

**DECREE No 162**  
**of Národná banka Slovenska**

of 29 May 2012

**on how to demonstrate compliance with conditions for an authorization  
to establish and operate a pension fund management company**

Národná Banka Slovenska, in accordance with Section 48(9) of Act No 43/2004 on the old-age pension scheme (and amending certain laws), as amended (hereinafter referred to as the "Act"), has adopted this Decree:

§ 1

(1) Compliance with the condition under Section 48(2)(a) of the Act is to be demonstrated through submission of a statement concerning a current account or a deposit account<sup>1</sup> held with a bank or a foreign bank's branch<sup>2</sup> complying with the conditions applicable to a depository's activities under Section 99(2) of the Act with which the founder of a pension fund management company ("PFMC") has signed an agreement on entering into a depository services provision agreement on the day of the grant by Národná Banka Slovenska of an authorization to establish and operate a PFMC (hereinafter referred to as the "authorization").

(2) Compliance with the condition under Section 48 (2)(b) of the Act is to be demonstrated through submission of documents on the provenance of the funds forming the contributions to the share capital of the PFMC and other financial resources of the PFMC where the founder is

(a) a natural person

1. an overview of the assets and financial standing of the founder as at the day preceding the filing date of the authorization application (hereinafter referred to as the "application");
2. a written document about the provenance, volume, and structure of the funds forming the founder's contributions to the share capital of the PFMC, the information about the amount of own resources intended to create the share capital, and documents evidencing those facts;
3. statements of the founder's accounts held with banks,<sup>1</sup> branches of foreign banks,<sup>2</sup> and foreign banks<sup>3</sup> as at the date preceding the filing date of the application;
4. a document confirming the income of the founder who is a payer of the tax on income of natural persons under a separate regulation<sup>4</sup> for at least three immediately preceding years

through income tax returns or a document confirming annual withholding income tax settlements for three immediately preceding tax periods or another similar document; a foreign national<sup>5</sup> shall submit a similar document confirming the income of a natural person for at least three immediately preceding years;

5. the founder's written declaration stating that the funds forming contributions to the share capital of the PFMC have not been generated through criminal activities;<sup>6</sup>

(b) a natural person - entrepreneur

1. an overview of the assets and financial standing of the founder as at the date preceding the filing date of the application;
2. an extract not older than three months from the commercial register or the trade register concerning the founder or another document evidencing the licence to conduct business; a foreign national<sup>5</sup> shall submit a similar document not older than three months and issued by a competent authority;
3. a written document about the provenance, volume, and structure of the founder's funds provided as contributions to the share capital of the PFMC, including the information about the amount of own resources intended to create the share capital, and documents proving the facts;
4. statements concerning the founder's accounts held with banks,<sup>1</sup> branches of foreign banks,<sup>2</sup> and foreign banks<sup>3</sup> as at the date preceding the filing date of the application;
5. the founder's income tax returns<sup>4</sup> for at least three immediately preceding years, including the document confirming compliance with tax obligations; a foreign national<sup>5</sup> shall submit a similar document about the income of a natural person – entrepreneur for at least three immediately preceding years; where the founder started to conduct business within the three years before the application filing date, they shall submit the tax return or a similar document on the income of a natural person – entrepreneur only for the period from the commencement of business activities;

<sup>1</sup> Section 2(1) of Act No 483/2001 on banks (and amending certain laws).

<sup>2</sup> Section 2(5) and (8) of Act No 483/2001, as amended by Act No 659/2007.

<sup>3</sup> Section 2(7) of Act No 483/2001.

<sup>4</sup> Act No 595/2003 on income tax, as amended.

<sup>5</sup> Act No 404/2011 on banks (and amending certain laws).

<sup>6</sup> Act No 297/2008 on the prevention of money laundering and terrorist financing (and amending certain laws), as amended.

6. the founder's financial statements audited by an auditor, where they are subject to such audits, for three accounting periods immediately preceding the filing date of the application; where the founder started to conduct business activities within the three years before the filing date of the application, they shall submit only the financial statements for the period of conduct of business activities; where the financial statement is to be audited and has not been audited by an auditor as at the application filing date, the unaudited financial statement is to be submitted;
  7. the founder's written declaration stating that the funds forming contributions of the share capital of the PFMC have not been generated through criminal activities;<sup>6</sup>
- (c) a legal entity
1. an overview of the founder's assets and financial standing as at the date preceding the application filing date;
  2. an extract not older than three months from the commercial register or other document issued by the competent authority and evidencing incorporation of the founder; a legal entity having registered office abroad is to submit an extract not older than three months from a register or other records in which the entity is registered;
  3. a written document about the provenance, volume, and structure of the founder's funds provided as contributions to the share capital of the PFMC, including the information about the amount of own resources intended to create the share capital, and documents proving the facts;
  4. the founder's financial statements audited by an auditor, where they are subject to such an audit, and the auditor's statements and annual reports or other similar reports where the annual reports or other similar reports are drawn up under the legal regulations of the relevant country and submitted to the general meeting or other competent body of the founder for discussion in respect of three immediately preceding accounting periods; if the founder is a member of a consolidated group, they shall submit also audited consolidated financial statements along with the auditor's statements for three immediately preceding accounting periods; if the founder was incorporated within the period of three years before the filing date of the application, they shall submit the above documents for the period from their incorporation; if the founder's financial statements that shall be audited have not been audited as at the filing date of the application, they shall submit unaudited financial statements;
  5. statements concerning the founder's accounts held with banks,<sup>1</sup> branches of foreign banks<sup>2</sup> and foreign banks<sup>3</sup> as at the date preceding the application filing date;
  6. the founder's written declaration stating that the funds forming contributions to the share capital of the PFMC have not been generated through criminal activities;<sup>6</sup>
7. The founder's rating for three immediately preceding years provided that such ratings have been drawn up.
    - (3) Compliance with the condition under Section 48(2)(6) of the Act is to be demonstrated through submission of
      - (a) documents under subsection 2 in respect of the persons with qualified participation in the PFMC;
      - (b) a list of natural persons with qualified participation in the PFMC, specifying the percentages of interests in the share capital of the future PFMC and related voting rights;
      - (c) a list containing the full names and permanent residence addresses of close persons<sup>7</sup> of the natural persons with qualified participation in the PFMC, who are, as at the filing date of the application, employed or have a similar relationship with another PFMC or a financial institution under Section 48(22) of the Act, while stating its business name, legal form, identification number, and registered office address;
      - (d) a list of legal entities with qualified participation in the PFMC, stating their business names, registered offices, legal forms, identification numbers, share capital amounts, and percentages of interests in the share capital of the future PFMC and related voting rights;
      - (e) a list containing the full names and permanent residence addresses of close persons<sup>7</sup> of members of the statutory body of a legal entity with qualified participation in the PFMC, who are, as at the filing date of the application, employed or have a similar relationship with another PFMC or a financial institution under Section 48(22) of the Act, while stating its business name, legal form, identification number, and registered office address;
      - (f) a list of the legal entities with business names, legal forms, identification numbers, registered offices, registered capital amounts, and percentages of their interests in the registered capital of the legal entities and voting rights in the legal entities in which
        1. a natural person with qualified participation in the future PFMC holds qualified participation or is a member of their statutory bodies or control bodies or guarantees, with an important part of his/her assets, fulfilment of their liabilities, the extent of liabilities the fulfilment of which the natural person guarantees, and submission of the documents proving those facts;
        2. a legal entity with qualified participation in the future PFMC holds qualified participation or is a member of their statutory bodies or control bodies or guarantees, with an important part of its assets, fulfilment of their liabilities, the extent of liabilities the fulfilment of which the legal entity guarantees, and submission the documents proving those facts;
      - (g) a list of legal entities with their business names, legal forms, identification numbers, and registered office addresses, and a list of natural persons with their full name and permanent residence addresses, who control the founder of the PFMC, including the information about the manner in which such control is carried out;

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<sup>7)</sup> Section 116 of the Civil Code.

(h) a written document about the administrative sanctions imposed on the future shareholder with qualified participation in the PFMC, based on a valid and enforceable decision made within administrative or other similar proceedings during the last three years before the filing date of the application;

(i) a written document stating whether the grant to the future shareholder in the PFMC of a licence or other authorization to conduct business has been refused based on a valid and enforceable decision during the last three years and the written document about withdrawal of licences;

(j) a written declaration of the future shareholder of the PFMC that the shareholder is not a person that has entered into liquidation, whose assets are subject to bankruptcy proceedings or a bankruptcy petition, a bankruptcy petition has been rejected on the grounds of insufficient assets, who was previously subject to a bankruptcy order, or the confirmation of a compulsory arrangement, less than five years ago, and had their liabilities under a previous bankruptcy order settled in accordance with a court-approved timetable less than one year ago, or who is subject to restructuring proceedings, debt cancellation proceedings or forced supervisory administration or forced administration.

(4) As concerns the persons nominated to a position that is a member of the management board, a member of the supervisory board, an authorised representative, a senior employee responsible for specialist activities under the Act who reports directly to the management board, or the internal control officer (“nominated persons”), compliance with the condition under Section 48(2)(d) of the Act is to be demonstrated through submission of

(a) documents confirming achieved education and professional experience of nominated persons, which prove compliance with the conditions under Section 48 (10) of the Act;

(b) brief professional CVs of nominated persons;

(c) criminal record check certificates not older than three months in respect of such natural persons; a foreign national<sup>6</sup> shall submit an equivalent clean criminal record certificate issued by a competent authority in the country in which the person has permanent residence or a competent authority of the country in which the person habitually resides;

(d) nominated persons’ written declarations stating that they comply with the conditions under Section 48(11) of the Act.

(5) Compliance with the conditions under Section 48 (2)(e) through (g) of the Act is to be demonstrated through submission of a graph showing the structure of qualified participation of the future shareholder with qualified participation in the PFMC and a graph showing the structure of the group with close links that includes the future shareholder with qualified participation in the PFMC, a specification of the direct and indirect interests in the share capital of or voting rights in the legal entity belonging to the group, and

identification of foreign supervisory authorities within the group with close links and specification of competent supervisory authorities; where the future shareholder with qualified participation in the PFMC is a foreign person, their declaration of compliance with the conditions under Section 48(2)(f) and (g) of the Act shall be submitted as well.

(6) Compliance with the condition under Section 48(2)(h) of the Act is to be demonstrated through submission of a document confirming that the registered office of the PFMC and its head office will be situated within the territory of the Slovak Republic, i.e.

(a) memorandum of association or the deed of incorporation where the applicant is the founder;

(b) draft articles of association;

(c) an extract from the certificate of title, a lease agreement or an agreement on entering into a lease agreement in future evidencing the rise of ownership or a lease in respect of the place of registered office and head office; or

(d) other similar document evidencing compliance with the condition under Section 48(2)(h) of the Act.

(7) Compliance with the condition under Section 48(2)(i) of the Act is to be demonstrated through submission of two copies of draft articles of association of the PFMC.

(8) Compliance with the condition under Section 48(2)(j) of the Act is to be demonstrated through submission of

(a) a description of the PFMC’s technical equipment with the data about computers (hardware, software), the information system, and the system for technical data processing, including the information about the security of the electronic data transfers via a secure communication channel to the register of insured persons and savers;

(b) draft internal working regulations and procedures defining the data transfer system security, the manner of data backups within the system, and the manner of its use;

(c) the document evidencing the title or other entitlement to use the real estate where the PFMC will conduct its activities if the real estate is a place other than the place of registered office or head office.

(9) Compliance with the condition under Section 48(2)(k) of the Act is to be demonstrated through submission of

(a) draft internal regulations and procedures governing operations of the PFMC, securing compliance with prudential business rules and defining, in particular:

1. the organizational rules and organizational structure of the PFMC;
2. the internal audit system;
3. the procedure for settlement of savers’ complaints,
4. the risk management system and the manner of system updates;
5. accounting procedures;
6. business documentation keeping;
7. the measures that are to be applied upon a conflict of interest and procedures preventing misuse of confidential information;
8. monitoring and compliance with the adequacy of internal resources;
9. the program of activities aimed against money laundering;<sup>8</sup>

<sup>8</sup> Section 20(1) of Act No 297/2008.

10. procedures for valuation of assets pension funds, including the measures and procedures for valuation of over-the-counter financial derivatives;
- (b) draft internal management regulations and procedures for the PFMC's activities, securing compliance with operation rules and defining, in particular:
1. due diligence measures and procedures;
  2. rules for provision of information to savers;
  3. functioning of the investment management system within pension funds, including the procedures for adoption of investment decisions for each managed pension fund;
- (c) draft internal regulations governing retention of documents.
- (10) Compliance with the condition under Section 48(2)(l) of the Act is to be demonstrated through submission of the information about the future depository of pension funds, stating the depository's business name, registered office address, and identification number.
- (11) As concerns members of the board of directors, authorized representatives, and senior employees of the future depository who will secure the depository's activities ("the depository's employees"), compliance with the condition under Section 48(2)(m) of the Act is to be demonstrated through submission of
- (a) documents about achieved education and professional experience of the depository's employees, confirming compliance with the condition under Section 48(10) of the Act;
- (b) brief professional CVs of the depository's employees;
- (c) criminal record check certificates not older than three months concerning the depository's employees;

in the case of a foreign national, an equivalent clean criminal record certificate issued by a competent authority in the country where the foreign national has permanent residence or a competent authority in the country where he/she habitually resides shall be submitted;

- (d) written declarations of the depository's employees stating that they comply with the conditions under Section 48 (11) of the Act.

(12) Compliance with the conditions under Section 48(2)(n) and (o) of the Act is to be demonstrated through submission of two copies of draft pension fund statutes and two copies of draft pension fund information prospects.

§ 2

The documents specified in Section 1 shall be submitted in compliance with Section 48(15) and a separate law.<sup>9</sup>

§ 3

Decree No 183/2004 of the Ministry of Labour, Social Affairs, and Family of the Slovak Republic on the method of proving compliance with the requirements conditioning the grant of an authorization to establish and operate a pension fund management company is hereby repealed.

§ 4

This Decree enters into force on 15 June 2012.

**Viliam Ostrožlík [signed]**  
on behalf of the Governor

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<sup>9</sup> Section 16(4) and (5) of Act No 747/2004 on financial market supervision (and amending certain laws), as amended.