

773/2004 Coll.

DECREE
of the Ministry of Labour, Social Matters, and the Family of the
Slovak Republic,

dated 21 December 2004,

stipulating the way of documenting compliance with the conditions
for the issue of a licence for the foundation and operation of a
supplementary pension management company

Under the provisions of Article 23 paragraph 9 of Act No. 650/2004 Coll. on supplementary pension saving and on amendments to certain laws (hereinafter referred to as 'Act'), the Ministry of Labour, Social Matters, and the Family of the Slovak Republic has enacted the following:

Article 1

(1) Compliance with the condition laid down in Article 23 paragraph 1 letter a) of the Act shall be proved by means of a statement of an account kept at a bank¹⁾ or a branch of a foreign bank²⁾ which meets the conditions for operation as a depository and with which the founder (founders) of a supplementary pension management company has (have) signed a preliminary contract for the provision of depository services for the supplementary pension management company by the date of issue by the Financial Market Authority (hereinafter referred to as 'Authority') of a licence for the foundation and operation of a supplementary pension management company.

(2) Compliance with the condition laid down in Article 23 paragraph 1 letter b) shall be proved by means of documents certifying the origin of the funds contributed to the registered capital a future supplementary pension management company by its founder or founders and documents certifying the origin of the other financial resources of the future supplementary pension management company, in the following ways:

a) in the case of a natural person, by presenting a survey of the person's proprietary and financial situation, including documents confirming his proprietary and financial situation, i.e. a statement of an account kept at a bank or a branch of a foreign bank, a statement of an account maintained by a member of the central depository, an extract from the land register, a document of income (in the case of an employee who is a personal income

tax payer under separate regulations³), or a document certifying the basis of assessment for income earned from business activity or other independent activity over the past five calendar years, preceding the calendar year in which a licence application was submitted to the Authority;

b) in the case of a legal entity, by presenting the financial statements for the last five fiscal years, preceding the calendar year in which a licence application was submitted to the Authority, together with an auditor's report on the financial statements compiled in the form and according to the standards of auditing, and reports on the business activity and financial position of this legal entity for the last five fiscal years, which were approved by the supreme body of the company;

c) by presenting the business and financial plan of the supplementary pension management company for at least the next five years following the year in which the licence application was submitted to the Authority, containing:

1. the expected range of foundation costs and the way of their financial coverage;

2. the expected share of the market and the further development of this share;

3. the expected method of financing the company's business activity, divided into financing from own and foreign resources;

4. the business plan of the supplementary pension management company, including its marketing plan and marketing strategy, as well as the estimated costs;

5. the draft plan of activity of the supplementary pension management company, containing a detailed estimate of the revenues and expenses, an estimated balance sheet, an estimate of the own funds adequacy, in realistic, optimistic, and pessimistic variants, as well as the security of own resources earmarked for an increase in the registered capital if need be;

6. the expected developments in supplementary pension funds, including the estimated total amount of contributions to supplementary pension saving, the expected number of participants in supplementary pension saving (hereinafter referred to as 'participant'), the expected placement of assets in supplementary pension funds, expected developments in the value of assets in individual supplementary pension funds, the estimated level of revenues in supplementary pension funds;

d) by presenting a feasibility study of the company's business plan.

(3) Compliance with the condition laid down in Article 23

paragraph 1 letter c) of the Act shall be proved by means of:

a) documents set out in paragraph 2 letters a) and b) concerning shareholders with a qualified interest in the future supplementary pension management company;

b) the list of natural persons with a qualified interest in the future supplementary pension management company, including their percentual share in the registered capital of the future supplementary pension company and the list of closely related persons⁴⁾ who had, at the time when the licence application was submitted, a labour-law relationship or a similar relationship with a supplementary pension management company, a supplementary pension insurance company, or a financial institution pursuant to Article 29 paragraph 4 of the Act, including the business name, legal form, identification number, and registered office of the institution, and the full names of the closely related persons⁴⁾;

c) the list of legal entities with a qualified interest in the future supplementary pension management company, including their business names, registered offices, legal forms, identification numbers, registered capital, and their percentual share in the registered capital of the future supplementary pension management company;

d) the list of legal entities, including their business names, registered offices, legal forms, identification numbers, registered capital, and their percentual share in the registered capital of legal entities in which

1. a natural person with a qualified interest in the future supplementary pension management company has a share in registered capital or voting rights of at least 10% or he is a member of the statutory body or supervisory board of the legal entity in which the natural person has a qualified interest or guarantees its liabilities with his total property, or

2. a legal entity with a qualified interest in the future supplementary pension management company has a share in registered capital or voting rights of at least 10% or is a member of the statutory body or supervisory board of the legal entity in which the relevant entity has a qualified interest or guarantees its liabilities with its total property;

e) a written declaration by the natural person with a qualified interest in the future supplementary pension management company, stating that he is not a natural person whose property

1. has been placed under control of a bankruptcy trustee or the petition in whose bankruptcy has been rejected for the lack of property, or

2. was placed under control of a bankruptcy trustee in the past or the petition in whose bankruptcy was rejected for the lack of property, or within five years from the end of bankruptcy proceedings or after the re-confirmation of the compulsory settlement, but no sooner than one year following the settlement of its liabilities that are tied to bankruptcy under a lawful decision of the court;

f) a written declaration by the legal entity with a qualified interest in the future supplementary pension management company, stating that it is not a legal entity 1. which has gone into liquidation;

2. whose property has been placed under control of a bankruptcy trustee or the petition in whose bankruptcy has been rejected for the lack of property, or

3. whose property was placed under control of a bankruptcy trustee in the past or the petition in whose bankruptcy was rejected for the lack of property, or within five years following the bankruptcy proceedings or following the re-confirmation of the compulsory settlement, but no sooner than one year following the settlement of its liabilities that are tied to bankruptcy under a lawful decision of the court;

g) consolidated financial statements verified by an auditor, for the last five fiscal periods, preceding the calendar year in which the licence application was submitted to the Authority, if the legal entity with a qualified interest is part of a consolidated unit.

(4) Compliance with the conditions laid down in Article 23 paragraph 1 letter d) of the Act in respect of natural persons nominated as members of the management board, members of the supervisory board, authorised representatives, senior officers reporting directly to the management board, responsible for the management of investment activity under this Act, manager in charge of internal control in the future supplementary pension management company, shall be proved by presenting:

a) certificates of completed education and professional experience, in compliance with the conditions laid down in Article 23 paragraph 10 of the Act;

b) a brief professional curriculum vitae;

c) an extract from the crimes register not older than three months or, in the case of a non-resident, a similar certificate of integrity issued by the competent body of the state of his permanent residence and the state of his citizenship, and the

states in which he stayed in the last ten years for a period of more than six months; if the relevant state does not issue such documents, they may be substituted by a statutory declaration;

d) a statutory declaration that he is a trustworthy person pursuant to Article 23 paragraph 11 of the Act.

(5) Compliance with the conditions laid down in Article 23 paragraph 1 letters e) to f) of the Act shall be proved by means of:

a) documents certifying the transparency of the group with close relations⁵⁾ to which the shareholder with a qualified interest in the future supplementary pension management company belongs, including the amounts of direct and indirect shares in the registered capital or voting rights of legal entities within this group, i.e. an extract from the commercial register not longer than three months, an extract from the issuer's register, or a statement of the owner's account of book-entry securities, etc.;

b) documents certifying that the close relations within the group with close relations⁵⁾ to which the shareholder with a qualified interest in the future supplementary pension management company belongs, do not hinder the exercise of supervision, including a graphical illustration of the structure of this group.

(6) Compliance with the condition laid down in Article 23 paragraph 1 letter i) of the Act shall be proved by presenting:

a) a description of the technical equipment of the future supplementary pension management company, including data on the computer equipment (hardware, software), the information system, and the system for technical data processing;

b) the drafts of internal working regulations, directives, and instructions concerning the safety of the data transfer system, the making of backup copies of data within this system, and the method of its application;

c) documents certifying ownership to the real estate or its part or authorisation to use this real estate or its part in which the supplementary pension management company will operate;

d) a document justifying the location of the registry⁶⁾ in rooms where its safety is guaranteed in accordance with the safekeeping of business documents under separate regulations.⁷⁾

(7) Compliance with the condition laid down in Article 23 paragraph 1 letter j) of the Act shall be proved by presenting:

- a) the drafts of the organisational structure and the organisation manual;
- b) the drafts of internal working regulations concerning the procedure to be followed in dealing with the complaints of savers and beneficiaries;
- c) the drafts of internal working regulations concerning the system of internal control;
- d) the drafts of internal working regulations specifying the range of authorisation for the employees of the future supplementary pension management company to manage assets in supplementary pension funds, including limits for the individual transactions and procedures for transactions exceeding the limits set by law;
- e) the rules of activity in relation to participants, including the specimen forms used in dealing with participants, such as a participation contract, employment contract, etc.
- f) the drafts of internal working regulations governing the conflict of interests and procedures restricting the use of confidential information and the manipulation of securities prices;
- g) the drafts of internal working regulations governing the management of risks involved in the activities of a supplementary pension management company;
- h) information on the promoting and advertising strategy;
- i) information on procedures for the performance of analyses of the ways of asset investment in a supplementary pension fund;
- j) the drafts of internal working regulations governing the method of accounting;
- k) the drafts of registry regulations and the draft registry plan under separate regulations⁸⁾;
- l) the draft investment strategy of the supplementary pension fund for the period of the first twelve months, starting from its foundation;
- m) information on the way of ensuring the exchange of information between a supplementary pension management company and the

intermediaries of supplementary pension saving;

n) the draft plan of training for the employees of the supplementary pension management company and the intermediaries of supplementary pension saving;

o) the action programme for fight against the laundering of proceeds from criminal activity⁹⁾;

p) the drafts of internal working regulations concerning the procedures designed to secure transactions in assets denominated in foreign currency.

Article 2

This Decree shall become effective on 1 January 2005.

Miroslav Beblavý

1) Article 2 paragraph 1 of Act No. 483/2001 Coll. on banks and on amendments to certain laws.

2) Article 2 paragraphs 5 and 8 of Act No. 483/2001 Coll. as amended by Act No. 554/2004 Coll.

3) Article 3 paragraph 1 letter a) of Act No. 595/2003 Coll. on income tax.

4) Article 116 of the Civil Code.

5) Article 8 letter e) of Act No. 566/2001 Coll. on securities and investment services, and on amendments to certain laws (Securities Act).

6) Article 16 paragraph 6 letter e) of Act No. 395/2002 Coll. on archives and registries, and on amendments to certain laws.

7) Article 57 of Act No. 43/2004 Coll. on retirement pension saving and on amendments to certain laws.

8) Articles 16 and 17 of Act No. 395/2002 Coll.; Decree No. 628/2002 Coll. of the Ministry of the Interior of the Slovak Republic, implementing the provisions of the law on archives and registries and on amendments to certain laws.

9) Article 6 paragraph 1 of Act No. 367/2000 Coll. on protection against the laundering of proceeds from criminal activity and on amendments to certain laws, in the wording of Act No. 445/2002 Coll.