative aspects, the inevitable succession of legislative modifications has made it difficult to systematically treat all the essential matters. The law puts an end to this situation, helping to strengthen legal certainty, the proper regulatory hierarchy and respect for the principle of legality. One of the manifestations of this will is the notable increase in the number of articles regarding the repealed law. The basic principles that must govern the activity of the subjects that make up the collective investment sector are thus settled. The specific and technical development of these principles will be carried out in regulatory headquarters. On the one hand, this is intended to ensure flexibility and capacity to adapt to the evolution of the market, which is an essential element of a quality regulatory framework for collective investment. On the other hand, the regulatory area is the natural framework for dealing with developments which, within the framework of the European Union, are carried out by means of agreements adopted by the Contact Committee of Collective Investment Bodies in Securities Transferable securities (hereinafter referred to as UCITS) pursuant to the ratings granted to it by UCITS Directive 85 /611/EEC.

The second formal objective of the law is the transposition of the two Directives which have amended the Community regulation of such UCITS: Directive 2001 /107/EC of the European Parliament and of the Council of 21 January 2002, which amend Directive 85 /611/EEC of the UCITS regulatory board with a view to the regulation of management companies and simplified prospectuses and Directive 2001 /108/EEC of the European Parliament and of the Council of 21 January 2002, which amending Directive 85 /611/EEC as regards the investments of UCITS. These Directives complete the introduction of collective investment in the single market in financial services, by extending the Community passport to management companies and by extending the range of financial assets and instruments in the which UCITS can invest.

The basic material objective of this law is to establish a legal regime that meets the needs of a collective investment sector that has already entered a stage of maturity. After a long period of growth marked by the successive role of different assets, the equity of the Collective Investment Institutions (IICs) marketed in Spain has stabilized at around 30% of the gross domestic product. The composition of that heritage is very diverse and more than half is invested in assets issued by non-residents. The two defining features of the maturity phase in which the Spanish collective investment has entered are the existence of a diversified demand, demanding in quality and price, and the growing competition between management service providers in the European and global framework. The law aims to achieve adaptation to this new reality based on three basic principles:

a) The liberalization of investment policy. The restrictions on the investment possibilities of the IICs could become a brake for the Spanish collective investment to satisfy the aspirations of an increasingly demanding and diverse investor base.

The experience of recent years has shown that it is preferable to abandon the multitude of legal categories of IIC and the limitation of assets eligible for investment by introducing more flexibility and freedom when defining the investor profiles of IICs.

b) Strengthening protection for investors with new instruments. The strengthening of transparency obligations and the rules of conduct to prevent conflicts of interest has revealed a more effective means of protecting investors than the imposition of restrictions on the possibilities for action. financial of the IICs.

c) The improvement of the administrative intervention regime. The law makes a considerable effort to improve the agility of the administrative procedure and the legal certainty for the managed ones. In a sector where, as in other financial activities, intervention is high in relation to other sectors of economic activity, the quality of the regulation depends to a large extent on these two factors.

## II

The preliminary title defines the Collective Investment Institutions in a broad and flexible manner and establishes the scope of the law, which includes IICs domiciled in Spain, IICs authorized in other States and marketed in Spain, the management companies of IIC and the depositaries. Title I regulates the general principles of the two legal forms that IICs can adopt: fund and society. The possibility that IIC is created by compartments and that there are different classes of shares or series of shares is considered new. In Chapter I, investment funds are defined as separate assets, without legal personality, the management and representation of which corresponds to a management company, with the contest of a depositary. A list of minimum rights of the participants is included, which in the repealed law were dispersed or not explicitly recognized, among which is the one to go to the department of attention to the client or the client defender, thus as, if any, the Commissioner for the Defense of the Investor.

The commissions which the management company charges to the unit-holders may not exceed the limits which, as a guarantee of the interests of the unit-holders, are regulated. Different commissions may be established for different classes of units of the same fund or compartment. The minimum number of members shall be 100, while Chapter II provides that the number of shareholders in an investment company may not be less than 100, in both cases in general.

## III

Title II contains the basic common provisions applicable to all financial and non-financial IICs, for which access to the activity and its financial year should be governed. Chapter I begins by pointing out that the National Securities Market Commission (hereinafter CNMV) will be the

competent body to authorize the draft constitution of the IICs or, where appropriate, the constitution of those funds whose document constitutive is not formalized in public document. The resolution of applications for authorisation shall be made in any event before the five months after its receipt, so that if the time limit is exceeded, the administrative silence shall be positive. The legal form of the investment companies justifies the inclusion of additional differential elements in the access and exercise of the business. The application for authorisation may be refused, in addition to non-compliance with legal and regulatory requirements, where there are elements that make it difficult to exercise the supervisory functions effectively. Investment companies shall have a good administrative and accounting organisation, administrators or managers with a recognised business or professional good repute, a majority of members of the management board with appropriate knowledge and experience, as well as an internal rules of conduct. They must also designate a management company if their minimum capital does not exceed EUR 300 000. The causes of suspension and revocation of the authorisation and the reservation of the IIC's activity and denomination are also regulated in this chapter. As a novelty, the regulation of the cross-border marketing of IIC shares and units is incorporated into the law, considering a special regime for the marketing in Spain of shares and shares of foreign IIC (distinguishing according to either harmonised or non-harmonised or non-Member States of the European Union) and, on the other hand, the applicable procedure for the marketing of harmonised Spanish IICs in the other countries of the European Union. Chapter III contains the necessary provisions to make the principle of transparency effective. The minimum content, the periodicity and the form of dissemination of the full and simplified prospectuses and the annual, half-yearly and quarterly reports are set out. The information in these information documents shall be supplemented by the compilation and audit of the accounting statements and the dissemination of relevant facts and significant holdings in the capital or assets of an IIC. Chapter IV sets out the three guiding principles of investment policy: liquidity, risk diversification and transparency. These general principles are supplemented by other provisions of the law applicable to each class of IIC and must be developed in accordance with the nature of the institution, the unit-holders or shareholders and the assets in which the invest. Title II is completed with a chapter V dedicated to the dissolution, liquidation, transformation, fusion and excision of IIC. Two aspects of the new regulation can be highlighted; on the one hand, the merger between IIC is permitted in a different legal form provided that they belong to the same class and that the same is carried out by absorption. On the other hand, the transfer of shares or shares of IIC is regulated, defining the procedure for the members or shareholders to transfer their investments from one IIC to another benefiting from the tax deferral regime. in the IRPF, introduced by Law 46/2002, of December 18, of partial reform of the Tax on the Income of the Physical Persons and by which the laws of the Taxes on Societies and on the Income of Non-Residents are modified.

#### IV

Title III develops the specialties of the general system of exercise of the activity contained in Title II for the two classes of IIC referred to: financial and non-financial. Financial IICs are those that invest in assets and financial instruments, and can only take the form of equity investment or equity investment company (SICAV), as the law suppresses the figure of capital companies. fixed that established the previous law. These IICs will be able to invest in all types of financial assets and instruments, including derivative instruments, shares and units of other IICs and non-

listed securities, thereby eliminating restrictions on the range of assets eligible for the investment in the previous text. The CNMV will establish IIC categories according to its investment vocation and IICs should provide information about their own vocation to members and shareholders, as well as incorporate in their statutes or regulations the basic elements of their investment policy. Financial IICs may not, in general, invest more than five per cent or 15 per cent of the asset in securities issued by the same issuer or by entities in the same group, respectively, to ensure the principle of diversification of risk. This percentage of diversification may be accompanied by a percentage that limits the volume of assets owned by the IIC with respect to the total outstanding securities of the same issuer. The operating system of the variable capital investment companies shall be based on the increase or decrease of their capital within the maximum and minimum limits laid down in the statutes, by means of the sale or acquisition by the company of their own shares to the liquidative value, without the need for agreement of the General Meeting. The exchange trading obligation provided for in the previous law, which remains as one of the possible options for providing liquidity to the shares of the SICAV, is deleted. Within the non-financial IIC class the law distinguishes real estate IICs and non-financial non-financial IICs. The main object of the real estate IIC is the investment in real estate of an urban nature for its lease and its investment policy must respect a liquidity ratio and two coefficients of risk diversification. To cater for the less liquid nature of your asset, real estate investment funds (FII) may limit the subscription and redemption of the holdings to once a year.

Non-financial non-financial IICs shall be those that may be created in the future with a different object than the real estate IICs and shall be applicable to the common system provided for in Title II.

V

Title IV aims to establish the system of action of the Management Societies of Collective Investment Institutions, notably by extending the few provisions provided for in the previous law and granting legal support to the effective functioning of the Community passport. An outstanding novelty lies in the extension of the business of management companies, which may be authorised to carry out discretionary and individualised management of portfolios, including those belonging to pension funds, as well as (a) the management, management and marketing of venture capital funds, the latter in accordance with the provisions of Law 1/1999 of 5 January, the Regulatory of the Risk Capital Entities and their Management Societies. The possibility of delegation to third entities in the management of assets is also foreseen, which will not entail the delegation of responsibility. The authorisation of the management companies corresponds to the Minister of Economy. Among the conditions for the exercise of the activity of the management companies that regulates the law, they emphasize a system of communication of significant participations similar to that established in the Law of the Market of Values for the service companies investment and the clear and comprehensive definition of its functions. One of the most important is to inform members or shareholders about the policy of exercising the political rights associated with the securities that integrate the fund's portfolio, which may be accompanied, in the cases where the the stability and relevance of the participation so advised, of the obligation to exercise these rights effectively. A specific regulation of the cross-border performance of the management companies is incorporated, establishing the procedure for a

management company authorised in Spain to be able to carry out its activity in any Member State of the Union European by the establishment of a branch or under the freedom to provide services. On a reciprocal basis, management companies authorised in another Member State of the European Union may exercise their activity in Spain without the need for prior authorisation, once the CNMV has received the relevant communication from the State of origin monitor.

## VI

Title V regulates the activity of the depositary, defined as the entity entrusted with the custody of the IIC assets and the supervision of management of management companies. Credit institutions and securities agencies and companies may be depositaries, provided that they are participants, directly or indirectly, in the systems of registration, clearing and settlement of the different markets in which they are to operate. The depositaries must obtain an authorization from the CNMV, register in the corresponding register and fulfill the obligations established by the law, always acting independently and in the interests of the participants.

## VII

Title VI regulates rules of conduct, supervision, intervention and substitution, as well as the sanctioning regime. The management companies, the depositaries, the investment companies that do not entrust their integral management to a management company, as well as those who have administrative and management positions in them, are submitted to the rules of conduct established in the Securities Market Act. This scheme is supplemented by the regulation of two types of specific rules of conduct to prevent conflicts of interest which may harm members or shareholders: (a) in the case of related transactions carried out between the management company, the investment company, the depositary and its directors and directors, the management company is required to establish an internal control procedure for such operations; and (b) the separation of the depositary, which requires that, in cases where the depositary of an IIC belongs to the same group as the management company or that the company of the institution of investment, the management company or, where appropriate, the investment company has a procedure specific internal to prevent conflicts of interest. Compliance with the requirements necessary to ensure independence shall be entrusted to an independent commission within the management company or the investment company, which shall draw up a report on this matter. The supervisory and inspection powers are attributed to the CNMV, which shall be exercised on the subjects subject to the provisions of the law and on those who carry out their own operations, in particular for the purposes of verifying if it infringes the activity and denomination reserves of the IICs and their management companies. The law grants the CNMV the power to agree the intervention of the management company or the investment company, the temporary replacement of its administrative or management bodies or the replacement of the management company, giving a reasoned account to the Minister of the Economy, when the IICs or the management companies of the Collective Investment Institutions (SGIIC) are in a situation of exceptional gravity that puts in grave danger their patrimonial balance or that affects the stability of the financial system or the general interest,

as well as when the true situation of the entities cannot be deducted from their accounts. Finally, the sanctioning regime is revised, adapting it to the basic principles that govern other sectors of financial activity. The infringements are divided into three categories: a) minor; b) serious, in which the competition for the imposition of the sanction will be the responsibility of the CNMV and c) very serious, in which the competent organ for the imposition of the sanction will be the minister of Economy. The imposition of the sanction for revocation of the authorisation shall be the responsibility of the Council of Ministers.

In short, in many cases it is a question of extending, systematizing and completing the measures already provided for in Law 46/1984, introducing into the legal framework of collective investment the most advanced elements that form a modern regime and effective investor protection, which already applies to the rest of the financial sectors.

## VIII

Finally, the tax regime applicable to the Collective Investment Institutions is included in the first, second and third final provisions.

The final provision first incorporates the tax benefits of the Collective Investment Institutions in respect of the Tax on Inheritance Transfers and Legal Acts Documented in the Law of the Tax, having been so far regulated in the financial rules. It follows the criterion that the tax regime of the institutions of collective investment be regulated in the own laws of the corresponding taxes, as it has been carried out in the Taxes on Societies and on the Income of the Physical Persons.

The second and third final provisions include in the Company Tax Law the regime applicable to the Collective Investment Institutions. These provisions maintain the current system, but they require a minimum number of shareholders and members to be counted by those institutions of collective investment to benefit from the favourable tax treatment, since such treatment is linked, inter alia, to the collective nature of the investment, which would disappear with a small number of shareholders or members.

## PRELIMINARY TITLE

Article 1. Concept, form and classes.

1. They are Collective Investment Institutions (IICs, hereinafter) those that aim to attract funds, goods or public rights to manage and invest in goods, rights, securities or other instruments, financial or not, always the return of the investor is established on the basis of the collective results.

Those activities whose object is different from that described in the preceding paragraph shall not have the character of collective investment. Also those entities that do not satisfy the requirements set out in this law may not be constituted as IIC.

2. IICs shall take the form of an investment company or an investment fund.

3. IICs may be of a financial or non-financial nature, in the terms set out in Title III of this Act.

#### Article 2. Scope.

1. This law will apply:

(a) IICs which have their domicile in Spain in the case of companies, or which have been established in Spain and whose management company is domiciled in Spain, in the case of funds.

(b) IICs authorised in another Member State of the European Union in accordance with Council Directive 85 /611/EEC of 2 December 1985 on the coordination of laws, regulations and administrative provisions on certain undertakings for collective investment in transferable securities (hereinafter referred to as Directive 85 /611/EEC) and which are marketed in Spain. In this case, only the rules of conduct and disciplinary rules laid down in Title VI of this Law shall apply to them in Spain.

(c) IICs authorised in another Member State of the European Union not subject to Directive 85 /611/EEC, and to IICs authorised in non-EU Member States, in both cases where they are placed on the market in Spain.

For the purposes of this law, the marketing of an IIC shall mean the acquisition by advertising activity, on behalf of the IIC or any entity acting on its behalf or in the name of one of its marketers, clients for their contribution to the IIC of funds, goods or rights. For these purposes, advertising activity shall have the same meaning as set out in Article 3 of Royal Decree 291/1992 of 27 March on issues and public offers for the sale of securities.

In any event, the activities of sale, disposal, intermediation, subscription, subsequent repayment or transfer of the shares, units or securities representing the capital or equity of the IIC in question The marketing of the IIC must be carried out through the financial intermediaries, as provided for in this law and in its development provisions.



2. In addition, this law will apply to the IIC Management Societies (hereinafter SGIIC) referred to in Title IV, to the depositaries provided for in Title V, as well as to other entities providing services to IICs, in the terms of established in this law and its development provisions.

## TITLE I

### Legal form of the Collective Investment Institutions

## CHAPTER I

### Investment funds

#### Article 3. Concept.

1. Investment funds are IICs which are set up as separate assets without legal personality, belonging to a plurality of investors, including other IICs, whose management and representation corresponds to a management company, which exercises the powers of domain without being the owner of the fund, with the contest of a depositary, and the purpose of which is to raise funds, assets or public rights to manage and invest in goods, rights, securities or other instruments; financial or non-financial, provided that the return of the investor is established on the basis of collective results.

2. Investment funds may be set up by compartments in which two or more compartments are grouped under a single constituent contract and management regulation, and this should be expressly reflected in those documents. Each compartment shall be given a specific name in which the name of the fund must necessarily be included. Each compartment shall give rise to the issuance of its own shares, which may be of different classes, representative of the part of the equity of the fund to which it is assigned. The part of the assets of the fund allocated to each compartment shall be exclusively responsible for the costs, expenses and other obligations expressly attributed to that compartment and for the costs, expenses and obligations that have not been incurred. expressly attributed to a compartment in the proportional part to be established in the fund's rules of procedure. The compartments shall be individually applicable to all the provisions of this law with the specificities to be established in accordance with, inter alia, the minimum number of members, minimum assets and requirements of distribution of the same among the unit-holders.

#### Article 4. Constitution.

The fund shall be constituted, after obtaining the required authorisation, by one or more initial contributions, which shall be documented in a contract between the managing company and a depositary which may be formalised in public writing. The minimum content of the contract shall be regulated.

The management company and the depositary may be authorised, prior to the establishment of the fund, to carry out a public subscription of shares.

Article 5. Concept, rights and minimum number of members.

1. The condition of participation is acquired through the realization of the contribution to the common heritage.

2. Investment funds not made up of the procedures for the successive founding and the public subscription of shares shall have a period of one year, counted from their registration in the corresponding administrative register, for to achieve the minimum number of members set out in paragraph 4 of this Article and the minimum assets to be established in accordance with Article 11 of this Act.

3. The status of participation confers the rights recognised in this law, in its implementing rules and in the fund management regulation, and shall be at least the following:

a) Request and obtain the redemption of the value of your units. This right shall be exercised without deduction of commission or expenditure in the cases set out in Article 12.2 of this Law.

b) Request and obtain the transfer of your investments between IIC, in the terms set out in Article 28 of this Act.

c) Get complete, truthful, accurate and permanent information about the fund, the value of the units as well as the position of the participant in the fund.

(d) Require responsibilities to the management company and the depositary for the failure to comply with its statutory and regulatory obligations.

e) Accuse the Customer Service Department or Customer Advocate, as well as, if applicable, the Commissioner for the Defense of the Investor in the terms set out in Article 48 of this Law and in Articles 22 and following of Law 44/2002 of 22 November of Measures for the Reform of the Financial System.

4. Number of unit-holders in an investment fund may not be less than 100. A separate threshold may be provided for, taking into account the different types of assets in which the IIC materializes its investments, the nature of the unit-holders or the liquidity of the fund. Furthermore, additional requirements for the distribution of the equity between unit-holders may be established.

#### Article 6. Heritage.

The equity of the investment funds shall be constituted by the contributions of the unit-holders and their returns.

Members will not answer for the debts of the fund but up to the limit of the contribution.

The equity of investment funds shall not be liable for the debts of unit-holders, management companies or depositaries.

#### Article 7. Participation.

1. The participation is each of the aliquot parts in which the patrimony of a fund is divided. The shares shall not have a nominal value, shall have the status of marketable securities, and may be represented by registered certificates or by means of an account. Within the same fund, or in the case of the same compartment, different classes of units may exist which shall be differentiated by the fees applicable to them. Each class of participation shall receive a specific name, which shall be preceded by the name of the fund and, where appropriate, the compartment.

2. The settlement value of each holding class shall be the value of dividing the value of the equity part of the fund corresponding to that class by the number of units of that class in circulation.

For the purposes of subscription and redemption, it will be calculated and made public by the means of dissemination that is determined regulatively, with the periodicity that is established, according to the different investment policies, of the the nature of the unit-holders and the liquidity of the fund.

3. The shares shall be issued and reimbursed by the management company at the request of any participant, in terms of regulations.

However, the National Securities Market Commission (CNMV) may temporarily suspend the subscription or redemption of shares where the determination of its price is not possible or another cause of force majeure is present.

4. As a general rule, subscriptions and repayments of investment funds must be made in cash. However, in exceptional cases where such rules are laid down and in the management rules, subscriptions and refunds may be made by the supply of goods, securities or rights which are suitable for investment, appropriate to their vocation. reverse of the background.

#### Article 8. Commissions.

Management companies and depositaries may receive from the funds management and deposit commissions, respectively, and the management companies of the unit-holders, subscription and reimbursement commissions; establish subscription and refund discounts in favour of the own funds. Such fees shall be set as a percentage of the equity or return on the fund, or a combination of both variables, or, where appropriate, the liquidative value of the holding, shall not exceed the limits which, as guarantee of the interests of the unit-holders and depending on the nature of the fund and the maturity of the investments, be established in a regulatory manner. The prospectus shall include the form of calculation and the ceiling of the commissions, the fees actually charged and the entity receiving the charge.

Different commissions may be applied to the different classes of units issued by the same fund.

In any case, the same management and depositary fees shall apply to all units of the same class.

## CHAPTER II

### Investment companies

Article 9. Concept and minimum number of shareholders.

1. Investment companies are those IICs that take the form of a public limited company and whose social object is described in Article 1 of this law.

Investment companies may be set up by compartments in which two or more compartments are grouped under a single constituent contract and social statutes, and this should be expressly reflected in those compartments. documents. The share of the capital of the company corresponding to each compartment shall be exclusively responsible for the costs, expenses and obligations expressly attributed to a compartment and the costs, expenses and obligations that have not been allocated expressly to a compartment, in the proportional part to be established in the social statutes. Each compartment shall be given a specific name in which the name of the investment company must necessarily be included. Each compartment shall give rise to the issue of shares or series of shares, which are representative of the share of the share capital allocated to them. The compartments shall be individually applicable to all the provisions of this law with the specificities to be laid down in regulation, inter alia, to the minimum number of shareholders, minimum social capital and requirements of distribution of the same to shareholders.

2. The investment companies will be governed by the provisions of this law and, as not provided for in it, by the provisions of the recast text of the Law on Companies, approved by the Royal Decree of Law 1564/1989 of 22 December 1989 (in forward, the Companies Act).

3. The capital of investment companies shall be fully subscribed and paid up since its establishment, and shall be represented by shares.

Different series of actions may be issued that will be differentiated by the fees applicable to them.

Shares belonging to the same series will have equal face value and confer the same rights.

In addition, each of these series will receive a specific name, which will be preceded by the name of the company and, if applicable, the compartment.

Such actions may be represented by nominative titles or by means of annotations in mind.

4. The number of shareholders in investment companies may not be less than 100.

A different threshold may be available on the basis of the different types of assets in which the company materializes its investments, the nature of the shareholders or the liquidity of the

company. In addition, additional requirements for the distribution of capital between shareholders may be established.

Companies not formed by the procedures for the successive founding and the public subscription of participations shall have a one-year period, counted from their registration in the corresponding administrative register, to achieve the minimum figure provided for in the preceding paragraph.

## TITLE II

### Common Provisions

#### CHAPTER I

##### Activity access and exercise conditions

##### Article 10. Authorization and registration.

1. The CNMV shall be responsible for authorising the draft constitution of the companies and investment funds.

2. The application for authorization must include, in any case, a memory, the accreditation of the good repute and the professionalism, in the terms of this law, of those who are responsible for the administration and management of the IIC, and in general, how much data, reports or background is considered appropriate to verify compliance with the conditions and requirements set out in this article. In addition, such a request shall, in the case of investment funds, incorporate the prospectus referred to in Article 17 of this Law and, in the case of companies which have not designated a management company, a memory of the activity in the organizational structure appears. In the case of funds, the application shall incorporate the rules governing the management of the funds and, in the case of companies, the social statutes.

The CNMV shall establish the standard models of all documentation referred to in this paragraph.

3. The authorisation of the CNMV shall be notified within three months of the receipt of the application. If five months elapse without the express decision being made, the application for administrative silence may be deemed to be deemed to be, with the effects provided for in

Article 43 of Law No 30/1992 of 26 November 1992, of the Legal Regime of the Public Administrations and the Common Administrative Procedure.

4. The CNMV may only refuse, by means of a reasoned decision, the authorisation to set up an IIC where the legal and regulatory requirements are not met. In the case of investment companies the authorisation may also be refused in the following cases:

(a) The lack of transparency in the structure of the group to which the entity may eventually belong, (b) in the case of companies that have not designated a management company, when maintaining close links with other entities they do not allow for an adequate and effective exercise of the supervisory functions of the CNMV, (c) where it is found that there may be serious difficulties in inspecting it or obtaining the information deemed necessary by the CNMV for the appropriate development of its supervisory functions, d) where the laws, regulations or (a) a Member State which is not a Member State of the European Union for which the natural or legal persons with whom the investment company maintains close links, or the difficulties arising from its application, prevent the exercise of effective of the referred monitoring functions.

For the purposes of this law, close links shall be understood to exist where two or more natural or legal persons are joined by:

(a) a control link, in the terms provided for in Article 4 of Law 24/1988 of 28 July 1988, of the Securities Market (hereinafter referred to as the Securities Market Act), (b) the fact that it has, directly or indirectly, or by means of a control link, 20% or more of the capital or voting rights of an undertaking or entity.

5. Decisions taken by the CNMV in the exercise of the administrative powers provided for in this Law, with the exception of Articles 72 and 94, shall terminate the administrative procedure and may be appealed on administrative-litigation.

6. IICs may not start their activities until they have been registered in the administrative register of the CNMV and have been recorded in the information leaflet for the institution. The registration of the investment funds in the Mercantile Register will be a potestative one.

Article 11. Access and exercise requirements for the activity.

1. They will be required to obtain and retain the authorization:

- a) Constituency as a public limited company or as an investment fund.
  
- b) Limit your social object to the activities established in this law.
  
- (c) Dispose of the minimum social capital or equity within the time limit and amount to be determined.
  
- d) Contar with shareholders or members within the legally enforceable deadline and number.
  
- (e) In the case of investment funds, designate a management company that complies with the provisions of Article 43 (1) (c) of this law. In the case of investment companies, if the minimum initial share capital does not exceed EUR 300,000, designate an SGIIC.
  
- (f) Designate a depository in the case of investment funds and variable capital investment companies provided for in Article 32 of this Act.

2. In the case of investment companies, the following requirements must also be met:

- a) Contar with an administrative and accounting organization, as well as adequate internal control procedures that ensure, both those and these, the correct and prudent management of the IIC, including risk management, as well as control and security mechanisms in the field of information technology and bodies and procedures for the prevention of money laundering.
  
- b) That your registered office, as well as its effective administration and address, is located in Spanish territory.
  
- (c) Those who hold office or management positions in the entity have a recognized business or professional honorability.

It shall be understood that there is no business or professional good repute in those who have been, in Spain or abroad, declared bankrupt or tender of creditors without being rehabilitated; those who are prosecuted or, in the case of the procedures referred to in Titles II and III of book IV of the Criminal Procedure Act, if a self-opening of the oral trial has been issued; those with a criminal record for crimes of falsehood, against the Public finances, insolvency punishable, infidelity in the custody of documents, violation of secrets, money laundering, embezzlement of public funds, discovery and disclosure of secrets, against property; or those who are disabled or



suspended, criminal or administratively, to pursue charges public or administration or management of financial institutions.

In the case of proxies which do not restrict the scope of their representation to specific areas or areas or matters beyond the activity which constitutes the object of the company, the board of directors shall check before the granting the power of the business and professional honorability requirement, and revoking the powers granted when this requirement disappears.

d) That the majority of the members of its board of directors or executive committees, as well as all delegated and general directors and directors, have adequate knowledge and experience in matters related to the securities market or to the main investment object of the IIC in question.

e) Contar with an internal rules of conduct in the terms provided for in Chapter I of Title VI of this Law.

The requirements laid down in paragraphs (a), (d) and (e) above shall not be required for investment companies whose management, administration and representation are entrusted to an SGIC.

In the event of changes in management and management positions in the company, the new identifying data must be communicated immediately to the CNMV, which will make them public through the corresponding record.

3. For the purposes of this law, it is considered that they have administrative or management positions in an entity their administrators or members of their collective management bodies and those persons who develop in the entity, in fact or under the right, senior management functions under the direct dependence of its administrative body or executive committees or delegated members thereof, including proxies that do not restrict the scope of its representation to areas or subjects specific or external to the activity that constitutes the object of the entity.

Article 12. Amendment of constituent projects, statutes and regulations.

1. Amendments to the draft constitutive, in the statutes or in the IIC regulations shall be subject to the prior authorisation procedure laid down in Article 10.

They will not require prior authorization, although they must be communicated to the CNMV for their constancy in the corresponding register, the modifications of the social statutes and the regulations, which have as their object:

(a) Change of domicile within the national territory as well as the change of denomination of the SGIIC or the depositary.

(b) Incorporation to the regulations of investment funds or to the statutes of investment companies of legal or regulatory precepts of an imperative or prohibitive nature, or the enforcement of judgments or administrative.

(c) The capital increases from reserves of the investment companies.

(d) Those other modifications for which the CNMV, in response to prior consultation or, by means of a general resolution, has deemed it unnecessary, due to its limited relevance, to the approval procedure.

2. Any modification of the regulation of an investment fund, after being authorized by the CNMV, must be communicated by the SGIIC immediately to the participants. Where the change in the management regulation or the prospectus concerns the investment policy, the policy for the distribution of results, the replacement of the managing company or the depositary, the delegation of portfolio management to another entity, (a) control of the management company, merger, transformation or division of the fund, establishment or elevation of the commissions, as well as in the cases to be determined on a regulated basis, must be communicated to the unit-holders prior to their entry into force. In all such cases, provided that there is a commission of reimbursement or expenses or discounts associated with it, the unit-holders shall have the right of separation, without deduction of commission or expense.

However, there shall be no right of separation in the case of replacement of the managing company or the depositary provided that the replacement entity is of the same group, or in the cases of merger or creation of a management company or Depositary of the same group. In any case, a continuity in the management shall be established at the time of the application for the authorisation provided for in the preceding paragraph of this paragraph.

The date for the calculation of the liquidative value to be applied to the repayments, the way in which the amendments will enter into force and the procedure and time limit for the execution of the right of payment shall be established. separation which, in any case, will guarantee the information to the unit-holders and will give rise to the updating of the management regulation and the explanatory prospectus of the fund.

Article 13. Revocation and suspension of authorization.

1. The authorization granted to IICs can only be revoked by the CNMV, in addition to the provisions of Article 85 of this Law, in the following cases:

(a) For non-compliance with the requirements set out in Article 10 (4) or Article 11 of this Act.

However, when due to circumstances on the market or due to compliance with this law or the requirements of the Company Law, the equity or number of members of a fund, or the capital or the number of shareholders of an investment company, shall fall from the minimum established rules, those institutions shall enjoy the period of one year, during which they may continue to operate as such. Within that period, they shall either lead to the reconstitution of the capital or assets and the number of shareholders or members, either to give up the authorization granted or to decide on its dissolution.

(b) If you do not start the specific activities of your social object within six months of the date of registration in the special register for which the person concerned is responsible.

c) If you give up express permission to the authorization.

d) If it is not registered in the corresponding register of the CNMV within six months of the date of notification of the authorization, for cause attributable to the data subject.

e) When you have obtained the authorization by means of false statements or omissions or by other means contrary to the legal order.

f) If for a year the volume of activity is less than the one that is regulated.

(g) Where there are substantiated and substantiated reasons for the fact that the influence exercised by persons holding significant participation in an investment company may result in the detriment of the correct management and prudent of the same, which will seriously damage your financial situation.

h) If a bankruptcy procedure is initiated with respect to the entity.

i) When any of the causes of forcible dissolution provided for in Article 260 of the Law on Limited Companies are to be found.

2. The authorisation granted to an investment company may be suspended in the following

:

(a) Where the provisions laid down in this law or in the other regulatory standards of investment companies are seriously or systematically infringed, where there are substantiated and substantiated reasons for the fact that the influence exercised by persons who have a significant participation in an investment company may be detrimental to the correct and prudent management of the investment company, which will seriously damage their financial situation.

c) As a sanction as provided for in Title VI of this Act.

d) In the cases referred to in paragraphs (a), (b), in the case of application, and (c) of Article 76 (1) of the Securities Market Act.

Article 14. Reservation of activity and denomination.

1. The activities defined in Article 1 (1) of this Law shall be deemed to be reserved for IICs.

2. The name "Institutions of Collective Investment" and its acronym "IIC" and the specific ones provided for in this law and its implementing rules shall be private of the entities registered in the corresponding records of the CNMV, not being able to another entity to use such names or other names that mislead them.

The Commercial Registry and other public records shall not register those companies whose activity or social object or whose denomination contradicts the provisions of this law, under the penalty of full nullity.

Such nullity shall not prejudice the rights of third parties acquired in good faith, in accordance with the content of the relevant records.

3. No person or entity may, without having obtained the required authorisation and without being registered in the records of the CNMV, carry out the activities legally reserved for IICs, or

use the name referred to in paragraph 1 of this Article. present article or any other expression that leads to confusion with them.

4. Persons or entities who fail to comply with this Article shall be sanctioned as provided for in Title VI of this Law. If they are required to cease immediately in the use of the names or in the supply or performance of the activities, they shall continue to be used or carried out, and shall be subject to periodic penalty payments of up to EUR 300 000, which may be repeated on the occasion of subsequent requirements.

It will be competent for the formulation of the requirements and for the imposition of the fines referred to in the previous paragraph, the CNMV, which may also make public warnings regarding the existence of this conduct. The requirements shall be made after the hearing of the person or entity concerned and the fines shall be imposed in accordance with the procedure laid down in this law.

5. The provisions of this Article are without prejudice to other responsibilities, including criminal law, which may be enforceable.

## CHAPTER II

### Cross-border marketing of IIC shares and units

#### Article 15. Marketing in Spain of shares and units of foreign IIC.

1. The placing on the market in Spain of the shares and units of IICs authorised in another Member State of the European Union in accordance with Council Directive 85 /611/EEC shall be free, subject to the rules laid down in this Article:

(a) IIC must comply with the regulations in force in Spain which do not fall within the scope of Directive 85 /611/EEC as well as the rules governing advertising in Spain.

(b) The IIC shall take the measures deemed necessary by the CNMV in order to facilitate payments to shareholders and unit-holders, the acquisition by the IIC of its shares or the redemption of the shares, the dissemination of information to be provided to shareholders and members of the resident in Spain, and, in general, the exercise of their rights.

(c) The IIC shall submit to the CNMV the following documentation:

1. Prior communication of the project to market its shares or units in Spanish territory, to which it must be attached a copy of the communication made to the supervisory authority of the State of origin.
2. A certificate from the authorities of the Member State of origin of which the IIC meets the conditions laid down in Directive 85 /611/EEC.
3. th Regulation of the investment company's investment fund or constitution.
4. Full and simplified brochure.
5. Last Annual Report and Last Semi-Annual Report.
6. Indent on the intended marketing arrangements for IIC shares and units in Spanish territory.

The documents referred to in points 2.o, 3. and 4. shall be submitted by the competent authority of the State of origin. All documents must be accompanied by their sworn translation into Spanish.

The CNMV may waive any of the requirements set out in this article when in the marketing in Spain of these institutions there are some of the determining circumstances of the exceptions. (a) partial or partial, in accordance with Article 7 (1) of Regulation (EC) No 291/1992 of the European Parliament and of the Council [3

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The marketing of the shares and units of the IICs may be initiated after two months from the presentation of the documentation set out in this article, unless the time limit is completed by the end of the CNMV issues a reasoned decision refusing to be placed on the market, considering that the intended marketing arrangements do not comply with what is required under Directive 85 /611/EEC.

The CNMV may determine the manner and time limits in which the modifications of the registered documentation will be communicated to it and will be disseminated to the shareholders and unit-holders resident in Spain.

2. The placing on the market in Spain of the shares and units of the IICs referred to in paragraph 1 of Article 2 (c) of this law shall require that the following be credited to the CNMV for the following: extremes:

(a) Accreditation that the Spanish legislation regulates the same category of IIC to which the foreign institution belongs and that the IIC is subject in its State of origin to a specific law on the protection of the interests of the shareholders or members similar to the Spanish legislation in this field.

(b) A favourable report of the authority of the State of origin to which the IIC control and inspection is entrusted with respect to the development of the IIC's activities.

Accredited such extremes, the IIC shall be subject to the requirements laid down in Article 61 of Law 24/1988 of 28 July of the Stock Market and to the precepts that are dictated in its development.

All the documents referred to in this paragraph must be accompanied by their sworn translation into Spanish.

In order for the IIC to be able to market its shares or units in Spain, it will be necessary to be expressly authorized for this purpose by the CNMV and to be registered in the CNMV records.

The authorization may be denied for prudential reasons, for not giving an equivalent treatment to the Spanish IICs in their country of origin, for not being assured the fulfillment of the rules of management and discipline of the markets of Spanish securities, because the due protection of investors resident in Spain and the existence of disturbances in the conditions of competition between these IICs and the IICs authorised in Spain are not sufficiently guaranteed.

Once authorised and registered in the registry of the CNMV these institutions shall be subject to the same reporting obligations as set out in paragraph 1 (b) above.

3. In the cases referred to in the preceding paragraphs, the authorised intermediary shall provide the shareholders or members of the Spanish IIC resident in Spain free of charge in accordance with the provisions of Chapter III of Title II of the this law, the full and simplified prospectuses and the annual and half-yearly reports of the IICs, as well as the rules of management of the fund or, where appropriate, the statutes of the company. These documents will be provided in your sworn translation into Spanish.

Article 16. Marketing of Spanish IIC shares and shares in the European Union area.

Spanish IICs which intend to market their shares or units within the European Union in accordance with the provisions of Directive 85 /611/EEC shall inform the CNMV of the draft marketing authorisation. to request the issue of a certificate of the characteristics referred to in paragraph 1 (c) (2) (c) of the previous Article.

The CNMV shall issue such certification after verification that the IIC meets the requirements laid down in Directive 85 /611/EEC. To this end, account shall be taken of the activity of its management company and of its management regulations or social statutes and brochures.

### CHAPTER III

#### Information, Advertising, and Accounting

Article 17. Informational documents.

1. The management company, for each of the investment funds it manages, and the investment companies shall publish for dissemination among the shareholders, unit-holders and the general public a full prospectus, a simplified prospectus, a report annual report, a half-yearly report and a quarterly report, so that, in an updated manner, all circumstances which may influence the appreciation of the value of the institution's assets and prospects are publicly known, in (a) the inherent risks involved, as well as compliance with the applicable rules.

2. The full prospectus shall contain the IIC statutes or regulations as appropriate and shall be in accordance with the provisions of Article 28 of the Securities Market Act, with the exception of the obligation to include the findings of the IIC audits. accounts, and in the law of development of this law, being registered by the CNMV with the scope provided for in Article 92 of the Law of the Market of Securities.

Without prejudice to the provisions of the preceding paragraph, the conclusions of the audit of accounts shall be included in the annual report.

The full prospectus must be updated in terms that are determined to be regulated.

3. The simplified prospectus shall contain, in summary form, information on the institution, on the objectives of the fund or company, on the investment policy with a brief assessment of the



risk profile of the fund or of the company in such a way that the The investor knows precisely what category of the planned development of the last paragraph of Article 30 (2) the IIC belongs to, on the historical evolution of its profitability, the profile of the type of investor to which the institution, and economic and commercial information. The simplified prospectus must be updated in terms that are determined to be regulated.

The simplified prospectus will be incorporated into the full prospectus as a separate part of the prospectus and may be used as a marketing tool in all Member States of the European Union, without changes, except for language.

4. The annual report shall contain the annual accounts and the management report, the conclusions of the audits of accounts and the other information to be determined on a regulated basis, in order to include the relevant information enabling the an investor, with knowledge of cause, to make a judgment on the evolution of the institution's activity and results.

5. The quarterly and half-yearly reports shall contain information on the state of the assets, number of shares and shares in circulation, net value of the inventory by participation or share, portfolio of securities, movements in assets of the institution, comparative table relating to the last three financial years and any other financial year to be regulated.

6. The CNMV shall establish the standard models of all the documentation referred to in this Article.

The CNMV will maintain a register of brochures, annual, semi-annual and quarterly IIC reports to which the public will have free access.

All the documents mentioned in the above paragraphs, simultaneously with their dissemination among the public, will be submitted to the CNMV with the aim of keeping the records referred to in the previous paragraph updated. In the case of the prospectus, its dissemination shall require the prior verification and registration by the CNMV in accordance with the provisions of Article 10 (6) of this Law.

7. In any event, the simplified prospectus and quarterly reports shall contain all the costs of the fund or, where appropriate, of the company, expressed in terms of percentage of the equity of the fund or, where appropriate, the capital of the society.

It shall be for the CNMV to determine the items to be included in those expenses.

Article 18. Information to members and shareholders, the general public and advertising.

1. Prior to the subscription of the units or shares, the simplified prospectus and the last half-yearly report shall be delivered free of charge to the subscribers and, upon request, the full prospectus and the latest annual reports and Published quarterly.

2. The annual and half-yearly reports shall be sent free of charge to members and shareholders at regular intervals, unless they expressly renounce this. In addition, IICs shall send free and periodically a quarterly report to members and shareholders who expressly request it. Where the participant or shareholder expressly requests it, such reports shall be sent to him by telematic means.

In addition, all these documents will be made available to the public in the places they indicate in the complete and simplified brochures. In any case, all such documents must be available through telematic means.

3. Any advertising containing an invitation to buy a stake or shares in an IIC shall indicate the existence of the prospectuses provided for in this chapter and the places and the way in which the public can obtain or have access to them.

4. The advertising activities aimed at promoting the subscription or acquisition of shares or shares of an IIC will be subject to the provisions of the current regulations and to what is determined in this area by the Minister of Economy and, with his express rating by the CNMV.

Article 19. Relevant facts.

The relevant facts related to the institution shall be made public in the manner that is regulated, in accordance with the provisions of the Law of the Market of Securities, giving knowledge of the same to the CNMV, and will be incorporated into the successive reports for information to shareholders and members.

Article 20. Accounting rules.

1. In the development of the accounting standards referred to in the Code of Commerce, the Law of Companies Anonymous and the General Plan of Accounting, it corresponds to the Minister of Economy and, with his express rating, to the CNMV, and with the previous report of the Accounting and Audit Institute of Accounts, approve the specific rules of the accounting of IICs, as well as the criteria of valuation and determination of the patrimony and the results.

2. The Minister of Economy and, with his express rating, the CNMV will determine the supplementary states of reserved information which, for their supervision, will have to render the IICs, the public models of information to be adjusted their accounts annual, as well as the frequency and detail with which the data must be supplied. In any case, prior report of the Accounting and Audit Institute shall be required for the determination of the public models of annual accounts.

#### Article 21. Auditing of accounts.

IICs shall be subject to the audit of accounts, in accordance with the provisions of the first provision of Law 19/1988, of July 12, of Audit of Accounts, adjusting the economic year to the calendar year. The review and verification of its accounting documents shall be carried out in accordance with the provisions of the regulatory standards for auditing of accounts.

This audit should be extended to the documents provided for in the aforementioned Audit of Accounts Act and its development provisions.

#### Article 22. Significant shareholdings.

The acquisition and loss of a significant participation in an IIC shall be made public in the form and time limits that are regulated.

Also, the percentages of capital and equity that will have the consideration of significant participation will be determined, as will the persons or entities forced to their communication or dissemination.

### CHAPTER IV

#### Investment rules

#### Article 23. Principles of the investment policy.

Without prejudice to the specialties provided for in this law for each IIC class, IICs will invest their assets, taking into account the following principles:

a) Liquidity. IICs shall have sufficient liquidity, depending on the nature of the institution, the shareholder or shareholder and the assets in which it is invested.

b) Diversification of risk. IICs shall limit the concentration of the counterparty risk in such a way as to ensure sufficient diversification.

c) Transparency. IICs should clearly define their investment profile, which should be reflected in the information tools provided for in the previous chapter.

## CHAPTER V

### Dissolution, settlement, transformation, merger, division and transfer of units and shares

#### Article 24. Dissolution and liquidation.

1. They shall be cause of dissolution of the fund, the fulfilment of the period laid down in the contract of incorporation, the agreement of the management company and the depositary where the fund was constituted for an indefinite period and the other provisions laid down in this law or in its implementing rules, as well as in the management regulation.

2. The liquidation of the fund shall be carried out by the management company with the contest of the depositary and prior to the fulfilment of the requirements of publicity and guarantees that the regulation of this law establishes. Once the dissolution has been agreed and made public by the CNMV, subscriptions and refunds will be suspended.

3. In the case of an IIC of a societarium character, the dissolution and liquidation shall be in accordance with the Law of Limited Societies, without prejudice to the provisions of this law.

4. The CNMV may, where appropriate, agree to the intervention of the winding-up proceedings in accordance with Title VI of this Law.

#### Article 25. Transformation.

1. IICs can only be transformed into other IICs that have the same legal form and belong to the same class. However, IICs authorised in accordance with Directive 85 /611/EEC shall not be converted into other IICs.

2. Without prejudice to the provisions of the previous paragraph, all investment companies covered by the IIC Statute may be transformed into companies which do not hold such status. Similarly, public limited liability companies may be transformed into investment companies.

3. Processing operations shall be subject to the following requirements:

(a) Prior administrative authorisation of the CNMV in accordance with the procedure laid down in Article 10 of this Law.

b) Accreditation, at the time of the transformation, that the specific conditions set for the resulting IIC class are met.

c) Reform of the social statutes or management regulations, leaving the operation on the register of the corresponding CNMV and, in the case of companies, prior to the Commercial Registry.

(d) Publication in the "Official Journal of the Trade Register" and in two national circulation newspapers in the case of companies and communication to the unit-holders, in the case of a fund, in order to exercise their rights, if appropriate of separation that correspond to them.

e) Presentation in the CNMV of the audit of the financial statements that have served to agree the transformation, closed on a date not earlier than three months after the adoption of the transformation agreement.

Article 26. Merge.

1. Merger operations shall be subject to the authorisation procedure provided for in Article 10 of this Act.

2. IICs can only be merged when they belong to the same class.

The merger may be both by absorption and by the creation of a new institution provided that, in the latter case, it is carried out between IIC in the same legal form.

3. In the case of investment companies, the merger processes shall comply with the provisions of the Company Law.

4. In the case of investment funds, the merger procedure shall be initiated subject to the agreement of the management company or, as the case may be, the management companies, and the depositary or, where appropriate, the depositaries, of the institutions which they intend to merge, which, together with the merger project, will be submitted to the CNMV for authorisation. The authorisation of the merger process shall be considered as relevant and shall be published in the Official Gazette of the State and in two national newspapers.

The authorisation shall also be communicated to the members of all the funds concerned, together with the draft terms of merger, within 10 days of their notification.

After the period of one month from the date of the notices or from the referral of the individual notification, if it is later, the managing company or, where applicable, the managing companies, and the depositary or, where appropriate, the depositors, the funds will execute the merger by granting the corresponding contractual document and their registration in the corresponding registration of the CNMV. The exchange equation shall be determined on the basis of the liquidative values and the number of units in circulation at the close of the day preceding the granting of the deed or, if that is not the case, when the document is granted contract. The financial statements which are incorporated in writing or, where appropriate, the contractual document shall be approved by a duly empowered person of the management company and the depositary.

The minimum content of the fund merger project will be developed.

5. In the case of a merger between IIC of different legal nature, the procedure shall be determined by regulation.

Article 27. Excision.

1. The division of the entities covered by the IIC status may be total or partial.

IICs may benefit from the division, in whole or in part, of any other entities, whether or not they are subject to the legal status, provided that this does not mean that their character and legal nature or the non-compliance of the specific requirements and obligations of the institution concerned.

2. The divisions referred to in this provision shall, at least, comply with the requirements laid down in Article 25 (3), in addition to the presentation of the relevant draft terms of division. In addition, in the case of investment companies, the provisions contained in the Companies Act shall apply.

#### Article 28. Transfer of units or shares.

1. Transfers of investments between IICs or, where appropriate, between compartments of the same IIC, shall be governed by the provisions laid down in this Article and, as otherwise provided for in this Article, by the general rules governing the subscription and reimbursement of shares in investment funds, as well as the acquisition and disposal of shares in investment companies.

2. In order to initiate the transfer, the shareholder or shareholder must address, as appropriate, the management company, the marketing or investment company, the destination (hereinafter the destination company), to which it will order in writing the performance of the required. The company of destination must communicate to the management, marketing or investment company of origin (hereinafter referred to as the company of origin), within the maximum period of one working day since it is in its possession, the application duly completed with indication at least of the name of the IIC of destination and, where appropriate, of the compartment, the identifying data of the IIC account to which the transfer is to be carried out, its depository, where appropriate, its management company, and the IIC origin, and, where applicable, of the compartment.

The source company shall have a maximum of two working days from the receipt of the request to carry out the checks it deems necessary.

Both the transfer of cash and the transfer by the company of origin to the target company of all the financial and tax information necessary for the transfer must be made, starting on the third working day from the receipt of the application, within the time limits laid down for payment of the refunds or for the disposal of shares. In any event, the transfer of cash shall be effected by bank transfer, ordered by the company of origin to its depository or, where applicable, the trader, from the account of the IIC of origin to the account of the IIC of destination.

The target company shall keep the documentation derived from the above acts and obligations at the disposal of the company of origin, the relevant supervisory bodies, where appropriate, of the depositories of origin and destination, and of the competent tax authorities.

3. The liquidative securities applicable in the transfer operations referred to in the preceding paragraph shall be those laid down in the rules of each fund for subscriptions and repayments or in the company's statutes for acquisition and Disposal of actions.

4. In the case of transfers involving an investment company whose shares are listed on the stock exchange, the intermediation by a stock exchange member may not in any case assume that the amount of the redemption of shares or the disposal of shares is made available to the shareholder or shareholder. In addition, the shareholder or shareholder shall be responsible for the custody of the financial and tax information of the transfer as well as its communication, where appropriate, to the destination management or marketing company.

5. Failure to comply with the obligations laid down in this section shall be subject to administrative penalties in accordance with the provisions of Title VI of this Law.

6. The Minister for Economic Affairs and, with his express rating, the CNMV, will be able to develop the content of this article by making the necessary adaptations to ensure the security and transparency of the procedures. It may also authorise standardised systems, with the appropriate security guarantees for the transmission of transfer requests, for the transfer of cash and for the transmission of information between the entities involved in the transfer. procedure.

### TITLE III

#### Collective Investment Institutions Classes

#### CHAPTER I

#### Financial Collective Investment Institutions

#### Section 1. Common Provisions

#### Article 29. Concept and denomination of financial IICs.

Financial IICs are those that aim to invest in assets and financial instruments, in accordance with the requirements defined in this law and in their regulatory development.

In the case of funds, their name must be followed by the expression "Investment Fund" or "F.I." Investment firms must take the form of a public limited liability company and its share capital may be increased or reduced within the limits of the maximum or minimum capital laid down in



its statutes, by means of the sale or acquisition by the society of its own actions, without the need for agreement of the general meeting.

Your name must be followed by the expression "Equity Investment Company" or "SICAV".

Article 30. Assets eligible for investment, rules on investments and obligations vis-à-vis third parties.

1. Financial IICs may invest in the following financial assets and instruments:

(a) marketable securities and financial instruments, as provided for in the first subparagraph of Article 2 (a) of the second indent of the Securities Market Act, admitted to trading on stock exchanges or in other markets or organised trading systems, irrespective of the State in which they are located, provided that, in any case, the following requirements are met:

That is about markets that have a regular operation.

To provide equivalent protection to the official markets located on Spanish territory.

Having rules of operation, transparency, access and admission to trading similar to those of official secondary markets.

SGIICs and investment companies must ensure, prior to the start of investments, that the markets in which they intend to invest meet these requirements and collect in the IIC explanatory brochure an indication of the markets in which to invest.

(b) The securities and negotiable instruments referred to in the preceding paragraph for which their admission to trading is requested in any of the markets or systems referred to in that paragraph.

Such securities and instruments shall be equated with those in whose terms of issue the commitment to apply for admission to trading is made, provided that the initial period for fulfilling that commitment is less than one year. Where admission to trading does not occur within six months of the date on which the undertaking to submit the relevant application for admission is requested or not fulfilled, the portfolio in question shall be restructured. the following two months following the end of the periods referred to above. If the time limit is

insufficient, it may be justified to request the extension of the CNMV. Such extension shall not exceed an additional period of two months.

(c) Shares and units of other IICs authorized under Directive 85 /611/EEC, provided that the rules of the funds or the statutes of companies whose shares or shares are intended to be acquired do not authorize invest more than 10 percent of the institution's assets in units or shares of other IICs.

(d) Shares and units of other IICs not authorised under Directive 85 /611/EEC, provided that the latter are not intended to invest in other IICs and provided that they meet the following requirements: a regulation of the funds or the statutes of companies whose shares or shares are intended to be acquired does not authorise the investment of more than 10% of the institution's assets in units or shares of other IICs, the management company or, where appropriate, the investment company is subject to supervision by the Community authorities; the competent authorities consider equivalent to that which establishes Community law and which ensures cooperation between the authorities, the level of protection of its members and shareholders is equivalent to that established in this law by virtue of what the CNMV determines, report on its business activity in a semi-annual report and another annual report to enable the assessment of assets and liabilities, revenues and transactions during the reporting period.

(e) Deposits in credit institutions that are in the view or may be withdrawn, with a maturity of not more than 12 months, provided that the credit institution has its headquarters in a Member State of the European Union or, if the domicile the credit institution is located in a non-member State, is subject to prudential rules equivalent to those required by the Spanish legislation, by virtue of what the CNMV determines.

(f) derivative financial instruments traded on a market or trading system that meets the requirements set out in subparagraph (a) above provided that the underlying asset consists of assets or instruments of the referred to in this paragraph, financial indices, interest rates, exchange rates or foreign currency, in which the IIC of a financial character may invest in accordance with its investment policy as stated in the prospectus.

g) Non-traded derivative financial instruments in a market or trading system that meets the requirements set out in subparagraph (a) above, provided that the requirements set out in paragraph (f) are met as to the composition of the underlying asset, the counterparties of the derivative transactions are entities subject to prudential supervision and belong to the categories approved by the CNMV, the derivative positions are subject to a daily valuation reliable and can be liquidated at any time at its market value through an operation of a contrary sign on the initiative of the IIC of a financial character.

The requirements set out in the second and third indents of this paragraph shall also be payable to the derivative financial instruments referred to in paragraph (f) except if they are traded on a market that requires the deposit of guarantees on the basis of contributions or adjustment of losses and profits and there is a clearing centre which registers the transactions carried out and is between the contracting parties acting as a buyer to the seller and as a seller to the buyer.

(h) Monetary market instruments provided that they are liquid and have a value that can be accurately determined at all times, not traded on a market or trading system that meets the requirements set out in the (a) above, provided that one of the following requirements is met:

That are issued or guaranteed by the State, the Autonomous Communities, the local authorities, the Banco de España, the European Central Bank, the European Union, the European Investment Bank, the Central Bank of Member States, any public administration of a Member State, a third country or, in the case of a Länder, one of the members of the Federation, or an international public body to which one or more States belong members.

That are issued by a company whose securities are traded on a market that meets the requirements laid down in paragraph (a) above.

That are issued or guaranteed by an entity subject to prudential supervision.

That are issued by entities belonging to the categories that the CNMV determines.

i) Financial securities or instruments other than those provided for in the preceding paragraphs.

(j) In the case of investment companies, they may acquire the movable and immovable property essential for the direct pursuit of their business.

2. In addition, the IICs shall maintain the liquidity ratio that sufficiently guarantees the reimbursement regime in terms that are regulated by regulation.

In order to comply with the principle of risk diversification, as a general rule, investment in assets and financial instruments of the same issuer, or of entities in the same group, shall not exceed five per cent or 15 per cent. percent, respectively, of the IIC asset.

The five percent limit is extended to 10 percent as long as the total of the IIC's investments in securities in which it exceeds five percent does not exceed 40 percent of the assets of the IIC.

Reglamentarily, according to the nature of the institution, the participant and the assets in which it is invested, an upper limit may be established, as well as additional percentages of risk diversification. Depending on the nature of the issuer and the IIC, limitations may be made to the maximum percentage that the IIC investment may represent in the outstanding securities of the same issuer. In no case shall such participation allow IIC to exert a significant influence on society.

On the other hand, in order to comply with the principle of transparency, IICs must clearly define their investment vocation, so that the investor knows precisely which category of those established by the CNMV belongs to the institution.

For statistical purposes and to provide information about your risk profile and the assets in which you invest, the CNMV will establish IIC categories according to the investment vocation of these within the assets provided for in this Article.

3. The limits and conditions to which the investments, direct or indirect, of the IICs of a financial character, the maximum overall risk of the operations they carry out and the requirements to be met, shall be determined. the IICs whose investment policy is intended to reproduce or to take as a reference a certain stock index or fixed income index.

4. Neither managing companies nor investment companies may grant or endorse claims on behalf of third parties. However, they may acquire the assets referred to in paragraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 of this Article even if they have not been fully disbursed.

5. In general, neither management companies, in relation to IICs managed by them, nor investment companies, may make sales of the financial assets referred to in paragraphs (c), (d) and (h) of the paragraph 1 of this Article.

6. The securities and other assets that the portfolio includes shall not be eligible for or constitute a guarantee of any kind, except to serve as collateral in the operations that the institution carries out in the official secondary markets. Where applicable, the securities and assets that are part of the portfolio shall be deposited in the custody of the depositaries regulated in this law. However, securities and other assets that integrate the portfolio of financial IICs may be the subject of securities lending operations with the limits and guarantees established by the Minister for Economic Affairs.

7. IICs of a financial nature shall not be able to borrow more than 10% of their assets in general. Similarly, in the case of investment firms, in the case of loans for the acquisition of immovable properties which are essential for the continuation of their activities, they may not exceed that

limit, in which case these loans and those provided for They will not be able to exceed 15 percent of their assets previously.

Reglamentarily higher limits may be permitted, accompanied by specific transparency obligations.

8. They shall also be unable to receive funds from the public in the form of a deposit, loan, temporary disposal of financial assets or other similar assets.

9. Financial IICs may not acquire precious metals or any other type of raw material or movable or immovable property other than those referred to in the preceding paragraphs of this Article.

Article 31. Content of social statutes and regulations in respect of investment policy.

All IICs of a financial character must incorporate into their social regulations or statutes at least the following aspects relating to the investment policy:

(a) Form of compliance with the investment principles provided for in Article 23 of this Law.

(b) Rules for the use of financial instruments derived from the purpose, inter alia, of ensuring adequate coverage of the risks assumed in all or part of their portfolio, as an investment to manage more effectively its portfolio, or in the framework of a management aimed at achieving a concrete objective of profitability.

c) Financing that they can receive.

d) Operations on assets that integrate their assets, including their pledge.

Section 2. Variable Capital Investment Corporations

Article 32. Concept, social statutes, social capital and actions.

1. These variable capital investment companies are the IICs of a financial character that adopt the corporate form, in accordance with the provisions of Article 29 of this Law.

2. The designation of the depositary as well as the initial capital figure should necessarily be included in the social statutes. The figure of the maximum statutory capital shall also be collected, expressing, in one and the other case, the number of shares and, where applicable, the series, in which the share capital and the nominal value of those shares are divided.

3. Shares representing the maximum statutory capital not subscribed to, or subsequently acquired by the company, shall be held in holding until they are put into circulation by the managing bodies. The portfolio shares shall be held by the depositary.

4. The company will have to reduce the capital by reducing the nominal value of its shares in circulation, when the share capital has fallen below two thirds of the capital figure in circulation, provided that a year has elapsed without the asset being recovered. In the same proportion, the nominal value of the portfolio shares shall be reduced.

5. In the event that there are not enough shares acquired by the company in order to meet the obligation to sell its own shares, the company must, within the period to be established, put sufficient shares into circulation until it reaches, if necessary, the statutory maximum capital established.

When the company is unable to meet the above obligations due to the lack of portfolio shares and the maximum statutory capital has already been disbursed, the company will declare this circumstance as a relevant fact and its board of directors. The administration will propose that an increase in its statutory capital be agreed upon at the next regular meeting of shareholders.

6. The liquidative value of each share shall be the value of dividing the equity of the company corresponding to the series to which it belongs by the number of outstanding shares corresponding to that series and, for the purposes of its subscription and repurchase by the company, it shall be calculated on a regular basis, in accordance with the different investment policies and characteristics of the shareholders.

7. The shares shall be issued and repurchased by the company itself at the request of any person concerned according to the liquidative value corresponding to the date of application and may be placed on the market by the company, either directly or through Intermediaries who are entitled, or on stock exchange, to that effect, to receive commissions or discounts in favour of the latter.

8. The acquisition by the company of its own shares, between the initial capital and the maximum statutory capital, will not be subject to the established limitations on the derivative

acquisition of own shares in the Company Law. Below that minimum capital, you may acquire shares with the limits and conditions set forth in the aforementioned Company Law.

9. The company may put in circulation shares at a price below its nominal value, not being applicable to Articles 75 and 76 of the Companies Act.

The shareholders of the company will not in any case enjoy the preferential right of subscription in the issue or putting into circulation of the new shares.

The remuneration or advantages of the founders and promoters regulated in the Companies Act are prohibited.

10. The provisions of Article 60 of the Securities Market Act relating to public offers for the acquisition of securities shall not apply to variable capital investment companies.

Article 33. Liquidity.

The different procedures that provide liquidity to the actions of the SICAV will be established.

## CHAPTER II

Non-financial collective investment institutions

Section 1. Concept

Article 34. Concept.

Non-financial IIC are all those that are not covered by Article 29 of this Act.

Section 2. Third Real Estate Collective Investment Institutions

Article 35. Concept and denomination.

1. The real estate IICs regulated in this law are those of a non-financial nature that have as their principal object the investment in real estate of an urban nature for their lease.

2. The real estate IICs will invest their assets in real estate, which they will be able to acquire in their different phases of construction, being able to make it compatible, according to the limitations that are established regulatively, with the investment of a part of its asset in securities traded on secondary markets.

3. The denominations "Real Estate Investment Fund" or "Real Estate Investment Company", or its acronym, "F.I.I." and "S.I.I." they shall be proprietary to the authorised, incorporated and registered entities in accordance with this law.

#### Article 36. Investment rules.

1. Real estate IICs shall meet the criteria for the valuation of assets and rights in which they invest and respect the following coefficients:

Liquidity ratio that sufficiently ensures compliance with the reimbursement scheme.

Risk Diversification Ratios that limit investment in a single building as well as the lease of real estate to entities in the same group.

2. The minimum time limit for compliance with the percentages resulting from the coefficients referred to in the previous paragraph and the possibility of temporarily derogating from the percentages of diversification of the risk.

3. Real estate IICs must comply with the rules to be established in relation to the minimum length of stay of investments, the acquisition and disposal of real estate, the acquisition and disposal of purchasing options, (a) the term and the actual rights, the concentration of financial flows resulting from the lease of the immovable property, and the mortgage-guarantee financing. Similarly, the purchase of housing under official protection will be met with the conditions for maintaining the economic benefits inherent in the protection regime.

4. The shareholders or members of the real estate IIC may be tenants of the real estate that integrate the asset of the same as well as hold any rights other than the derivative of its shareholder status or participate and perform contributions, originating or derived, in kind.



Article 37. Real estate investment companies.

1. Real estate investment companies shall be public limited companies and shall have a minimum capital that has been fully paid up since their establishment.
  
2. The management of a real estate investment company may be entrusted to a management company.

Article 38. Real estate investment funds.

1. Real estate investment funds shall be governed, in the case not specifically provided for, by the investment funds of a financial nature.
  
2. As for the subscription and refund regime, they will conform to the following rules:
  - (a) The liquidative value shall be fixed at least monthly.
  
  - (b) Members shall be allowed to subscribe or to request the redemption of their shares at least once a year.
  
  - c) Real estate assets should be assessed as a general rule once a year. Such valuation shall necessarily be carried out by a valuation company as provided for in the mortgage market legislation.
  
  - (d) Where exceptional circumstances are present, in terms to be determined by regulation, the CNMV may authorise the suspension of the subscription and the redemption of the units.
  
3. The registration of the real estate belonging to the fund in the Land Registry shall be made to its name.

Section 3. Other Non-Financial Collective Investment Institutions

Article 39. Other non-financial IICs.

Non-financial IICs, other than real estate IICs, will be governed by the provisions of this law and, additionally, by the special provisions approved by the Minister of Economy or, with his express rating, the CNMV.

#### TITLE IV

#### Collective Investment Institutions Management Societies

#### CHAPTER I

#### Concept and social object

Article 40. Concept, social object and reservation of activity and denomination.

1. The SGICs are public limited companies whose social object will consist of the administration, representation, investment management and management of the subscriptions and repayments of the funds and investment companies.

In addition, management companies may be authorized to perform the following activities:

(a) Discretionary and individualized management of investment portfolios, including those belonging to pension funds, under a mandate granted by investors or legally authorised persons, provided that such portfolios include one or more of the instruments provided for in Article 63 (4) of the Securities Market Act.

b) Administration, representation, management and marketing of venture capital funds, in the terms established by Law 1/1999, of 5 January, regulatory of venture capital institutions and their management companies.

2. By way of derogation from paragraph 1 of this Article, management companies may also be authorised to carry out the following additional activities:

(a) Advice on investments in one or more of the instruments provided for in Article 63 (4) of the Securities Market Act.

(b) Custody and management of the investment funds ' holdings and, where appropriate, the shares of the investment companies.

In any event, the authorization to carry out the activities of this paragraph shall be conditional on the management company having the necessary authorization to provide the services referred to in subparagraph (a) of the 1 above.

3. Management companies may market shares or shares of IIC. This additional activity may be carried out directly or by means of agents or proxies under the conditions to be determined. Subscriptions or acquisitions of shares or shares must be effected by means of a registered cheque in favour of the IIC, bank transfer in favour of the IIC or by means of delivery of cash directly by the institution. the person concerned to the depositary, for subsequent payment to the account of the fund or of the company.

4. The functions which management companies perform in accordance with the provisions of this law and their implementing rules shall be carried out by the care of an orderly employer and a loyal representative.

5. Management companies may delegate, in whole or in part, to third entities the management of assets which integrate the assets of the IICs managed in accordance with the conditions laid down in regulation. In no case shall the liability of the management company be affected by the fact that the management company is delegated to third parties.

6. The activities defined in the first subparagraph of paragraph 1 of this Article shall be deemed to be reserved for SGICs.

7. The name "Société Gestora de Inversiones de Inversión Colectiva" and its acronym "SGIC" shall be private of the entities registered in the corresponding registry of the CNMV, and no other entity may use such names or other to induce confusion with them.

The Commercial Registry and other public records shall not register those companies whose activity or social object or whose denomination contradicts the provisions of this law, under the penalty of full nullity. Such nullity shall not prejudice the rights of third parties acquired in good faith, in accordance with the content of the relevant records.

8. No person or entity may, without having obtained the required authorisation and without being registered in the records of the CNMV, develop the activities legally reserved for the SGIC, or use the name referred to in paragraph 7. of this article or any other expression that leads to confusion with them.

9. Persons or entities who fail to comply with this Article shall be sanctioned as provided for in Title VI of this Law. If they are required to cease immediately in the use of the names or in the supply or performance of the activities, they shall continue to be used or carried out, and shall be subject to periodic penalty payments of up to EUR 300 000, which may be repeated on the occasion of subsequent requirements.

It will be competent for the formulation of the requirements and for the imposition of the fines referred to in the previous paragraph, the CNMV, which may also make public warnings regarding the existence of this conduct. The requirements shall be made after the hearing of the person or entity concerned and the fines shall be imposed in accordance with the procedure laid down in this law.

10. The provisions of this Article are without prejudice to other responsibilities, including criminal law, which may be enforceable.

11. Management companies shall be responsible for the obligation to carry out and maintain records and documents in relation to holdings and, in general, to their operations on the stock market.

## CHAPTER II

### Activity access conditions

#### Article 41. Authorization and registration.

1. It will be up to the Minister of Economy, on a proposal from the CNMV, to authorize, on a prior basis, the creation of SGIIC. Once they have been formed, to start their activity, they must register in the Commercial Registry and in the corresponding registration of the CNMV.

2. The application for authorization must be accompanied by the documents to be drawn up, including the draft statutes and a memory in which the organisational structure of the company will be described in detail. the relationship of activities to be developed and the technical and human resources of which it will have, the relationship of those who will hold positions of administration or management in the entity, as well as the accreditation of the honorability and the professionalism of these, the the identity of the shareholders, whether direct or indirect, natural or legal persons, who hold a significant participation in the company and the amount of the company and, in general, how much data, reports or records are deemed appropriate to verify compliance with the conditions and requirements set out in this Chapter.

3. Prior consultation with the supervisory authority of the relevant Member State of the European Union shall be the subject of the authorisation of a management company where one of the following circumstances is present:

(a) the management company is a subsidiary of another management company, investment firm, credit institution or insurance institution authorised in another Member State of the European Union, (b) the management company is a subsidiary of the managing company; a subsidiary of the parent undertaking of another management company, investment firm, credit institution or insurance undertaking authorised in another Member State of the European Union, (c) which is under the control of the same natural persons or a legal entity other than the managing company, investment firm, credit institution or entity insurer authorised in another Member State.

4. The authorisation shall be notified within three months of the receipt of the application. If five months elapse without the express decision being made, his application for administrative silence may be deemed to be considered, with the effects provided for in Law 30/1992 of 26 November of the Legal Regime of Public Administrations and of the Common Administrative Procedure.

Article 42. Refusal of authorization.

The Minister of Economy may only refuse authorisation to constitute an SGIIC for the following reasons:

(a) Failure to comply with the required regulatory requirements and in particular those provided for in the following Article.

(b) When, taking into account the need to ensure the correct and prudent management of the institution, the suitability of the shareholders to have a significant shareholding is not considered appropriate. The suitability will be appreciated, among other factors, depending on:

1. The business and professional honorability of shareholders.

2. The heritage means with which these shareholders are counted to meet the commitments made.

3. The possibility that the institution would be inappropriately exposed to the risk of its promoters' non-financial activities or, when dealing with financial activities, the institution's stability or control may be affected by the high risk of those.

c) When any of the causes set forth in the fourth paragraph of Article 10 of this law.

Article 43. Activity access requirements.

1. Managing companies must meet the following requirements to obtain and retain the authorisation:

a) Revestir the form of a public limited company, constituted for an indefinite period of time, and that the actions of the social capital have a nominative character.

b) To have exclusive social object as provided for in article 40 of this law. As a principal, they shall carry out the activities referred to in the first paragraph of Article 40.1, without prejudice to the fact that they may be authorised to carry out the remainder of the activities provided for in that Article.

c) That your registered office, as well as its effective administration and address, is located in Spanish territory.

d) That, in the case of a newly created entity, it is constituted by the simultaneous foundation procedure and that its founders do not reserve any special benefits or remuneration of any kind.

e) Dispose of the minimum social capital that is regulated, fully disbursed in cash and subsequently with the levels of own resources that are required, proportionate to the real value of the assets administered.

f) Having an administrative board of no less than three members.

g) That the identity of all shareholders, whether direct or indirect, natural or legal persons, holding significant participation in the company, and the amount of such participation be communicated.

(h) Those who hold office or management positions in the company have the requirements of good repute laid down in paragraph 2 (c) of Article 11 of this Law and that the majority of the members of the the management board or its executive committees, as well as all the delegated and general directors and similar directors have the experience requirements laid down in Article 11 (2) (d) of this Act; taking into account the nature of the IIC and the types of portfolios that the management company intends to manage.

i) Having a good administrative and accounting organization, as well as with adequate human and technical means, in relation to its object.

j) Having adequate internal control procedures and mechanisms to ensure the correct and prudent management of society, including risk management procedures, as well as control and safety mechanisms in the computer and organs and procedures for the prevention of money laundering, a system of related operations and an internal rules of conduct. The management company shall be structured and organised in such a way as to minimise the risk that the interests of IICs or clients are harmed by conflicts of interest between the company and its clients, including clients, between one of its clients and an IIC or between two IICs.

2. Where the management company is authorised to market the subscription and redemption of investment fund shares or the acquisition and disposal of shares in investment companies, the additional requirements of this Regulation may be required. solvency and operational requirements to be determined.

3. The management of assets of persons or entities other than IICs shall be carried out in accordance with the requirements and conditions governing such management. In particular, the SGIIC may not invest either the whole or part of an investor's portfolio in IIC shares or shares managed by it, except with the prior general consent of the client. They shall also be subject exclusively to the discretionary and individualised management of investment portfolios referred to in Article 40 (1) (a) of this Law and only by the assets managed in connection with the the same, to the rules relating to the investor compensation schemes provided for in Article 77 of the Securities Market Act.

## CHAPTER III

### Exercise Conditions

Article 44. Amendment of statutes.

1. The amendments to the draft constitution and the social statutes of the management companies shall be subject, with the exceptions to be determined, to the authorisation procedure provided for in this Title.

All of them must be the subject of registration in the Commercial Registry and in the Registry of the CNMV.

2. They shall not require prior authorisation, although they shall be notified to the CNMV for their constancy in the register concerned, the amendments to the social statutes of the managing companies which have as their object:

a) The change in the name of the management company.

b) The change of domicile within the national territory.

c) To incorporate into the statutes of the management company legal or regulatory precepts of an imperative or prohibitive nature, or to comply with judicial or administrative decisions.

d) Extensions and reductions of capital made by legal imperative.

e) Those other modifications for which the CNMV, in response to prior consultation formulated to the effect by the institution concerned, has considered unnecessary, because of its limited relevance, the authorization procedure.

Article 45. Significant shareholdings.

1. For the purposes of this law, significant participation in a management company shall be understood to be such that it reaches, directly or indirectly, at least five per cent of the capital or the voting rights of the company.

It will also have the consideration of significant participation, in terms that are determined to be regulated by the one that, without reaching the percentage indicated, allows to exert a noticeable influence on the society.

2. Any natural or legal person intending to acquire, directly or indirectly, a significant participation in a management company shall inform the CNMV in advance, indicating the



amount of such participation, the mode of acquisition and the maximum time that the operation is intended to be performed.

3. It shall also inform the CNMV in advance, in the terms set out in the preceding paragraph, who intends to increase, directly or indirectly, its significant participation in such a way that its share of capital or voting rights is reached or it would exceed some of the following levels: 10 percent, 15 percent, 20 percent, 25 percent, 33 percent, 40 percent, 50 percent, 66 percent, or 75 percent. In any event, this obligation will also be enforceable to those who, by virtue of the proposed acquisition, could control the management company.

4. It is understood that there is a control relationship for the purposes of this title provided that it is one of the assumptions provided for in Article 4 of the Securities Market Act.

5. The CNMV shall have a maximum period of one month, from the date on which it has been informed, in order, where appropriate, to oppose the proposed acquisition.

If the Commission fails to act within that period, it shall be deemed to accept the claim. Where there is no opposition from the CNMV, the CNMV may set a maximum period of time other than the one requested for the acquisition.

6. In the event that, as a result of the acquisition, the management company would be under some of the control procedures provided for in Article 41 (3) of this law, the CNMV must consult the supervisory authority. competent.

The CNMV will have to suspend its decision or limit its effects when, by virtue of the acquisition, the management company is to be controlled by an undertaking authorised in a non-member State of the European Union and the circumstances provided for in Article 66 (4) of the Securities Market Act.

7. Where an acquisition is made of those covered by the preceding paragraphs without having previously informed the CNMV; having informed the CNMV, but without the period of one month provided for in paragraph 5 of this Article having elapsed, or with the express opposition of the CNMV, the following effects shall be produced:

(a) In any event, and automatically, no political rights may be exercised corresponding to the shares acquired irregularly. If, however, they are to be exercised, the corresponding votes will be null and the agreements will be impugnable in court, as provided for in the Law of Companies Anonymous, being legitimized to the effect the CNMV.

(b) The suspension of activities provided for in Article 51 of this Law may be agreed.

(c) If necessary, the intervention of the company or the replacement of its administrators, as provided for in Article 72 of this Law, shall be agreed.

In addition, the sanctions provided for in Title VI of this Law may be imposed.

8. Any natural or legal person who, directly or indirectly, intends to cease to have a significant participation in a management company, which intends to reduce its participation in such a way that it is reduced below some of the levels referred to in paragraph 3 of this Article, or which, by virtue of the intended disposal, may lose control of the company, must inform the CNMV in advance, indicating the amount of the proposed operation and the time limit laid down for it to

Failure to comply with this duty of information shall be sanctioned as provided for in Title VI of this Act.

9. The managing companies shall inform the CNMV, as soon as they are aware of this, of the acquisitions or disposals of holdings in their capital which exceed one of the levels set out in the preceding paragraphs. Such companies shall not register in their book of shares the transmissions of shares which are subject to the obligation of communication established in accordance with this Article until the non-opposition of the CNMV is justified or, where appropriate, they are credited with the communication to the CNMV and that the deadline set for the opposition has elapsed.

10. Where there are substantiated and substantiated reasons that the influence exercised by persons holding a significant participation in a management company may be detrimental to the correct and prudent management of the management company and to seriously harm its financial position, the CNMV shall adopt some or some of the following measures:

(a) Those provided for in paragraphs (a) and (b) of paragraph 7 of this Article, while the suspension of voting rights may not exceed three years.

b) By way of exception, revocation of the authorization.

In addition, sanctions may be imposed as provided for in Title VI of this Law.

Article 46. Obligations and liability.

1. Management companies shall comply with the obligations laid down in this law and its implementing rules, and in particular the following:

a) Communicate to the CNMV those changes in the conditions of the authorization that may be relevant in relation to the powers and supervisory work of the CNMV.

b) Inform the CNMV of the investments in which they materialize their own resources and on behalf of the funds and companies they administer.

c) To report to the CNMV on a regular basis on the composition of its shareholders or the changes in the composition of the shareholders in the terms to be established. Such information shall necessarily include the information relating to the participation of other financial institutions in their capital, irrespective of the amount. It will be determined in which cases the information provided will be public.

(d) In relation to the funds managed, the assumptions in which, in the light of the quantitative relevance and the stable nature of the fund's participation in the capital of a company, will be established. the management company shall be required to exercise all rights inherent in the securities integrated into the fund for the sole benefit of the members, in particular the right to attend and vote in general meetings.

In any case, the management companies must inform the members of their policy regarding the exercise of the political rights inherent in the securities that integrate the fund's portfolio, justifying the non-exercise of the the right to vote or the sense of the vote.

You must also record that policy in the informational documents to be determined.

2. The management companies shall act for the benefit of the members or shareholders of the institutions whose assets they administer and the commissions they receive from them shall have the limits established in accordance with Article 8 of this law. The management company shall be responsible for the powers of the domain over the assets of the fund, without being the owner of the fund, exercising them in the interests of the members, in accordance with the provisions of this law, in its implementing rules and in the management regulations.

3. The management company shall be obliged to forward to the depositaries all the information required to be regulated. They shall also be required to communicate to the CNMV any anomaly that they detect in the functions of the depositary in respect of the assets they administer.

4. The management company shall be liable to the members or shareholders of all the damages which it will cause to them for failure to comply with its legal obligations. The management company is required to require the depositary to carry out its duties on behalf of the unit-holders.

Article 47. Audit of accounts and other conditions of exercise.

The management companies shall be subject to the audit of accounts in accordance with the provisions of Law 19/1988 of 12 July on auditing of accounts, adjusting the economic year to the calendar year.

It will result from the implementation of the SGIC audit as provided for in Article 92 (c) of the Securities Market Act.

The minimum rates of investment, diversification and indebtedness that they will have to meet at all times will be established.

Article 48. Customer service department and client advocate.

1. Management companies will be obliged to address and resolve complaints and complaints that shareholders of investment companies or unit-holders of investment funds may present, related to their interests and legal rights. recognised. For these purposes, management companies must have a customer service department or service in charge of handling and resolving complaints and complaints. Institutions shall keep an internal record of all complaints received from their clients, in which they shall incorporate a copy of the claim received and the response transferred to the claimant.

Such management companies may, either individually, be grouped by branches of activity, geographical scope, turnover or any other criteria, designate a client defender, which shall be an entity or independent expert of recognised prestige and who will be responsible for dealing with and resolving the types of complaints submitted to their decision in the framework of their operating regulations, as well as promoting compliance with the rules on the transparency and protection of customers and on good practices and financial uses.

2. The decision of the customer advocate in favour of the complaint will link the management company. Such a link shall not be an obstacle to the completeness of judicial protection, recourse to other dispute settlement mechanisms or administrative protection.

Article 49. Causes of revocation.

1. The authorisation granted to an SGIIC may be revoked in the following cases:

a) If you do not make use of the authorization within 12 months of the date of the notification of the authorization.

b) If you expressly waive the authorization, regardless of whether it is transformed into another entity or agrees to its dissolution.

(c) If it interrupts, in fact, the specific activities authorised for a period of more than six months.

d) If for a year it performs a volume of activity that is less than it is regulated.

e) If you are in breach of any of the requirements for obtaining the authorization and to exercise the activity as provided for in this law. However, where the own resources of a management company fall below the limits set, the CNMV may exceptionally and in a reasoned manner grant a period of no more than six months for the correction of the situation or cease the activities of the management company.

f) Where the provisions laid down in this law or in the other rules governing the legal system of the laws of the Member States of the European Union are dealt with in a serious or systematic manner in accordance with Article 45 (10) of that law. managing societies of IICs.

g) As a sanction, as provided for in Title VI of this Act.

h) When any of the causes of forcible dissolution provided for in Article 260 of the Law on Limited Companies are to be found.

i) If authorization was obtained by virtue of false statements, omissions or otherwise irregular means.

j) If the opening of a bankruptcy procedure is agreed.

2. Any authorisation revoked from a Spanish management company carrying out any cross-border action in accordance with Article 54 of this law shall be notified to the competent authorities of the host Member State.

#### Article 50. Revocation procedure.

1. The revocation of the authorisation shall be in accordance with the common procedure laid down in Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure, with the following specialties:

(a) The initiation agreement and the instruction shall be the responsibility of the CNMV, which may take the provisional measures it deems necessary, such as the discharge of the management of the IICs managed to another SGIC.

(b) The resolution of the file shall be the responsibility of the Minister for Economic Affairs on a proposal from the CNMV, or directly to this body in the case provided for in paragraph 1 (b) of the previous Article.

2. However, where the cause of revocation is one of the reasons set out in paragraphs (a), (b) or (c) of the previous Article, it is sufficient to give the interested party a hearing. In the cases provided for in paragraph (g), the specific procedures provided for in this Act shall be followed.

3. The resolution that agrees to the revocation shall be immediately enforceable. Once notified, the management company will not be able to carry out new actions related to its social object. The resolution must be registered in the Commercial Registry and in the registration of the CNMV. It will also be published in the "Official State Gazette", which has since then produced effects vis-à-vis third parties.

4. The Minister of Economy may agree, on a proposal from the CNMV, that the revocation will entail the forced dissolution of the entity. In these cases, the CNMV may, in the interests of the protection of the members and shareholders of the IICs managed, agree on all the precautionary measures deemed relevant and, in particular:

(a) Agree to the transfer to another company of cash management, marketable securities and other financial instruments, assets and managed rights.

b) Name the liquidators.

c) Require any specific guarantee to the partners or to the liquidators appointed by the company.

d) Intervening settlement operations. If, pursuant to this provision, or in others of this law, it is necessary to appoint liquidators or auditors of the settlement operation, the provisions of Chapter III of Title VI of this Law shall apply.

5. When a management company agrees to be dissolved by any of the causes provided for in Article 260 of the Company Law, the authorization shall be deemed to be revoked, with the CNMV being able to agree to the orderly liquidation of any of the measures referred to in paragraph 4 of this Article.

#### Article 51. Suspension.

When any of the assumptions provided for in the following Article are met, the CNMV may suspend, in whole or in part, the effects of the authorisation granted to an SGIIC. In case of partial suspension, it will affect either managed IIC or any of the faculties. In the act of suspension, the precautionary measures which are deemed relevant may be agreed.

#### Article 52. Suspension assumptions.

1. The suspension referred to in the previous Article may be agreed upon when any of the following assumptions are made:

a) Opening a sanctioning case for serious or very serious infringement.

(b) Where any of the causes referred to in paragraphs (e), (f), (g), (g) or (i) of Article 49 (1) of this law are substantiated, as long as the revocation procedure is substantiated.

c) When of the assumption provided for in article 45.7 of this law.

d) As a sanction, as provided for in Title VI of this Act.

2. The suspension will only be agreed upon when, in accordance with one of the causes provided for in the previous paragraph, the measure is necessary to protect the members or shareholders of the IIC managed, or, where appropriate, other clients of the institution. It shall not be agreed, except in the case of a penalty, for a period exceeding one year, which may be extended by another year.

#### Article 53. Substitution.

1. The management company may request its replacement as such, where it considers it appropriate, by writing to the CNMV by the depositary, the former management company and by the new management company, which shall declare itself ready to accept such functions, by taking the appropriate authority.

Exceptionally, the CNMV may authorise such substitution even if it is unilaterally requested by the management company. In no case may the management company seeking to be replaced give up the exercise of its functions until the requirements and formalities for the designation of its replacement have been fulfilled.

2. The insolvency proceedings of the management company do not result in the dissolution of the IIC administered, but it will cease in the management of the fund, or in the management of the assets of investment companies and in the other activities that have been authorised to carry out the procedure for the replacement of the manager in the form and conditions to be regulated. Such substitution may be agreed by the CNMV even if it is not requested by the management company.

3. The provisions of the foregoing paragraphs shall apply in the circumstances provided for in Article 72 of this Law.

#### CHAPTER IV

##### Cross-Border Performance

#### Article 54. Cross-border action of the management companies authorised in Spain.

1. The SGIICs authorised in Spain may exercise the activity referred to in the authorisation in other Member States of the European Union, either through the establishment of a branch, or through the freedom to provide services, in the terms set out in this Article.



2. Any management company authorised in Spain wishing to establish a branch in the territory of another Member State shall notify the CNMV. The notification to the CNMV shall indicate:

(a) The Member State in whose territory the branch is proposed to be established.

(b) The operating program that establishes the activities and services to be proposed and the structure of the branch organization.

(c) The address in the host Member State in which the documents may be required.

d) The name of the managers responsible for the branch.

3. The CNMV shall forward all information provided by the management company to the host Member State within three months of the receipt of all the information, unless it has reason to doubt the project in question. (i) a question of the adequacy of the administrative structures or the financial situation of the management company, having regard to the activities which it intends to pursue. This circumstance shall be notified to the management company within two months of receipt of all the information.

In the event of any modification of the data communicated in accordance with paragraphs (a), (b), (c) and (d) of the previous paragraph, the management company shall notify the CNMV in writing at least one month before making it effective so that the latter can decide on it in accordance with the provisions of this Article.

4. Any management company authorised in Spain wishing to pursue its activity in the territory of another Member State for the first time under the freedom to provide services shall notify the CNMV. The notification should also be made in the event that the management company entrusts third parties with the marketing of shares and shares of IIC in the host Member State. The notification shall indicate:

(a) The Member State in whose territory it is proposed to operate.

(b) The operational programme setting out the activities and services it intends to carry out, as well as the identification of the third parties entrusted with the placing on the market of shares and units of IIC.

The CNMV shall forward all information provided by the management company to the host Member State within one month of receipt of all the information. In the event of a change in the content of the information referred to in paragraph (b) above, the management company shall communicate that amendment to the CNMV in writing before it is effective.

5. In the event that any measure provided for in Title VI of this Law has been adopted, it is intended to prevent or punish the commission of acts contrary to the laws or regulations of a management company. authorised in Spain, the competent authorities of the host Member State must be informed in order to facilitate the exercise of their supervisory powers.

The exercise of this obligation will be determined, as well as the referral of any other information necessary to the latter authorities and the carrying out of on-the-spot checks in the exercise of the the task of collaboration provided for in Community legislation.

6. Spanish management companies seeking to open a branch or to provide services without a branch in a Member State other than the European Union must obtain a prior authorisation from the CNMV, which is determined by the requirements and the procedure applicable to this assumption.

Article 55. Managing companies authorised in another Member State of the European Union.

1. The management companies authorised in another Member State of the European Union under Directive 85 /611/EEC may carry out in Spain either by opening a branch or by way of freedom to provide services, the activity to which the it relates to its authorisation in the terms set out in this Article.

2. In no case shall the establishment of branches or the freedom to provide services be conditional upon the obligation to obtain an additional authorisation, or to provide a fund of endowment or any measure having equivalent effect.

3. The opening in Spain of branches of management companies authorised in other Member States of the European Union shall not require prior authorisation.

However, the same shall be conditional on the CNMV receiving a communication from the competent authority of the home Member State of the management company, containing the information referred to in paragraphs (a), (b), (c) and (d) of the Article 54 (2) of this law.

Once the communication has been received, the CNMV will notify its reception to the management company, who must register the branch in the Mercantile Registry and in the corresponding register of the CNMV, communicating to this date the effective start of their activities.

The CNMV may fix a period, not exceeding two months from the receipt of the communication, for the commencement of the branch's activities. You may also indicate to you the conditions under which, for reasons of general interest, you must carry out your activity in Spain, including those relating to the placing on the market in Spain of shares and units of IIC subject to the Directive 85 /611/EEC and the rules of conduct to be observed in the case of the provision of the individual portfolio management service and the investment advisory and advisory services.

4. In the event of a change in any of the data communicated in accordance with the provisions of paragraphs (a), (b), (c) and (d) of Article 54 (2), the management company shall notify the CNMV in writing in writing at least within the time limit. of one month before making such an amendment effective.

5. The implementation in Spain, for the first time, of activities under the freedom to provide services, by management companies authorised in another Member State of the European Union, may be initiated once the CNMV has received a communication from the competent authority of the home Member State of the management company, as referred to in Article 54 (4) of this law.

The CNMV will inform the management company of the conditions to which, for reasons of general interest, the management company in Spain must comply, including the rules of conduct to be observed in the event of the provision of the service individual portfolio management and the custody and financial advisory services.

The procedure described in this paragraph will also be followed in the event that the management company entrusts to third parties the marketing in Spain of shares and units of IIC. In any event, such marketing shall comply with the requirements laid down in Article 15 of this Act.

In the event of a change in the content of the information referred to in paragraph (b) of Article 54 (4), the management company shall communicate such modification to the CNMV in writing before it is effective.

6. The CNMV may require management companies to have branches in Spanish territory for statistical purposes for statistical purposes on the activities they carry out in that territory, as well as any other necessary information for the fulfilment of its supervisory obligations under

this law. Furthermore, it may require management companies to act on the basis of the freedom to provide services in Spain under the freedom to provide services with the information necessary to monitor compliance with the rules applicable to them under this Regulation. law and its implementing rules.

7. Management companies authorised in another Member State of the European Union which intend to carry out in Spain the activities covered by their authorisation under the freedom to provide services shall be obliged to designate a representative with tax residence in Spain to represent them for the purposes of the tax obligations to be fulfilled by the activities they carry out on Spanish territory.

Article 56. Non-Community management companies.

1. For non-Community management companies intending to open a branch in Spain and to Community companies not subject to Directive 85 /611/EEC, the procedure for prior authorisation provided for in Chapter II of this Title shall apply to them. the adaptations to be established regulatively.

If you intend to provide services without a branch, you must be authorized in the form and conditions to be set. In both cases the authorization may be refused, or conditional, for prudential reasons, for not giving an equivalent treatment to the Spanish entities in their country of origin, or for not being assured the compliance with the regulations established in this law and its regulatory development, to which they must be adjusted in its operation.

2. It shall also be subject to the prior authorisation of the CNMV, the creation by a Spanish management company or a group of Spanish management companies of a foreign management company, or the acquisition of a stake in a management company where the foreign management company is to be incorporated or is domiciled in a State which is not a member of the European Union. The information to be included in the application will be determined.

TITLE V

Depository

Article 57. Concept.

For the purposes of this law, the depositaries are the entities entrusted with the deposit or custody of the securities, cash and, in general, the assets that are the subject of the IIC

investments, as well as the supervision of the Management of the SGIC and, where appropriate, of the IIC administrators in a corporate manner and the other functions assigned to them by this law.

#### Article 58. Designation and incompatibilities.

1. Banks, savings banks, including the Spanish Confederation of Savings Banks, credit unions, companies and securities agencies may be deposited. They shall all have the status of a participating entity in the clearing, settlement and registration systems in the markets in which they are to operate, either as such or through another participating entity. In the latter case, the participating entity shall have the third-party account broken down.

The depositary must have its registered office or, where appropriate, a branch in Spain.

When the depositary has a credit rating granted by a rating agency recognised by the CNMV, it shall be recorded in the semi-annual and quarterly reports.

2. Each institution shall have one depositary.

No entity may be simultaneously managing and depositary of the same institution, except in the case of regulatory assumptions where this possibility is permitted.

#### Article 59. Authorization.

1. The IIC depositaries will acquire the character of such by the authorization of the CNMV and registration in the corresponding administrative register of the same. The decision on such authorisation shall be notified no later than 15 days after the date of entry of the application into the registration of the CNMV, or at the time of completion of the documentation required to prove the compliance with the requirements required in accordance with this law and provisions for development, and in any event within the month following its receipt.

2. Where the application is not settled within the period referred to above, it may be deemed to be estimated with the effects laid down in Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Administrative Procedure. Common.

3. The CNMV may refuse authorisation to be a depositary only if the entity does not comply with the regulatory requirements required of the depositaries or does not have the appropriate means to perform the functions set out in the article. next.

#### Article 60. Obligations.

IIC depositories must meet the following obligations:

(a) Compose the rules governing the management of investment funds and grant the document of incorporation, as well as those of modification or liquidation. These tasks must be developed jointly with the management company.

(b) The supervisory function of the management carried out by the management companies of the investment funds or by the directors of the investment companies shall be assumed by the unit-holders or shareholders. To this end, they shall verify in particular that the limits to the investments and coefficients provided for in this law are respected.

(c) To issue in union with the management company the certificates of the units in the investment funds that are represented through those securities.

They may also request the entities in charge of the accounting records, on behalf and on behalf of the unit-holders, to issue the certificates referred to in Article 12 of the Securities Market Act, when This is the case for participations represented by notes.

(d) Vellar for the regularity of the subscription subscriptions, the net of which shall be credited to the account of the funds.

(e) To satisfy, on behalf of the funds, the repayments of shares, the net amount of which shall be debited from the account of the fund. To this end, it is appropriate to monitor the criteria, formulas and procedures used by the management company for the calculation of the liquidative value of the units.

f) Vellar for the dividend payments of the shares and the profits of the shares in circulation, as well as to complete the reinvestment orders received.

g) Comply with, where applicable, the institutions, the purchase and sale of securities, as well as the interest and dividends accrued on them.

(h) Velar for the respect of legality in the performance of the management company when it acts as an investment fund marketer.

i) To exercise the functions of deposit or administration of values belonging to IICs, taking responsibility in cases where they do not develop directly the same. The obligations inherent in this custody function and the requirements to be met by the entities that hold the foreign securities deposit of the IICs shall be regulated.

j) Perform any other functions that serve for the best execution or as a complement to the custody and surveillance functions.

#### Article 61. Substitution.

1. The depositary may request its replacement, where appropriate, by writing to the CNMV by the management company, the former depositary and by the new depositary, which shall declare itself willing to assume such functions, authorisation. Exceptionally, the CNMV may authorise such substitution even if it is requested unilaterally by the depositary or, where appropriate, by the management company. In no case shall the depositary waive the performance of his duties until the requirements and formalities for the appointment of a replacement have been fulfilled.

2. The insolvency proceedings of the depositary do not entitle the institution whose assets are held to be wound up, although, in such cases, the depositary shall cease its duties and the formalities for its replacement shall be initiated.

#### Article 62. Responsibility.

1. The depositaries will always act independently and in the interests of the investors in IIC, and must fulfill all their obligations with the diligence of an ordered businessman and a loyal representative.

Depositors may ask the management company for all the information they need for the exercise of their duties.

The depositary is obliged to communicate to the CNMV any anomaly it detects in the management of the institutions whose assets they hold in custody.

2. The depositaries shall be liable to the members or shareholders of all the damages that will cause them for non-compliance with their legal obligations. The depositary is obliged to require the management company to carry out its duties on behalf of the members.

Depositors will be responsible for the custody of the institutions ' assets, even if they have entrusted to a third party custody of part or all of the assets.

#### Article 63. Suspension.

The CNMV may, in its case, subject to a report by the Banco de España, suspend, in whole or in part, the effects of the authorization granted to a depositary of IIC. Where the suspension is partial, it shall affect any of the IICs in respect of which the function of deposit is exercised, or any of the functions provided for in this law for the depositaries. In the act of suspension, the prudential measures deemed relevant may be adopted, and in particular the transfer of the assets and funds of the IICs from which the depositary to a third entity is authorised may be agreed. effect.

#### Article 64. Suspension assumptions.

1. The suspension referred to in the previous Article may be agreed upon when any of the following assumptions are made:

a) Opening a sanctioning case for serious or very serious misconduct.

(b) Where the conditions laid down in the authorization or other obligations provided for in this law are not met.

c) In the entity's alleged insolvency or intervention procedure.

d) As a sanction, as provided for in Title VI of this Act.

2. The suspension may not be agreed, except in the case of a penalty, for a period exceeding one year, which may be extended by another year.



## TITLE VI

### Rules of conduct, supervision, intervention and sanction

#### CHAPTER I

##### Rules of Conduct

###### Article 65. Applicable rules.

The SGIIC, the depository entities and those IICs that are in the form of a society and whose integral management is not entrusted to an SGIIC, as well as those who carry out management and management positions in all of them, their employees, agents and proxies, will be subject to the following rules of conduct:

(a) those provided for in this Chapter and those contained in Title VII of the Securities Market Act, with the adaptations and specifications which, where appropriate, are to be established in a regulated manner, including the sanctioning regime for the failure to comply with those rules laid down in Title VIII of the same law, b) those laid down in the provisions referred to in paragraph (a) above, approved by the Government or, with the express rating of the Government, the Minister for Economic Affairs, Proposal of the CNMV, c) those contained in the internal regulations of conduct.

###### Article 66. Operations on a market-based basis.

IICs shall carry out their transactions on goods, rights, securities or instruments at market prices and on market conditions, unless the transactions are carried out under more favourable conditions for the IIC.

###### Article 67. Related operations.

1. Related transactions are considered to be carried out by the persons listed below in relation to the transactions referred to in paragraph 2:

(a) by investment companies with depositaries and, where appropriate, their management companies, (b) by investment companies with whom they carry out management and

management positions in these companies or with whom they carry out administration and management in its institution and, where appropriate, its manager, (c) by the SGIIC and the depositaries to each other when they affect an IIC in respect of which they act as manager and depositary respectively, and those between them management companies and those carrying out management and management positions, d) by the SGIICs, when they affect an IIC in respect of which it acts as a manager; by the depositary when they affect an IIC in respect of which it acts as a depositary and by investment companies, with any other entity belonging to its same group as defines in Article 4 of the Securities Market Act.

2. The following shall be related operations:

(a) The collection of remuneration for the provision of services to an IIC, except those provided by the management company to the institution itself and those determined to be regulated.

b) Obtaining for a financing IIC or deposit constitution.

(c) The acquisition by an IIC of securities or instruments issued or endorsed by one of the persons defined in the previous paragraph or in whose issuance any such person acts as a colocator, insurer, director or advisor.

(d) Other to be established regulatively.

When the operations provided for in this paragraph are carried out by persons or entities, they shall also have the consideration of related transactions. For this purpose, the operation is understood to be performed by person or entity in question when it is executed by a person united by a link of direct or collateral in line, consanguine or affinity, up to and including the fourth grade. (a) a trustee or a trustee or any entity in which the management and management positions have, directly or indirectly, a percentage equal to or greater than 25% of the capital or carry out administration or administrative functions; address.

3. In order to enable a management company to carry out the related operations provided for in this Article, the following requirements shall be met:

(a) The management company must have a formal internal procedure, set out in its internal rules of conduct, to ensure that the related transaction is carried out in the exclusive interest of the IIC and at prices or in conditions equal to or better than market conditions. Confirmation that these requirements are met must be adopted by an independent commission set up within the management board of the management board or, alternatively, by an internal body of the manager entrusted to the management board. function.

The procedure may provide for simplified approval systems for repetitive or minor linked operations.

(b) The management company shall report in the prospectus and on the periodic information that the IICs publish, on the procedures adopted to avoid conflicts of interest and on the related transactions carried out in the form and in the detail that the Securities Market Act and its development regulations determine.

(c) The commission or internal body referred to in subparagraph (a) above shall inform the management board, at least once a quarter, of the related transactions carried out.

4. Regulations shall determine the requirements for the related operations to be carried out between the SGIIICs and those carrying out administration and management positions.

5. The above requirements shall be payable to investment companies where they have not delegated the management of their assets to another entity that complies with them.

The requirements set out in paragraphs (a) and (c) of paragraph 3 shall not be required where the general meeting of shareholders expressly authorizes and prior to its completion, operations linked to those provided for in paragraph 3. this article.

Article 68. Separation from the depositary.

1. No institution may be a depositary of IICs managed by a company belonging to its own group, or investment companies in which it is the same, unless the IIC or, where appropriate, the management company has a specific procedure, as set out in its rules of procedure, to prevent conflicts of interest.

2. The verification of compliance with the requirements laid down in the preceding paragraph shall be carried out by an independent commission set up within the administrative board or an internal body of the management company or of the management company. the investment company.

For these purposes, the body to which this function is entrusted shall, with the periodicity to be determined by regulation, draw up a report on the degree of compliance with the requirements laid down in this Article. Refer to the CNMV. In the event that the report reflects the right to

meet these requirements, the depositary should be replaced by another one not belonging to the same group in the terms provided for in Article 61.

## CHAPTER II

### Monitoring and Inspection

#### Article 69. Subjects.

Are subject to the supervision and inspection regime of this law:

(a) The IICs provided for in Article 2 (1) of this Act.

(b) The Spanish SGIIICs provided for in Title IV of this Law.

c) IIC depositories.

(d) Those who perform their own operations of any of the above subjects and, in general, the other natural and legal persons as soon as they may be affected by the rules of this law and their regulatory provisions, in particular for the purposes of verifying whether they infringe the stocks of activity and denomination referred to in Article 14.

#### Article 70. Competencies.

1. It is for the CNMV to inspect the natural persons and entities provided for in Article 69 and to monitor compliance with their obligations, as soon as it is not expressly attributed to other bodies.

2. For the exercise of the functions provided for in this Title, the CNMV may obtain from the said natural persons and entities any information it deems necessary on the matters of interest related to the matters covered by this law. In order to obtain such information or to confirm its veracity, the CNMV may perform as many inspections as it deems necessary.

3. The inspected subjects are required to make available to the CNMV how many books, records and documents they consider accurate whatever the format they are in.

4. The inspection provided for in this Article may cover the legal, technical and economic-financial situation, as well as the conditions under which they operate, either in general or in relation to specific questions.

5. The provisions contained in Article 90 of the Law on the Stock Market, with the necessary adaptations concerning the IICs subject to the scope of this law, will apply to the functions of supervision of the CNMV collected in this Law. legal text.

#### Article 71. Supervision of entities from other Member States.

1. The CNMV may require the entities referred to in Article 55 to act under the freedom to provide services, and to its branches, the information necessary to verify compliance with the applicable rules. It may also require information for purely statistical purposes.

2. If the CNMV observes that the entities listed in the previous paragraph do not comply with the information obligations provided therein, or other obligations set out in this law or its implementing rules, they shall require the management company to put in place end to the irregular situation.

If the management company does not take the appropriate measures, the CNMV shall inform the competent authority of the State of origin. If the management company continues to carry out the infringing conduct in spite of the measures taken by the competent authority of the State of origin, the CNMV may, after informing the competent authority, take the appropriate measures to the provisions of this Title to prevent further infringements, including the exercise of sanctioning powers.

Exceptionally, prior to the adoption of the measures provided for in this paragraph, the CNMV may adopt the preventive measures it deems necessary to protect the interests of investors.

The measures taken shall be communicated to the European Commission and the competent authorities of the State of origin as soon as possible.

3. If the CNMV finds that the entities referred to in Article 55 violate the conditions of agreement with which, for the general interest, the activity provided for in Article 1 of this law must be exercised in the Spanish territory, it may adopt, in accordance with the provisions of this Title, the measures necessary to prevent or punish the commission of offences which have been established. Those measures shall be communicated to the European Commission and the Member States concerned.

4. If, pursuant to the above paragraphs, the prohibition of action in Spain is imposed on the management company, such a sanction shall be communicated to the competent authority of the State of origin.

## CHAPTER III

### Intervention and replacement

#### Article 72. Causes of intervention or substitution.

1. Where IICs or SGIICs are in a situation of exceptional seriousness which seriously jeopardises their wealth balance or the assets of their clients, or which affects the stability of the financial system or the general interest, it may be agreed by the CNMV, giving a reasoned account to the Minister of Economy, the intervention of the management company or the investment company, the temporary replacement of its administrative or management bodies, or the replacement of the management company in the terms of Article 53. These measures shall be maintained on a transitional basis until the above situation is exceeded.

2. The provisions of paragraph 1 of this Article shall also apply in those cases where, where there are reasonable indications that the situation of exceptional gravity is present, the true patrimonial situation of the SGIIC, the investment fund or the investment company or its client is not able to be deducted from its accounts and other records.

3. The intervention or replacement measures referred to in this Article may be taken during the processing of a criminal case or irrespective of the exercise of the power of sanction, provided that any of the situations arise provided for in the preceding paragraphs.

4. The decisions of the CNMV which terminate the procedure by agreeing to the intervention or the replacement in the cases provided for in paragraph 1 of this Article may be appealed to the Minister for Economic Affairs.

#### Article 73. Request and adoption of agreement on intervention or substitution.

1. The intervention or replacement agreement may be adopted at the request of the institution itself.

They may make the request, the managers of the management company or investment company, the depositary and, where appropriate, a minority of shareholders which is at least equal to the one required by the respective legislation to urge the call for an extraordinary general meeting.

2. The intervention or replacement arrangements shall be adopted after hearing the management company or investment company concerned, within the period allowed for that purpose, which may not be less than five days. However, such a hearing shall not be necessary in the event that it has preceded the request of the institution itself or where the delay that such a procedure causes seriously compromises the effectiveness of the measure or the economic interests concerned.

3. The agreement shall designate the person (s) to exercise the functions of intervention or to act as interim administrators, and shall indicate whether such persons should act together, jointly or severally.

This agreement, of an immediately executive nature, will be published in the "Official Gazette of the State" and will be entered in the Commercial Register. Both the publication and the above mentioned registration will determine the effectiveness of the publication against third parties.

4. Where this is necessary for the implementation of the intervention or replacement agreement of the administrators, direct compulsion may be made for the taking of the offices, books and documents concerned or for the examination of the latter.

Article 74. Effects of the intervention.

1. In the case of intervention, the acts and agreements of any organ or any person or group of persons with any kind of decision-making, executive, representative or control power of the management company or of the investment company which is adopted from the date of publication of the agreement in the "Official State Gazette", they shall not be valid and shall not be carried out without the express approval of the designated financial controllers. The exercise of actions or resources for such entities in relation to the intervention measure or the action of the financial controller is exempted from this approval.

2. The appointed financial controller shall have the power to revoke any powers or delegations conferred by the entity's administrative body or by its proxies or delegates prior to the date of publication of the agreement. Such a measure shall be taken by the financial controller to require the return of the documents in which the authorities are responsible, as well as to promote the registration of their revocation in the competent public registers.

## Article 75. Effects of substitution.

1. In the case of replacement of the administrative body, the appointed interim administrators shall have the character of the financial controller in respect of the acts or agreements of the general meeting of the institution being applied to them as soon as it has Paragraph 1 of the previous Article.

2. The obligation to draw up the annual accounts of the institution and the institution's approval and social management accounts shall be suspended, for a period not exceeding one year, from the expiry of the period legally laid down for that purpose, if the new the management body or the financial controller reasonably estimate that there is no reliable and complete data or documents for this purpose.

3. Agreed by the CNMV to cease the replacement measure, the provisional administrators will immediately convene the general meeting of the entity, in which the management company will be replaced or the new management body will be appointed. Until the new administrators are sworn in, provisional administrators will continue to perform their duties.

## Article 76. Public intervention in the dissolution of an investment company, a management company or a depository entity.

1. The arrangements provided for in Article 76a of the Securities Market Act shall apply to the situations of investment companies and of the SGIICs.

2. Under the insolvency procedure of a securities depository entity of any IIC, the CNMV may provide, immediately and at no cost to the institution, the transfer to another entity, enabled to develop this activity, of the securities deposited and securities incorporated, in securities or in cash, on behalf of IICs, even if such assets are deposited in third entities in the name of the depository of the IIC or of the entity to whom the IIC is deposit. For these purposes, both the competent court and the court of insolvency shall provide the entity with which the securities are to be transferred to the accounting and accounting records and records necessary to make the transfer. The existence of the insolvency proceedings shall not prevent the establishment of the cash from the exercise of its economic rights or its sale to the institution holding the securities.

## CHAPTER IV

### Sanctioning Regime



## Section 1. General Provisions

### Article 77. Responsibility.

The IICs, the entities or persons provided for in the first paragraph of Article 69, as well as those who have administrative or management positions in them and their proxies, who violate this law and its development regulations, they shall be liable to be punishable under the provisions of this Title, without prejudice to the criminal liability that is the case where appropriate.

### Article 78. Exercise of sanctioning power.

1. The exercise of the sanctioning power referred to in this Title shall be independent of the possible concurrency of criminal offences or offences. However, where criminal proceedings are being carried out for the same facts or for others whose separation of the penalties under this law is rationally impossible, the procedure shall be suspended in respect of the same until it is a firm statement of the judicial authority. The file shall be resumed, if appropriate, the decision to be taken shall respect the assessment of the facts contained in that statement.

2. Where the commission of an infringement provided for in this law necessarily derives the commission of another or other infractions contemplated in the Law of the Market of Securities, or when the facts are qualified as an infringement according to the provisions of the penalties for both laws must be imposed only on the penalty for the most serious infringement committed. In the event that the infringements are of the same severity, the penalties provided for in this law shall be imposed.

## Section 2. Infractions

### Article 79. Classification of the infringements.

The infractions are classified according to their respective transcendence in three categories: mild, severe and very serious.

### Article 80. Very serious infringements.

Constitute very serious infringements of the natural and legal persons referred to in Article 69 of this Act the following acts or omissions:

a) The omission or falsehood in the accounting and in the information to be provided or published in accordance with this law, unless it has a purely occasional or isolated character.

(b) Investment in any assets other than those legally authorised or permitted by the IIC prospectus, statutes or regulations.

c) Non-compliance with the obligation to audit accounts.

d) The performance of securities and securities lending operations, as well as the pignoration of assets, with infringement of the securities to be determined in the rules for the development of this law or in the prospectus, the statutes or the IIC regulation.

(e) Failure to comply with the limits on investment or minimum investment ratios, or the conditions set out in the IIC prospectus, statutes or regulations, provided that the object of the IIC is distorted or seriously prejudice the interests of shareholders, members and third parties, and is not of a transitional nature.

(f) The purchase and sale of the shares in the variable capital companies and the issuance and redemption of shares with non-compliance with the limits and conditions imposed by this law, its complementary provisions and the statutes and regulations governing the management of the institutions.

g) The use of the denominations or acronyms reserved by this law to IICs and their management companies by entities or persons not registered in the corresponding records, and the performance by these reserved activities to such institutions or entities, without prejudice to both cases of the responsibilities of another order in which they may have incurred.

h) The resistance or refusal to the inspection set out in Article 70.

i) The conduct of investment transactions with non-compliance with the principles set out in Article 23 and consistent rules or in contravention of the conditions set out in the prospectus, the statutes or the rules of procedure the IIC.

(j) The performance without authorisation of the operations referred to in Articles 25, 26, 27 and 28, or with non-compliance with the requirements laid down.

(k) Failure to comply with the time limits for investments to be determined in accordance with the provisions of Article 36 (3) of this Law or in the prospectus, statutes or rules of the IIC.

(l) Non-compliance by management companies acting within the framework of this law, of the property valuation obligations that are established in accordance with the provisions of Article 36 of this Law.

m) The marketing of IIC shares or units without the corresponding authorization.

n) Non-compliance by the management companies with the functions and obligations referred to in Article 46, provided that they entail serious injury to the investors or shareholders of an IIC.

or) The default by the depositaries of the duties and obligations referred to in Articles 60 and 62 of this Act, provided that they entail serious injury to the investors or shareholders of an IIC.

p) The presentation by investment companies or management companies of deficiencies in the administrative and accounting organisation or internal control procedures, including those relating to the management of the risks when such deficiencies endanger the solvency or viability of the institution.

q) The maintenance by the SGIIC or the investment companies for a period of six months of own resources lower than those required to obtain the required authorisation.

r) The absence of a customer service department within the terms of Article 48.

s) The performance of transactions linked to non-compliance with the requirements set out in Article 67 (3), (4) and (5), where they are due.

t) Failure to comply with the rules of separation of the depositary and the management company of the IIC, as set out in Article 68.

u) The commission of serious infringements when during the five years prior to its commission it would have been imposed on the offender to be firm for the same type of infringement.

v) The performance of actions or operations prohibited by rules with the regulatory law of the IIC regime or with non-compliance with the requirements laid down therein, unless it is of a purely occasional nature or isolate.

#### Article 81. Serious infringements.

These are serious violations:

(a) Failure to comply with the reporting obligations under this law.

b) The lack of publicity of the information to the partners, members and public that must be surrendered under this law.

(c) The keeping of the accounts according to criteria other than those legally established when this distorts the patrimonial image of the entity or the IIC concerned, as well as the non-compliance with the rules on statement of accounts or on the manner in which the official books and records are to be carried, where serious harm to third parties is involved.

(d) Non-compliance with the limits on investment or minimum investment ratios, where it is not to be qualified as a very serious infringement.

(e) excess investment over the limits to be established in accordance with Article 30 and on those which are established under Articles 35 and 36, where the infringement is not to be qualified as mild.

(f) The excess in the limitations of obligations vis-à-vis third parties to be regulated or in the prospectus, the statutes or the IIC regulation.

g) The collection of the commissions provided for in Article 8, with non-compliance with the limits and conditions imposed in this law, in its implementing regulation and in the statutes or regulations of the institutions.

(h) Non-compliance by the management companies with the functions and obligations referred to in Article 46, where it is not to be qualified as a very serious fault.

(i) Failure by the depositary of the functions and obligations referred to in Articles 60 and 62 of this Law, where it is not to be qualified as a very serious fault.

j) The cessation or decrease of significant participation in breach of the provisions of Article 45.8.

(k) Failure to comply with the third subparagraph of Article 11 (2) (c) of this Law.

l) The commission of minor infractions when during the two years prior to its commission it would have been imposed on the infringer sanction firm for the same type of infraction.

m) the performance of actions or operations prohibited by regulatory regulatory standards of the IIC regime or with non-compliance with the requirements laid down therein, unless it is of a purely occasional nature or isolate.

n) The presentation by investment companies or the SGIIC of deficiencies in the administrative and accounting organisation or internal control procedures, including those relating to risk management, a the time allowed for the effect of the remedy has elapsed for the competent authorities and provided that this does not constitute a very serious infringement.

Article 82. Minor infractions.

These are minor violations:

(a) The referral, outside of the prescribed time limits, of the information that the institutions and their managers have to render in accordance with the provisions of this law.

(b) The delay in the publication of information which, in accordance with the provisions of this law, is to be disseminated among the partners, members and the general public.

(c) The keeping of the accounts according to criteria other than those legally established, as well as the non-compliance with the rules on the formulation of accounts or the way in which the books and records are to be taken officers, when it should not be qualified as a serious infringement.

(d) excess investment over the limits to be laid down in accordance with Article 30 and on those laid down pursuant to Articles 35 and 36, provided that the excess is of a nature and do not exceed 20 percent of the legal limits.

When referring to the coefficients set out in Articles 35 and 36, an excess is understood to be transient when the following three circumstances are present:

1. That the excess is not prolonged for more than five working days in a period of reporting from which the regulatory development is established.
2. The excess does not occur more than once in the same period.
3. Let this situation not be repeated in more than two periods in an exercise.

When referring to the coefficients to be established pursuant to Article 30, an excess shall be deemed to be transitory if it does not extend for more than six months in a period of one year.

Article 83. Limitation of the infringements.

1. Very serious and serious infractions will be prescribed at five years of age and mild to two years.
2. The limitation period for infringements shall begin to be counted from the day on which the infringement was committed. In the case of infringements resulting from continued activity, the initial date of the calculation shall be the date of completion of the activity or of the last act with which the infringement is consumed.
3. The limitation period shall be interrupted by the initiation, with the knowledge of the person concerned, of the sanctioning procedure, the limitation period being resumed if the sanctioning file remained paralyzed for three months for reasons not attributable to those against whom you are addressing.

Section 3. Sanctions

Article 84. Penalties.

The infringements referred to in the foregoing Articles shall give rise to the imposition of the penalties provided for in this Section.

Article 85. Penalties for the commission of very serious infringements.

1. For the commission of very serious infringements the offending entity shall be imposed one or more of the following penalties:

(a) Multa for an amount not less than or greater than five times the gross profit obtained as a result of the acts or omissions in which the infringement consists. In those cases where the benefit derived from the offence committed is not quantifiable, a fine of up to EUR 300,000.

b) Temporary exclusion of special registers, not less than two years, and no more than five years.

c) Revocation of the authorization with the definitive exclusion of the special registers. In the case of foreign IICs or community management companies, the penalty of revocation, where applicable, shall be replaced by the prohibition on operating or being marketed in Spain.

(d) Suspension or limitation of the type or volume of the operations that the infringer may perform for a period not exceeding five years.

e) Public assembly with publication in the "Official State Gazette".

f) Forcible replacement of IIC depositary.

2. In addition to the sanction that falls to the institution for the commission of very serious infringements, one of the following sanctions may be imposed on those who are responsible for the infringement with the administration or management of the institution. Article 89:

a) Multa each one of them for an amount not exceeding 300,000 euros.

(b) Suspension in the exercise of the term of office not exceeding three years.

c) Separation of the charge with disablement to exercise management or management positions in the same entity for a maximum period of five years.

d) Separation of the charge with disablement to exercise management or management positions in any other financial institution of the same nature for no longer than 10 years.

3. In the case of the imposition of the penalties provided for in paragraphs (b), (c) or (d) of the preceding paragraph, the penalty provided for in subparagraph (a) may be imposed at the same time.

Article 86. Penalties for the commission of serious infringements.

1. For the commission of serious infringements, one or more of the following penalties shall be imposed on the offending entity:

a) Public assembly with publication in the "Official State Gazette".

(b) Fine for the amount of the gross profit so far obtained as a result of the acts or omissions in which the infringement consists. In those cases where the benefit derived from the offence committed is not quantifiable, a fine of up to EUR 150 000.

c) Suspension or limitation of the type or volume of the operations or activities that the infringer may perform for a period not exceeding one year.

d) Temporary exclusion of special registers, not less than one year and no more than three years.

2. Commission of the offence referred to in paragraph (k) of Article 81.

3. In addition to the sanction that corresponds to the entity, the commission of serious infractions may impose one of the following sanctions against those who are responsible for administration or management of the same according to the Article 89:

a) Public assembly with publication in the "Official State Gazette".

b) The private assembly.



c) Multa each one of them for an amount not exceeding 150,000 euros.

d) Suspension of all managerial positions in the entity for a term of not more than one year.

4. By way of derogation from the preceding paragraph, the penalty provided for in paragraph (c) may be imposed at the same time in the case of the imposition of the penalty provided for in paragraph (d).

Article 87. Penalties for the commission of minor infractions.

For the commission of minor infractions the entity will be imposed one of the following sanctions:

a) The private assembly.

b) Multa for up to 60,000 euros.

Article 88. Criteria for the determination of penalties.

The penalties applicable in each case for the commission of very serious, serious or minor infractions will be determined according to the following criteria:

a) The nature and entity of the violation.

b) The severity of the hazard or the damage caused.

(c) The gains obtained, if any, as a result of the acts or omissions constituting the infringement.

d) The importance of the corresponding IIC, measured according to the total amount of equity or capital.

e) The unfavorable consequences of the facts for the financial system or the national economy.

f) The circumstance of having proceeded to the sub-healing of the infringement on its own initiative.

g) In the event of non-compliance with the requirements of Title II, the objective difficulties that may have been encountered in order to achieve or maintain the legally required levels.

h) The entity's previous conduct in relation to the rules of management and discipline affecting it, taking into account the firm sanctions that would have been imposed on it, for the last five years.

i) The reiteration in the commission of the violation.

#### Article 89. Responsibility of the administrative and management bodies.

1. The person who exercises administration or management positions in the entity shall be liable for very serious or serious infringements when they are attributable to his or her intentional or negligent conduct.

2. Notwithstanding the above, they shall be held responsible for the very serious or serious infringements committed by the IICs, the SGICs or the depositaries, who have been charged with administration or management, except in the case of Following cases:

(a) Where those who are part of the collective management bodies have not been assisted by reason of the corresponding meetings or have voted against or have saved their vote in respect of decisions or agreements which would have resulted in the infringements.

(b) Where such offences are solely attributable to executive committees, delegated members, directors-general or similar bodies, or other persons with functions in the institution.

#### Article 90. Prescription of penalties.

1. Penalties imposed for very serious misconduct will be imposed at three years, those imposed for serious misconduct at two years and those imposed for minor faults a year.

2. The limitation period shall begin to be counted from the time when the decision imposing the sanction is final.

Interrupt the prescription of the initiation, with knowledge of the person concerned, of the execution procedure, returning to elapse the period if the person is paralyzed for more than one month for reasons not imputable to the infringer.

#### Article 91. Replacement of organs.

1. The body imposing the sanction may provide for the appointment, on a provisional basis, of the members who are required to enable the governing body to adopt agreements, and shall indicate the functions of those members, in the event that, the number and class of persons affected by the sanctions for suspension or separation, this is strictly necessary to ensure continuity in the administration and management of the institution. Such persons shall be charged until the competent body immediately provides the relevant appointments and takes possession of the appointments, or, where appropriate, until the period of suspension has elapsed.

2. In the case of a credit institution, the powers laid down in the preceding paragraph shall be exercised by the Bank of Spain.

#### Section 4. th Competences in the Matter

#### Article 92. Competent bodies.

The competence for the instruction of the files referred to in this section and for the imposition of the corresponding penalties shall be governed by the following rules:

a) It shall be competent for the opening and instruction of the CNMV files.

(b) The imposition of penalties for serious and minor infringements shall be the responsibility of the CNMV.

(c) The imposition of penalties for very serious infringements shall be the responsibility of the Minister for Economic Affairs on a proposal from the CNMV, subject to the report of its Advisory Committee, except for the imposition of a sanction for the revocation of authorisation shall be the responsibility of the Council of Ministers

(d) When the infringing entity is a credit institution, the prior report of the Banco de España shall be required for the imposition of the corresponding penalty.

## Section 5. First Procedure Rules

### Article 93. Procedure.

In the matter of the sanctioning procedure, Law 30/1992, of 26 November, of the Legal Regime of Public Administrations and of the Common Administrative Procedure, and its regulatory development, with the Articles 20 to 24, 26 and 27 of Law 26/1988, of 29 July, of Discipline and Intervention of Credit Entities.

### Article 94. Enforceability.

1. Resolutions imposing sanctions under this law will be enforceable when they put an end to the administrative route. They shall, where appropriate, take the necessary precautionary measures to ensure that they are effective as long as they are not enforceable. The decisions of the CNMV that end the procedure will be used before the Minister of Economy in accordance with Law 30/1992, of November 26, of the Legal Regime of Public Administrations and of the Administrative Procedure. Common.

2. The penalties imposed in the last five years by the commission of serious and very serious infractions will be recorded in the corresponding administrative register in charge of the CNMV, to which the public will have free access. The penalties for suspension, separation and separation with disablement, once they are enforceable, shall be recorded, where appropriate, in the Trade Register.

3. Penalties for very serious and serious infringements shall be published in the "Official State Gazette" when they are firm on the administrative basis.

4. The Minister of Economy, after reporting by the CNMV, may write, in whole or in part, or defer the payment of the fines imposed on legal persons when they have become controlled by other shareholders after the infringement, they are engaged in a bankruptcy procedure or other exceptional circumstances arise that render the enforcement of the penalty in their own terms against equity or prejudice the general interest. The foregoing shall in no case be subject to the penalties imposed on those who held administrative or managerial positions in those legal persons when the infringement was committed.

In no case shall there be any cancellation or postponement if, in the event of the transfer of shares of the sanctioned entity, the situation has been mediated or the insolvency situation has been overcome, the situation may be addressed.

Additional disposition first. Special scheme for certain investment firms.

Investment services companies which can only provide the investment services provided for in Article 63 (1) (d) and in paragraphs (d) and (f) of Article 63 (2) of the Law of the Securities market, may obtain authorization to carry out the activities provided for in this law for the SGIIC, in this case waiving the authorization obtained pursuant to Council Directive 93 /22/EEC of 10 May 1993 on the investment services in the field of marketable securities.

Additional provision second. Tax obligations of the representative designated by the managing entities operating in the free provision of services.

The representative designated in Article 55 (7) of this law shall, on behalf of the management company operating under the freedom to provide services, comply with the following tax obligations:

1. Practice retention or entry into account and enter the amount in the Treasury as a result of transmissions or repayments of shares or shares representing the capital or equity of investment institutions collective in the terms provided for in the regulations of the Taxes on the Income of the Physical Persons, on Societies and on the Income of Non-Residents.
2. Inform the tax administration in relation to transactions that have as their object shares or units of collective investment institutions in accordance with the provisions of the fourth provision of Law 43/1995, of 27 December, of the Tax on Societies and its rules of development.

Additional provision third. Renaming IICs.

At the entry into force of this law the names of the IICs conforming to Law 46/1984, of 26 December, regulating the institutions of collective investment, will be automatically understood replaced by the denominations equivalent established in this law.

Additional provision fourth. Protection of customers in relation to the marketing of certain goods.

1. The provisions of this provision shall apply to the activity, which is carried out on a professional basis, by any natural or legal person who consists in the formalisation of a mandate for the purchase and sale of goods or other contracts. which permits an analogous activity to be carried out, by perceiving the purchase price of the same or a commission and by committing to the customer's account, by giving the customer, in several or in a single payment, the amount of his or her sale or a quantity for the assumption that a third party is not acquiring the goods on the agreed date.

The goods referred to in the preceding paragraph shall be the stamps, works of art, antiques, in any case, and also those other goods which may be the subject of such activity.

Those who carry out the activity referred to in the first subparagraph of this paragraph may not carry out the activities reserved for credit institutions, investment firms, investment institutions collective, insurance or reinsurance undertakings or any other entity entered in the registers of the Banco de España, Comisión Nacional del Mercado de Valores y Dirección General de Seguros y Dirección General de Seguros y fondos de pension. They may also not include in their name or in the advertising they carry out in reference to their activities, the financial or collective adjective, nor any other that leads to confusion with those reserved activities identified with before.

You must also submit your accounting documents to audit accounts by a professional registered in the Official Register of Auditors.

Persons or entities subject to an audit of accounts in accordance with this provision shall forward a copy of the audit report to the competent consumer authorities.

2. The contracts referred to in the preceding paragraph must be formalised in writing, which must explicitly and clearly reflect the commitments entered into by the parties and the rights and obligations of the parties in question. each operation, including all necessary elements to determine the terms of the contract. In any event, a duly dated and signed copy of the contract shall be delivered to the customer.

Prior to the conclusion of the contract, the customer must be informed in a clear and precise manner on the law applicable to the contract, on the provisions relating to the claims which may be made, goods placed on the market and access to such systems, the nominal value of the products placed on the market, the minimum guaranteed value on the market and, where appropriate, external guarantees to the entity developing the regulated activity in this provision ensuring compliance with their obligations and the other extremes which are determine in accordance with what is regulated.

All the information referred to in the preceding paragraph, as well as the audit report of accounts and contractual terms shall be made available to customers in advance sufficient time at the time that they are assume any obligation arising from the contract.

This will be applicable even if the contract has been concluded using a remote communication technique. In this case, and irrespective of the right of the client to be informed, where it is not possible to transmit in advance the contractual terms and information prior to the conclusion of the contract on durable medium, the Customer's disposition on such support shall be met immediately after the conclusion of the contract.

At any time in the contractual relationship, the customer shall be entitled to obtain the contractual conditions on paper and to change the distance communication techniques used.

For the duration of the contractual relationship, the customer must be informed about the changes in the information initially provided and also about their contractual situation.

3. They constitute very serious infringements of the natural or legal persons referred to in paragraph 1 of this provision, the following acts:

(a) Failure to comply with the obligation to submit accounting records to audit accounts in accordance with the third subparagraph of paragraph 1 of this provision.

(b) Failure to comply with the obligations relating to the documentation of the operations and to the provision of the information, reports and contractual conditions referred to in the second subparagraph of the present.

4. It is a serious infringement of the minor infringement commission where, during the five years preceding its commission, the offender was imposed for the same type of infringement. That period shall begin to be computed from the moment when the administrative route relating to the respective sanctioning procedure is exhausted.

5. They constitute minor infringements of the natural or legal persons referred to in paragraph 1 of this provision not to comply with the obligations laid down in paragraph 3 (b) of this provision in so far as they are concerned. of simple irregularities in the observance of such irregularities which are carried out on a purely occasional or isolated basis.

6. For the commission of the very serious infringements referred to in paragraph 3 of this provision, one or more of the following penalties shall be imposed on the infringer:

(a) Penalty penalty of not less than EUR 15,000 up to EUR 600 000, which may be exceeded up to five times the purchase price of the goods.

(b) Public assembly, with publication in the Official Journal of the competent authority.

7. For the commission of the serious infringements referred to in paragraph 4 of this provision, one or more of the following penalties shall be imposed on the infringer:

(a) Santion consisting of a fine of not less than EUR 3,000 up to EUR 15,000.

b) The private assembly.

8. For the minor offences referred to in paragraph 5 of this provision, the infringer shall be charged with the penalties of warning or fine of up to EUR 3,000.

9. The imposition of the penalties referred to in the preceding paragraphs of this provision shall be the responsibility of the competent public administration for the protection of consumers and users.

Additional provision fifth.

The fourth additional provision of this law is dictated by the provisions of Article 149.1.1.a, 6.a, 8. and 13. of the Constitution.

First transient disposition. Transitional regime for regulatory development.

The regulatory standards issued under Law 46/1984 of 26 December, regulatory of the

Collective Investment Institutions shall remain in force as long as this law is not opposed, until the entry into force of the regulatory standards that are dictated by the ratings contained therein.



Second transient disposition. Transitional arrangements for fixed capital investment companies.

1. The fixed capital investment companies registered in the administrative register of the CNMV at the entry into force of this law, must be transformed into SICAV, adapting their statutes and their activity to the provisions of this law, within the two years since the entry into force of the same.

2. In the case of non-adaptation as referred to in the previous paragraph, the authorization shall be revoked, the registration of the registration in the administrative register of the CNMV being cancelled.

3. Until such time as the conversion or, where appropriate, the withdrawal of the administrative authorization provided for in paragraphs 1 and 2 above, the fixed capital investment companies shall be taxed in accordance with the provisions laid down in the Articles 26 and 71 of Law 43/1995 of 27 December 1995 on Corporate Tax, in accordance with the wording in force until 31 December 2003. The conversion or, where appropriate, the revocation of the administrative authorisation shall have the effects referred to in Article 24 (2) (d) of that law.

Also, the tax benefits contained in Law 46/1984 of 26 December, regulatory of the Collective Investment Institutions, relating to capital, will continue to apply to companies of fixed capital investment. The Tax on Proprietary Transmissions and Documented Legal Acts, until they proceed to their transformation or are revoked their authorization.

Transitional provision third. Transitional arrangements for amendments to the statutes of management companies.

During the year following the entry into force of this law, the deadline for the authorization of the modification of the social statutes of the SGIICs authorized before the entry into force of this law will be extended to six months, where such amendment is intended to include in its social object the activity referred to in paragraph 1 (a) or in paragraphs (a) and (b) of Article 40 (2) of this law.

Transitional disposition fourth. Deadline for adaptation to the new legislation.

IICs authorized prior to the entry into force of this law will have one year, from the entry into force of this law, to adapt their management regulations and statutes to the new regulation.

Transient disposition fifth. Transformation of existing IICs into IIC by compartments or in compartments and creation of shareholdings or series of shares.

IICs authorized prior to the entry into force of this law may be transformed into IIC by compartments, in other IIC compartments, or may create new classes of shares or series of shares. Where an already authorised investment fund is involved, the unit-holders shall be granted the right of separation in accordance with this law.

Transitional disposition sixth. Exclusion from the exchange listing of IICs in a societary form.

They will not be subject to the obligation to make a public offer to acquire securities pursuant to Article 34 of the Securities Market Act, the IICs in a societarian manner than the entry into force of this law in stock exchange and whose corporate bodies agree to the exclusion of shares from their share capital.

Single repeal provision.

The following provisions are repealed:

(a) Law 46/1984 of 26 December, regulating the institutions of collective investment, (b) The additional provision of Law 37/1998 of 16 November of 16 November of 28 July 1988 on the reform of the Law of 28 July 1988 Securities, (c) Article 45 (1) (C) (c) of the recast of the Law on the Tax on Proprietary Transmissions and Documented Legal Acts, approved by the Royal Legislative Decree 1/1993 of 24 September.

Final disposition first. Addition of a new paragraph 19 in Article 45 (1) (B) ("Tax benefits") of the recast of the Law on the Tax on Proprietary Transmissions and Documented Legal Acts, approved by Royal Legislative Decree 1/1993, of 24 September.

A new paragraph 19 is added to Article 45 (I) (B) of the recast text of the Tax on Proprietary Transmissions and Documented Legal Acts, approved by Royal Legislative Decree 1/1993, of 24 September, which will be worded as follows:

" 1. The operations of the formation, capital increase, merger and division of the variable capital investment companies regulated in the Law of Collective Investment Institutions, as well as the contributions not to those entities, will remain exempt in the form of corporate operations of the Tax on Proprietary Transmissions and Documented Legal Acts.

2. Investment funds of a financial character governed by the law cited above shall be exempt from the Tax on Proprietary Transmissions and Legal Acts Documented with the same scope as the previous paragraph.

3. Companies and real estate investment funds governed by the law cited above, which, with the character of non-financial collective investment institutions, have the exclusive social object of investment in any type of real estate urban nature for its lease and, in addition, housing, student residences and third age residences, in terms of which they are regulated, jointly represent at least 50% of the total of the asset shall have the same tax regime as provided for in the previous two paragraphs.

Similarly, these institutions will enjoy a 95 percent bonus in the Tax on Inheritance Transmissions and Legal Acts Documented by the acquisition of housing for the lease, without prejudice to the conditions which may be laid down.

The application of the tax regime referred to in this paragraph will require that the real estate that is part of the assets of the real estate investment companies and funds does not fall until three years have elapsed. since its acquisition, except that, on an exceptional basis, the National Securities Market Commission is expressly authorised to do so. '

Final disposition second. Amendment to Article 26 (5) ("The rate of charge") of Law 43/1995 of 27 December of the Company Tax.

The following wording is given to Article 26 (5) of Law 43/1995 on Corporate Tax:

" 5. They will be taxed at the rate of one percent:

(a) Variable capital investment companies governed by the Collective Investment Institutions Act, provided that the number of shareholders required is at least that provided for in the fourth paragraph of Article 9 of the that law.

(b) Financial investment funds provided for in the law referred to above, provided that the number of members required is at least that provided for in Article 5 (4) of that law.

(c) Real estate investment companies and real estate investment funds regulated in that law, provided that the number of shareholders or members required is at least that provided for in

the fourth paragraphs of the Articles 5 and 9 of that law and which, with the character of non-financial collective investment institutions, have as their exclusive object the investment in any type of immovable property of an urban nature for their lease and, in addition, the dwellings, the student residences and the residences of the third age, in the terms that They shall be established jointly, together with at least 50% of the total assets.

The application of the tax rates provided for in this paragraph shall require that the immovable property which is part of the assets of the collective investment institutions referred to in the preceding paragraph shall not be used until the three years have elapsed since its acquisition, except that, on an exceptional basis, the National Securities Market Commission is expressly authorised to do so.

(d) The public-character regulation fund of the mortgage market, as set out in Article 25 of Law 2/1981 of 25 March, on the regulation of the mortgage market. "

Final disposition third. Amendment of Article 71 ("Taxation of IICs") of Law 43/1995 of 27 December of the Company Tax.

The following wording is given to Article 71 of Law 43/1995, of December 27:

" 1. Collective investment institutions governed by the Law on Collective Investment Institutions, with the exception of those subject to the general rate of charge, shall not be entitled to any deduction of the fee or the exemption from income at the base. tax to avoid international double taxation. In no case shall the arrangements of the assets companies provided for in Articles 75 to 77 of this Law apply to them.

2. Where the amount of the instalments, deductions and income on account of income exceeds the amount of the full quota, the tax authorities shall, on their own initiative, return the excess.

Final disposition fourth. Competitive titles.

This law is issued under the jurisdiction of the jurisdiction of article 149.1.6. and 11. of the Spanish Constitution.

Final disposition fifth. Enablement for regulatory development.

The Government is empowered to dictate how many provisions are necessary for the development and enforcement of this law.

Final disposition sixth. Entry into force.

1. This law will enter into force three months after its publication in the "Official State Gazette".

2. Without prejudice to the provisions of the preceding paragraph, the amendments to Law 43/1995 of 27 December of the Tax on Societies, which are laid down in the second and third final provisions of this Law, shall apply to periods of Tax to be initiated as from 1 January 2004.

Therefore, I command all Spaniards, individuals and authorities, to keep and keep this law.

Madrid, 4 November 2003.

JOHN CARLOS R.

The President of the Government,

JOSÉ MARÍA AZNAR LÓPEZ