

## **Law no. 74/2015 on Alternative Investment Fund Managers**

*In force as of 23 May 2015*

*The consolidation on 10 August 2022 is based on the publication in the Official Gazette, Part I no. 274 of 23 April 2015 and includes amendments made by the following laws: Law 268/2015; Law 243/2019; Law 158/2020; Law 237/2022; last amendment on 01 August 2022.*

The Romanian Parliament hereby adopts this law.

### **CHAPTER I**

#### **General provisions**

**Art.1 - (1)** This law lays down the rules on the authorisation, conduct of business and transparency of alternative investment fund managers, hereinafter referred to as AIFMs, which manage and/or distribute in Romania units of alternative investment funds, hereinafter referred to as AIFs.

**(2)** Subject to the provisions of para. (5) and Art. 2, this Law shall apply to:

**a)** legal persons established in Romania managing one or more AIFs, whether the AIF is from Romania, another Member State or a third country;

**b)** AIFMs established in third countries for which Romania is designated as a reference Member State in accordance with Art. 39;

**c)** AIFMs established in other Member States which distribute in Romania the units of one or more AIFs from other Member States;

**d)** AIFMs established in other Member States managing one or more AIFs in Romania;

**e)** AIFMs established in other Member States which distribute in Romania the units of one or more AIFs from third countries;

**f)** AIFMs established in third countries which distribute the units of one or more AIFs in Romania.

**(3)** For the application of para. (2) shall not be relevant:

**a)** whether the AIF is open-ended or closed-ended;

**b)** whether the AIF takes the contractual form of a trust or statutory form or any other legal form;

**c)** what is the legal structure of the AIFM.

**(4)** In the category of AIF referred to in para. (3) are also included collective investment undertakings other than undertakings for collective investment in transferable securities (OCIU), which are obliged to apply for registration with the Financial Supervisory Authority, hereinafter referred to as ASF, in accordance with the provisions of Art. 114 para. (2) and Art. 115 para. (2) of Law no. 297/2004 on the capital market, as amended and supplemented, hereinafter referred to as Law no. 297/2004, respectively OCIU which, in accordance with the provisions of Art. 115 para. (2) of the same Law, are not required to register with ASF.

**(5)** This Law does not apply to the following entities:

a) holding companies as defined in Art. 3 (27);

b) institutions for occupational retirement provision covered by Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, voluntary pension funds covered by Law no. 204/2006 on voluntary pensions, as amended and supplemented, privately administered pension funds covered by Law no. 411/2004 on privately administered pension funds, republished, as amended and supplemented, the Romanian Lawyers' Insurance House, established under the provisions of Government Emergency Ordinance no. 221/2000 on pensions and other social security rights of lawyers, approved with amendments and additions by Law no. 452/2001, other pension schemes not integrated into the public system, and pension products whose purpose is to provide a benefit at retirement age including, where applicable, authorised entities which are responsible for the administration of such institutions, funds or products and which act on their behalf, provided that they do not administer AIFs;

c) supranational institutions such as the European Central Bank, the European Investment Bank, the European Investment Fund, European development finance institutions and bilateral development banks, the World Bank, the International Monetary Fund, other supranational institutions and similar international organisations, where these institutions or organisations manage one or more AIFs and to the extent that the AIF concerned acts in the public interest;

d) the National Bank of Romania (BNR);

e) national, regional and local authorities and bodies or other institutions administering funds supporting social security and pension systems;

f) employee participation schemes or employee savings schemes;

g) special purpose securitisation entities.

(6) ASF is the competent authority for the regulation, authorisation and supervision of AIFMs established in Romania, which are subject to the provisions of this law, by exercising the prerogatives established by Government Emergency Ordinance no. 93/2012 on the establishment, organisation and functioning of the Financial Supervision Authority, approved with amendments and additions by Law no. 113/2013, with subsequent amendments and additions.

(7) ASF shall establish appropriate methods to verify, where relevant, on the basis of guidelines and recommendations developed by the European Securities and Markets Authority, hereinafter referred to as ESMA, compliance by AIFMs with their obligations under this law. If ASF considers it appropriate, it shall communicate to ESMA its reasoned decision on the intention not to apply ESMA's guidelines and recommendations.

(8) Within 30 working days from the date of entry into force of this law, ASF shall notify ESMA and the European Commission of its status as the competent authority in Romania to perform the tasks referred to in para. (6) and (7).

**Art. 2. - (1)** This law shall not apply to AIFMs established in Romania which manage one or more AIFs whose only investors are the AIFMs themselves, the parent companies or branches of AIFMs or other branches of these parent companies, provided that none of these investors is itself an AIF.

(2) Para. (3) and (4) shall apply only to AIFMs referred to in letters (a) and (b), taking into account the provisions of Art. 50:

a) AIFMs established in Romania which either directly or indirectly, through a company with which the AIFM is linked by common management or control or by a significant direct or indirect holding established in accordance with ASF regulations, manage portfolios of AIFs whose assets under management, including assets obtained through the use of leverage, do not exceed in total a threshold of 100,000,000 EUR; or

b) AIFMs established in Romania which either directly or indirectly, through a company with which the AIFM is linked by common management or control or by a significant direct or indirect shareholding established in accordance with the ASF regulations, manage portfolios of AIFs whose assets under management do not exceed in total a threshold of 500,000,000 EUR where the AIF portfolios are composed of AIFs which do not use leverage and where the redemption rights cannot be exercised within a period of 5 years from the date of the initial investment in each AIF.

(3) AIFMs referred to in para. (2) are obliged to:

a) register with ASF;

b) send to ASF their own identification data and those of the AIF they manage at the time of registration;

c) provide ASF with information on the investment strategies for the AIFs it manages at the time of registration;

d) periodically provide ASF with information on the main financial instruments in which they invest and the main exposures and the most important concentrations of the AIFs they manage, determined in accordance with the provisions of Art. 5 para. (3), Art. 110 para. (1) and Annex IV of Commission Delegated Regulation (EU) no. 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council as regards exemptions, general conditions for business, depositaries, leverage, transparency and supervision, hereinafter referred to as Regulation (EU) no. 231/2013, in order to enable ASF to monitor systemic risk effectively; and".

e) inform ASF if they no longer meet the conditions referred to in para. (2).

(4) In cases where they no longer fulfil the conditions laid down in para. 1, the AIFM concerned shall apply to ASF for authorisation within 30 calendar days, in accordance with the relevant procedures laid down in this Law.

(5) AIFMs referred to in para. (2) shall not benefit from any of the rights granted under this Law, unless they voluntarily choose to fall under this Law, in which case they shall no longer benefit from the exceptions provided for in para. (3) and (4).

**Art. 3** - For the purposes of this Law, the following terms and expressions shall have the following meanings:

1. AIF management - the performance, in respect of one or more alternative investment funds, of at least the investment management functions referred to in Art. 5 para. (2);

2. AIFM - any legal person whose principal activity is the management of one or more AIFs;

3. External AIFM - the legal person referred to in point 2, responsible for the management of the AIF, appointed for this purpose by the shareholders/Management Board/Supervisory Board of the AIF established under an investment company memorandum and articles of incorporation. In the case of an AIF established under an investment fund

company agreement, the external AIFM shall be represented by the legal person referred to in point 2 which took the initiative to establish the investment fund;

**4.** AIFMD - Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) no. 1060/2009 and (EU) no. 1095/2010;

**5.** competent authorities of AIFMs established in the European Union - competent authorities of other Member States of the European Union that supervise AIFMs established in those Member States;

**6.** the competent authorities in relation to the depositary:

**a)** where the depositary is a credit institution authorised under Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 relating to the taking up and pursuit of the business of credit institutions and the prudential supervision of credit institutions and investment companies and amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, the competent authorities as defined in Art. 4 para. (1) point 40 of Regulation no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment companies and amending Regulation (EU) no. 648/2012;

**b)** where the depositary is an investment company authorised under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), the competent authorities as defined in Art. 4 para. 1 (26) of that Directive;

**c)** where the depositary falls within one of the categories of institutions referred to in Art. 21 para. 3 letter (c) of the AIFMD, the national authorities of its home Member State which are empowered by law, regulation or administrative provision to supervise such categories of institutions;

**d)** where the depositary is an entity referred to in the third para. of Art. 21 (3) third line of the AIFMD, the national authorities of the Member State in which the entity in question has its registered office and which are empowered by law, regulation or administrative provision to supervise such entities or the competent official body to register or supervise such entities under the rules of professional conduct applicable to them;

**e)** if the depositary is appointed as depositary for an AIF from a third country in accordance with Art. 21 para. (5)(b) AIFMD and does not fall within the scope of letters (a) to (d), the relevant national authorities of the third country where the depositary has its registered office;

**f)** in the case of AIFs in Romania, the competent authority in relation to the depositary which fulfils the conditions laid down in Art. 20 is ASF;

**7.** competent authorities for AIFs in the European Union - the national authorities of a Member State which are empowered by law or administrative rule to supervise AIFs;

**8.** supervisory authorities in relation to an AIF from a third country - the national authorities of a third country which are empowered under a law, regulation or administrative provision to supervise AIFs;

**9.** supervisory authorities in relation to an AIFM established in a third country - the national authorities of a third country which are empowered under a law, regulation or administrative provision to supervise AIFMs;

**10.** prime broker - a credit institution, regulated investment company or other entity subject to prudential regulation and ongoing supervision, which provides services to professional investors, in particular for the financing or execution of transactions in financial instruments as a counterparty, and which may also provide other services, such as clearing and settlement of transactions, custody services, securities lending, customized technology and operational support services;

**11.** initial capital - the funds defined in Art. 26 para. (1) lit. (a) to (e) of Regulation (EU) no. 575/2013;

**12.** performance fee - a share of the AIF's profit earned by the AIFM as compensation for managing the AIF, not including the share of the AIF's profit earned by the AIFM as a return on the AIFM's investment in the AIF;

**13.** conflict of interest - one or more of the situations referred to in Art. 30 of the European Union Regulation no. 231/2013, which may arise between the persons referred to in Art. 14 para. (1);

**14.** control - the relationship between the parent company and a subsidiary as described in paragraph 35;

**15.** distribution - an offer or placement, directly or indirectly, made on the initiative of the AIFM or on behalf of the AIFM, of units of an AIF it manages to investors domiciled or having their registered office in a Member State;

**16.** leverage - any method by which the AIFM increases the exposure of an AIF it manages either by borrowing cash or securities, or by taking derivative positions or by any other means;

**17.** issuer - a legal entity governed by public or private law which has its registered office in the European Union and whose shares are admitted to trading on a regulated market in the European Union as defined in Art. 4 para. (1) point 21 of Directive 2014/64/EU. The issuer is, in the case of depository receipts representing securities, the entity issuing the securities represented;

**18.** special purpose securitisation entities - entities whose sole purpose is to carry out securitisation activities as defined in Art. 1(2) of Regulation (EC) no. 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions and other activities appropriate for this purpose;

**19.** ESRB - European Systemic Risk Board;

**20.** AIFs in Romania - those OCIU established in Romania which attract capital from at least 2 (two) investors, with a view to placing it in accordance with an investment policy defined in the interest of those investors and which meet the conditions indicated in Art. 1 para. (3);

**21.** AIF in the European Union:

**a)** any AIF which is authorised or registered in a Member State of the European Union in accordance with the law applicable in that Member State; or

**b)** any AIF which is not authorised or registered in a Member State but has its registered office and/or principal place of business in a Member State;

**22.** AIF from a third country - an AIF which is not an AIF from the European Union;

**23.** Feeder AIF - an AIF that:

- a) invests at least 85% of its assets in units of another AIF (master AIF);
- b) invests at least 85% of its assets in more than one master AIF, where those master AIFs have identical investment strategies; or
- c) has, in any other way, an exposure of 85% of its assets to one or more such master AIFs;

**24. Master AIF** - an AIF in which another AIF invests or to which another AIF has an exposure in accordance with point 23;

**25. subsidiary** - a company controlled by a parent company as defined in para. 35, including any company subordinate to the parent company which heads the group of companies concerned;

**26. own funds** - own funds as defined in Art. 4 para. (1) point 118 of Regulation (EU) no. 575/2013, i.e. the sum of Tier 1 own funds and Tier 2 own funds;

**27. holding company** - a company which owns interests in one or more other companies and whose business objective is to pursue one or more business strategies through its subsidiaries, associated companies or holdings to contribute to their long-term value, and which:

- a) it is either a company acting in its own name whose shares are admitted to trading on a regulated market in the EU; or

- b) it is not established for the primary purpose of generating returns for its investors through the sale of its subsidiaries or associated companies, as set out in the annual report or other official documents of the company;

**28. financial instrument** - an instrument as defined in Art. 2 para. (1) point 11 of Law no. 297/2004;

**29. professional investor** - an investor who is considered to be a professional client or may, on request, be considered to be a professional client within the meaning of the definition set out in the Financial Investment Services Regulations, issued in implementation of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EEC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;

**30. retail investor** - an investor who is not a professional investor;

**31. UCITS** - an undertaking for collective investment in transferable securities defined in accordance with the provisions of Government Emergency Ordinance no. 32/2012 on undertakings for collective investment in transferable securities and investment management companies, as well as for amending and supplementing Law no. 297/2004 on the capital market, approved with amendments and additions by Law no. 10/2015, hereinafter referred to as Government Emergency Ordinance no. 32/2012;

**32. qualifying holding** - a direct or indirect holding in an AIFM which represents at least 10% of the share capital or voting rights, as referred to in Art. 228 of Law no. 297/2004, having regard to the conditions of aggregation laid down in the regulations issued pursuant to that law, or which makes it possible to exercise significant influence over the management of the AIFM in which that holding subsists;

**33. legal representative** - a natural person domiciled in a European Union state or a legal person having its registered office in the European Union and who, being expressly appointed

by an AIFM established in a third state, acts on behalf of the AIFM concerned vis-à-vis the Romanian authorities, clients, bodies and business partners of the AIFM in respect of the obligations incumbent on AIFMs from a third state under this law;

**34.** employee representatives - employee representatives provided for in the Law no. 467/2006 on the establishment of the general framework of information and consultation of employees, hereinafter referred to as Law no. 467/2006;

**35.** parent company - a company that is in one of the following situations:

**a)** holds a majority of the voting rights of the shareholders or associates of another company (subsidiary); or

**b)** has the right to appoint or remove a majority of the members of the administrative, management or supervisory bodies of another company (subsidiary) and is simultaneously a shareholder or member of that company; or

**c)** has the right to exercise a dominant influence over a company (subsidiary) of which it is a shareholder or member by virtue of a contract entered into with that company or a clause in the memorandum or articles of incorporation of that company, if the law governing the subsidiary allows it to be subject to such contracts or clauses;

**d)** is a shareholder or associate of a company, and:

**(i)** either a majority of the members of the administrative, management or supervisory bodies of the company concerned (subsidiary) who performed these functions during the financial year in question, during the preceding financial year and up to the time of preparation of the consolidated accounts, were appointed solely by the exercise of their voting rights;

**(ii)** controls alone, by virtue of an agreement with other shareholders or associates of the company concerned (subsidiary), a majority of the voting rights of the shareholders or associates of the company concerned.

Subpara. (i) does not apply if another company holds the rights referred to in (a), (b) or (c) in respect of the subsidiary.

For the purposes of letters (a), (b) and (d), the voting, appointment or removal rights of any other subsidiary, and those of any person acting in his own name but on behalf of the parent company or of another subsidiary, shall be added to those of the parent company.

For the purposes of letters (a), (b) and (d), the following entitlements shall be deducted from the entitlements referred to in the preceding paragraph:

**1.** conferred by shares held for the account of a person who is neither the parent company nor a subsidiary of the parent company, or

**2.** conferred by shares held as collateral, provided that such rights are exercised in accordance with the instructions received or that the holding of such shares constitutes, for the company holding them, a regular transaction in its lending business, provided that the voting rights are exercised in the interest of the person giving the collateral.

For the purposes of letters (a) and (d), the total voting rights of shareholders or associates of the subsidiary shall be reduced by the voting rights attached to shares held by the company itself, by a subsidiary of that company or by a person acting in his own name but on behalf of those companies;

**36.** unlisted company - a company which has its registered office in the European Union and whose shares are not admitted to trading on a regulated market as defined in Art. 125 of Law no. 297/2004;

**37. established - means:**

**a)** for AIFMs, "which has its registered office";

**b)** for AIFs, "authorised or registered" or if the AIF is not authorised or registered, "having its registered office";

**c)** for depositaries, "which has its registered office or a branch";

**d)** for legal representatives of legal persons, "which has its registered office or a branch";

**e)** for legal representatives who are natural persons, "domiciled".

**38. Member State -** a Member State of the European Union. States which are signatories to the Agreement on the European Economic Area (EEA), other than Member States, are also assimilated to Member States of the European Union within the limits defined in that Agreement and subsequent acts;

**39. home Member State of the AIF:**

**a)** the Member State in which the AIF is authorised or registered under the law applicable in that Member State or, in the case of multiple authorisations or registrations, the Member State in which the AIF was first authorised or registered; or

**b)** if the AIF is neither authorised nor registered in a Member State, the Member State in which the AIF has its registered office and/or principal place of business;

**40. home Member State of the AIFM -** the Member State in which an AIFM has its registered office; for AIFMs established in a third country, all references to 'home Member State of the AIFM' shall mean 'home Member State of the AIFM' as referred to in Chap. VII;

**41. host Member State of an AIFM -** any of the following:

**a)** a Member State, other than the home Member State, in which an AIFM from the European Union manages an AIF from the European Union;

**b)** a Member State, other than the home Member State, in which an AIFM from the European Union distributes units of an AIF from the European Union;

**c)** a Member State, other than the home Member State, where an AIFM from the European Union distributes units of an AIF from a third country;

**d)** a Member State, other than the Member State of reference, where an AIFM established in a third country manages AIFs from the European Union;

**e)** a Member State, other than the Member State of reference, in which an AIFM established in a third country distributes units of an AIF from the European Union; or

**f)** a Member State, other than the Member State of reference, where an AIFM established in a third country distributes units of an AIF from a third country;

**g)** a Member State, other than the home Member State, in which an AIFM from the European Union provides the services referred to in Art. 5 para. (5);

**42. reference Member State -** the Member State defined in accordance with the provisions of Art. 39 para. (4);

**43. third State -** any State which is not a member of the European Union or which is not a signatory to the EEA;

**44. branch -** an organised, head office-type structure without separate legal personality of an AIFM or a self-managed AIF providing some or all of the services for which the AIFM or self-managed AIF has been authorised. All branches in Romania of an AIFM or a self-



managed AIF with its head office in another Member State or in a third country shall be considered as one branch;

**45.** units of the AIF - shares or fund units issued by the AIF depending on the legal form in which the AIF is constituted - either according to a memorandum of association or according to a partnership agreement.

**46.** pre-marketing - the direct or indirect provision of information or communications on investment strategies or investment ideas by or on behalf of an AIFM in the European Union to potential professional investors domiciled or headquartered in the European Union in order to test their interest in an AIF or a compartment of an AIF which is not yet established or which is established but in respect of which a notification of distribution has not yet been submitted in accordance with Art. 30 and 31 in the Member State in which the potential investors have their domicile or registered office, and which shall in no case constitute a placement or an offer to the potential investor to invest in units of that AIF or of a compartment thereof.

**Art. 4 - (1)** Each AIF managed in accordance with this law shall be managed by a single AIFM, which shall be bound by the provisions of this law. The AIFM shall be:

**a)** an external AIFM as defined in Art. 3 (3); or

**b)** where the AIF is established as a public limited-liability company and the management body of the AIF decides not to appoint an external AIFM, the AIF itself, which in this case is authorised as an AIFM, in which case the AIF shall be deemed to be internally managed or self-managed.

**(2)** Where an AIFM is unable to ensure compliance with this law by the AIF or by another entity acting on behalf of the AIF, the AIFM concerned shall immediately inform ASF and, where applicable, the competent authorities of the home Member State of the AIF. In this case, ASF shall require the AIFM to take the necessary measures to remedy the situation in accordance with ASF's regulations.

**(3)** If non-compliance persists, ASF may decide to terminate the management of the AIF concerned by the AIFM, taking into account the provisions of para. (2). In this case, the units of the AIF concerned shall no longer be distributed in the European Union. In the case of an AIFM established in a third country managing an AIF from a third country, the units of the AIF concerned shall no longer be distributed in Romania or in another Member State. ASF, as the competent authority of the home Member State of the AIFM, shall immediately inform the competent authorities of the host Member State of the AIFM of the measure taken.

## **CHAPTER II**

### **Authorisation of AIFMs**

**Art. 5 - (1)** The legal persons referred to in Art. 1 para. (2) may carry out the activity of management of AIF only if they are authorized under this law. AIFMs authorised in accordance with this law must at all times fulfil the conditions for authorisation.

**(2)** The main activities that an AIFM may undertake when managing an AIF are the following:

**a)** portfolio management;

**b)** risk management.

(3) AIFMs may also carry out other activities within the collective management of an AIF, such as:

- a) management of the entity:
  - (i) legal and fund accounting services;
  - (ii) requests for information from customers;
  - (iii) valuation and pricing, including tax returns;
  - (iv) monitoring compliance with applicable legislation;
  - (v) keeping the register of unit-holders;
  - (vi) distribution of income;
  - (vii) issues and redemptions of units;
  - (viii) settlement of contracts, including the issue of certificates;
  - (ix) record keeping;
- b) distribution;

c) activities related to AIF assets, i.e. services necessary for the performance of the AIFM's management tasks, infrastructure management, real estate management, advice to entities on capital structure, industrial strategy and related matters, advice and services relating to mergers and acquisitions of entities, and other services related to the management of the AIF and the companies and other assets in which it has invested.

(4) An external AIFM shall not be entitled to engage in activities other than those referred to in para. (2) and (3). Subject to authorisation as an investment management company, hereinafter referred to as an IMC, in accordance with the provisions of Government Emergency Ordinance no. 32/2012, it may also carry out the activity of additional management of one or more UCITS.

(5) An external AIFM may, in addition to the activities referred to in para. (3) may also carry the following activities and services:

- a) the management of individual investment portfolios, including those held by pension funds, on a discretionary basis and on an individual basis, in accordance with mandates given by investors, where such portfolios include one or more financial instruments as defined in Art. 2 (1) point 11 of Law no. 297/2004;
- b) related services comprising:
  - (i) investment advice;
  - (ii) safekeeping and administration activities relating to units issued by collective investment undertakings;
  - (iii) taking and transmitting orders in respect of financial instruments.

**Art. 6 - (1)** Internally managed AIFs may not engage in activities other than their own management in accordance with Art. 5 para. (2) and (3).

(2) AIFMs may not be authorised under this Law to carry on and/or provide:

- a) exclusively the services referred to in Art. 5 para. (5);
- b) related services referred to in Art. 5 para. (5) letter (b) without also being authorised to provide the services referred to in para. (5) letter (a);
- c) the activities referred to in Art. 5 para. (3); or
- d) the activities referred to in Art. 5 para. (2) letter (a) without also carrying out the activities referred to in Art. 5 para. (2) letter (b) or vice versa.

**(3)** The provision of the services referred to in Art. 5 para. (5) must be provided in accordance with Art. 3 para. (4), Art. 7 para. (6) and Art. 10 (f) of Law no. 297/2004, as well as the regulations on the rules of conduct applicable to the provision of services and investment activities.

**(4)** AIFMs established in Romania must provide ASF with the information it needs to monitor at any time compliance with the conditions laid down in this law.

**(5)** Intermediaries as defined in Art. 2 para. (1) point 14 of Law no. 297/2004 are not required to obtain an authorisation under this law to provide investment services, such as the management of the individual portfolio of an AIF. However, such intermediaries may offer or place AIF units to investors in the European Union directly or indirectly only to the extent that such units may be distributed in accordance with this law.

**Art. 7 - (1)** In order to carry out the activity of management of AIFs, AIFMs established in Romania must apply to ASF for authorisation as such.

**(2)** For the documentation of the application referred to in para. (1), the AIFM must submit to ASF the following:

**a)** information on members of the administrative or supervisory board, as the case may be, and on directors or members of the management board, as the case may be, of the AIFM;

**b)** information on the identity of the shareholders or direct or indirect shareholders of the AIFM, whether natural or legal persons, that have qualifying holdings and the value of those holdings;

**c)** a programme of operations setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Chap. II, III and IV and, where applicable, Chapters II, III and IV. V, VI, VII and VIII;

**d)** information on remuneration policies and practices in accordance with Art. 13;

**e)** information on the arrangements made for delegating and sub-delegating to third parties the activities referred to in Art. 19;

**f)** information on the investment strategies, including the types of underlying funds, whether the AIF is a fund of funds, the AIFM's policy on the use of leverage, risk profiles and other characteristics of the AIFs it manages or intends to manage, including information on the Member States or third countries in which the AIFs are established or are expected to be established;

**g)** information on where the master AIF is established, if the AIF in question is a feeder fund;

**h)** the rules or articles of incorporation of each AIF which the AIFM intends to manage;

**i)** information on the identity of the depositary, appointed in accordance with Art. 20, for each AIF which the AIFM intends to manage;

**j)** any additional information referred to in Art. 22 para. (1) for each AIF which the AIFM intends to manage.

**(3)** Where a IMC authorised in accordance with the provisions of Government Emergency Ordinance no. 32/2012 applies for authorisation as an AIFM under this law, that IMC need no longer provide information or documents that it has already provided for authorisation under Government Emergency Ordinance no. 32/2012, if the information and documents in question are still current.

**(4)** ASF shall inform ESMA quarterly of authorisations granted or withdrawn in accordance with the provisions of this Chapter.

**Art. 8 - (1)** ASF shall grant authorisation to an AIFM established in Romania only if:

**a)** ASF determines that the AIFM fulfils the conditions set out in this law; the AIFM has sufficient initial capital and own funds in accordance with Art. 9;

**b)** the persons who effectively conduct the business of the AIFM are of sufficiently good repute and have sufficient experience in accordance with the regulations of ASF, including in relation to the investment strategies pursued by the AIFs managed by the AIFM; the identity of those persons and of any person succeeding them in office shall be communicated forthwith to ASF, and the conduct of the business of the AIFM shall be ensured by at least two persons meeting such conditions;

**c)** the shareholders or members of the AIFM holding qualifying holdings meet the requirements of ensuring the sound and prudent management of the AIFM; and

**d)** the head office and registered office of the AIFM are located in Romania.

**(2)** The authorisation granted by ASF shall be valid in all Member States and the respective AIFMs shall be entered in the ASF Register.

**(3)** ASF shall consult the competent authorities of the other Member States before authorising the following AIFMs:

**a)** a subsidiary of an AIFM, a UCITS management company, an investment company, a credit institution or an insurance company authorised in another Member State;

**b)** a subsidiary of a parent company of an AIFM, a UCITS management company, an investment company, a credit institution or an insurance company authorised in another Member State; and

**c)** a company controlled by the same natural or legal persons as those controlling: another AIFM, a UCITS management company, an investment company, a credit institution or an insurance company authorised in another Member State.

**(4)** ASF shall refuse authorisation to an AIFM when the proper performance of its supervisory activity is hindered by:

**a)** close links between AIFMs and other natural or legal persons;

**b)** the laws, regulations or administrative provisions of a third country applicable to natural or legal persons with which the AIFM has close links;

**c)** difficulties in the application of those laws, regulations and administrative provisions.

**(5)** ASF may restrict the scope of the authorisation granted to an AIFM, in particular with regard to the investment strategies of the AIF that the AIFM is authorised to manage.

**(6)** ASF shall inform the applicant in writing, within 3 months from the date of submission of a complete application, whether or not authorisation has been granted. This period may be extended by a maximum of 3 months if ASF deems it necessary in view of the specific circumstances of the case and after having notified the AIFM thereof.

An application shall be deemed complete if the AIFM has submitted at least the information referred to in Art. 7 para. (2) (a) to (d), (f) and (g). AIFMs may start managing AIFs in Romania by using the investment strategies described in the application for authorisation in accordance with Art. 7 para (2) (f) from the moment of granting the

authorisation, but not earlier than 30 days after the submission of any missing information in accordance with Art. 7 para. (2) e) and h) - j).

(7) If within 4 months of the submission to ASF of the application for authorisation pursuant to Art. 7 the company does not submit at least the information referred to in Art. 7 para. (2) (a) to (d), (f) and (g) in order for the application to be considered complete under para. (6), ASF shall consider that the application has been abandoned and shall issue a rejection decision which may be appealed within 30 days from the date of communication.

**Art. 9 - (1)** An AIFM which is an internally managed AIF must have an initial capital of at least the equivalent in lei of 300,000 EUR, calculated at the reference rate communicated by the National Bank of Romania.

(2) Where an AIFM is appointed as external manager of the AIF, the AIFM in question shall have an initial capital of at least the equivalent in lei of 125,000 EUR, calculated at the reference rate communicated by the National Bank of Romania.

(3) Where the value of the AIF portfolios managed by the AIFM exceeds the lei equivalent of 250,000,000 EUR, the AIFM must top up its own funds by 0.02% of the amount by which the value of the portfolios managed by it exceeds the lei equivalent of 250,000,000 EUR. The total of the amount of initial capital and the amount of the additional amount of own funds is the equivalent in lei of at most 10,000,000 EUR.

(4) For the purposes of para. (3), AIFs managed by AIFMs, including AIFs to which the AIFM has delegated activities in accordance with Art. 19, with the exception of portfolios of AIFs which the AIFM manages by delegation, shall be deemed to be portfolios of AIFMs.

(5) Irrespective of the provisions of para. (3), the amount of the AIFM's own funds shall never be less than the amount laid down in Art. 13 of Regulation (EU) 2019/2.033 of the European Parliament and of the Council of 27 November 2019 on prudential requirements for investment companies and amending Regulations (EU) no. 1093/2010, (EU) no. 575/2013, (EU) no. 600/2014 and (EU) no. 806/2014, hereinafter Regulation (EU) 2019/2.033.

(6) An AIFM may not provide up to 50% of the additional own funds referred to in para. (3) if it benefits from a guarantee equal to the specified amount issued by a credit institution or an insurance company having its registered office in a Member State or in a third country, provided that it is subject to prudential rules which ASF considers equivalent to those laid down in Union law.

(7) In order to cover possible professional indemnity risks related to the activities that AIFMs may carry out under this law, both internally managed AIFs and external AIFMs:

a) either hold adequate additional own funds to cover possible liability risks arising from professional negligence; or

b) they hold professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(8) The own funds, including additional own funds referred to in para. (7)(a), shall be invested in liquid assets or in assets readily convertible into short-term cash and shall not include speculative positions.

(9) Para. (7) and (8) and their implementing measures adopted by the European Commission are the only ones applicable to AIFMs which are also IMC managing UCITS.

**Art. 10 - (1)** AIFMs shall submit to ASF, for authorisation purposes, prior to implementation, any change in the significant conditions on which the authorisation was based, provided for in Art. 7 para. (2) a), b), e), f), h) and i).

**(2)** In addition to the provisions of para. (1), AIFMs shall submit to ASF for authorisation, prior to implementation, including the following changes to the organisation and functioning:

- a)** extension/withdrawal of the object of activity;
- b)** change of registered office and, where applicable, of head office;
- c)** establishment/disbandment of secondary offices;
- d)** change of company name;
- e)** increase/decrease of share capital.

**(3)** If ASF decides to impose restrictions or to reject those changes, it shall inform the AIFM within 60 days of receipt of the request for authorisation. This period may be extended by a further maximum of 30 days if ASF deems it necessary due to the specific circumstances of the case and after having notified the AIFM thereof. The amendments shall take effect when ASF issues an authorisation decision.

**(4)** In the event of a change in the conditions referred to in Art. 7 para. (2) c), d), g) and j), AIFM shall notify ASF 14 days prior to the entry into force of such changes.

**(5)** The documents shall be deemed to have entered into force on the expiry of the 14-day period, if ASF has not sent any request to amend or supplement the notified information within this period.

**(6)** The provisions of para. (1) concerning the authorisation of changes to the significant conditions referred to in Art. 7 para. (2) (b) shall not apply to an AIFM which is an internally managed AIF and whose shares are admitted to trading on a regulated market.

**Art. 11 - ASF** may withdraw the authorisation issued to an AIFM if it:

**a)** does not start its activity within 12 months from the date of obtaining the authorisation, expressly renounces the authorisation or has renounced to carry out the activity regulated by this law within the last 6 months;

**b)** has obtained the authorisation by making false statements or by other unlawful means;

**c)** no longer fulfils the conditions on the basis of which it was authorised;

**d)** no longer complies with Directive 2013/36/EU and Regulation (EU) no. 575/2013, if the authorisation also covers the discretionary portfolio management service referred to in Art. 5 para. (5) a);

**e)** has seriously or systematically violated the provisions adopted under this Law; or

**f)** falls within any of the cases in which, under national law, authorisation must be withdrawn for matters outside the scope of this Law.

### **CHAPTER III**

#### **Conditions for the operation of AIFMs**

**Art.12 - (1)** AIFMs established in Romania must comply at all times during the course of their business with the following prudential rules:

a) act honestly, competently, prudently, diligently and fairly in the conduct of their activities;

b) act in the best interests of the AIF or the investors of the AIFs it manages and the integrity of the market;

c) maintain and make efficient use of the resources and procedures necessary for the proper conduct of their activities;

d) take all reasonable steps as set out in Art. 16 to 29 of the European Union Regulation no. 231/2013 to avoid conflicts of interest and, where they cannot be avoided, to identify, manage, monitor and, where appropriate, disclose conflicts of interest in order to prevent them from adversely affecting the interests of AIFs and their investors and to ensure that the AIFs it manages are treated fairly;

e) comply with all regulations applicable to the conduct of their activities so as to promote the interest of the AIF or the investors of the AIFs they manage and the integrity of the market;

f) treat all AIF investors fairly. Investors in an AIF shall benefit from preferential treatment only if such preferential treatment is mentioned in the rules or articles of incorporation of the AIF concerned.

(2) AIFMs authorised to provide also the discretionary portfolio management service referred to in Art. 5 para. (2) a):

a) are not authorised to invest all or part of the client's portfolio in units of AIFs they manage, unless they receive prior approval from the client;

b) may start their activity provided that they have acquired membership of the Investor Compensation Fund set up in accordance with the provisions of Title II, Chapter IX of Law no. 297/2004.

**Art. 13. - (1)** AIFMs shall draw up and apply remuneration policies and practices for those categories of staff whose professional activities have a significant impact on its risk profile or on the risk profiles of the AIFs it manages, including for persons in managerial positions, risk takers and control functions, as well as for any employee receiving total remuneration which places him in the same remuneration category as the directors and risk-takers, which is consistent with and promotes sound and effective risk management and which does not encourage risk-taking that is inconsistent with the risk profiles, rules or articles of incorporation of the AIF it manages.

(2) AIFMs shall determine remuneration policies and practices in accordance with the provisions of Annex 1.

**Art. 14 - (1)** AIFMs must take all reasonable steps set out in Art. 30-37 of the European Union Regulation no. 231/2013 to identify conflicts of interest arising in the course of the administration of AIFs between:

a) the AIFM, including its directors and employees or any other person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF;

b) the AIF or the investors in this AIF and another AIF or the investors in this AIF;

c) the AIF or the investors of that AIF and another client of the AIFM;

d) the AIF or investors in that AIF and a UCITS managed by the AIFM or investors in that UCITS; or

e) two clients of AFIA.

(2) AIFMs shall maintain and enforce effective organisational and administrative arrangements in order to take all reasonable steps set out in Art. 30 to 37 of Regulation (EU) no. 231/2013 to identify, prevent, manage and monitor conflicts of interest in order to prevent them from influencing the interests of AIFs and their investors.

(3) AIFMs shall separate, within their working environment, tasks and responsibilities which may be considered incompatible or which may possibly give rise to conflicts of interest. AIFMs shall consider whether their operating conditions may involve any other conflicts of interest and inform AIF investors accordingly.

(4) Where the organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure that the risk of damage to investors' interests is avoided as provided for in Art. 30 to 37 of the European Union Regulation no. 231/2013, the AIFM shall clearly inform investors, before acting on their behalf, of the general nature or source of such conflicts of interest and develop appropriate policies and procedures.

(5) Where the AIFM, acting on behalf of an AIF, uses the services of a prime broker, the conditions shall be set out in writing in a contract. The contract shall stipulate in particular the possibility of transfer and re-use of AIF assets which comply with the rules or the AIF's articles of incorporation. The contract shall provide for the depositary to be informed of the contract. The AIFM shall act with due skill, care and diligence in selecting and appointing the prime brokers with whom a contract is concluded.

**Art. 15 - (1)** AIFMs shall functionally and hierarchically separate risk management functions from operational units, including portfolio management functions. The functional and hierarchical separation of risk management functions shall be verified by ASF in accordance with the principle of proportionality, it being understood that the AIFM can demonstrate, in any event, that specific safeguards against conflicts of interest allow the independent performance of risk management activities and that the risk management process meets the requirements of this law and ensures ongoing effectiveness.

(2) AIFMs shall implement appropriate risk management systems to identify, assess, manage and monitor appropriately all risks relevant to the investment strategy of each AIF and to which each AIF is or may be exposed, in accordance with the provisions of Art. 30 to 37 of the European Union Regulation no. 231/2013. In this respect, AIFMs shall not rely exclusively or mechanically on credit ratings issued by credit rating agencies as defined in Art. 3 para. (1) (b) of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies to assess the creditworthiness of AIF assets.

AIFMs shall assess their risk management systems at an appropriate frequency, at least once a year, and adapt them where necessary in accordance with the provisions of the European Union Regulation no. 231/2013.

(3) Each AIFM must at least:

a) implement a documented and regularly updated due diligence procedure when investing on behalf of the AIF in accordance with the investment strategy, objectives and risk profile of the AIF;



b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF portfolio can be properly identified, assessed, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;

c) ensure that the risk profile of the AIF corresponds to the size, portfolio structure and investment strategies and objectives of the AIF as set out in its rules or articles of incorporation, prospectus and offering documents.

4) ASF shall monitor the adequacy of AIFM processes for assessing credit ratings, assess the use of references to credit ratings as referred to in para. (2). In the AIFM's investment policies with respect to AIFs and, where appropriate, encourage the mitigation of the impact of such references, with a view to reducing the exclusive reliance on such credit ratings.

5) AIFMs shall determine the maximum level of leverage they may use for each AIF they manage, as well as the rights to re-use collateral or any other type of collateral granted under the leverage agreement, taking into account, inter alia:

a) type of AIF;

b) the investment strategy of the AIF;

c) sources that generate leverage for AIF;

d) any other relevant interconnection or relationship with other financial service providers that could give rise to systemic risks;

e) the need to limit exposure to a single counterparty;

f) the extent to which leverage is guaranteed;

g) the ratio of assets to liabilities;

h) the volume, nature and scale of AIFM activities in the markets concerned.

**Art. 16 - (1)** For each AIF it manages which is not a closed-ended AIF which does not employ leverage, AIFMs shall employ an adequate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and ensure that the liquidity profile of the AIF investments complies with its basic obligations.

AIFMs shall conduct regular stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of the AIF and monitor the liquidity risk of the AIF accordingly.

(2) The AIFM shall ensure that, for each AIF managed, the investment strategy, liquidity profile and redemption policy are consistent.

**Art. 16<sup>1</sup> . -** Where AIFMs are exposed to a securitisation that no longer meets the requirements set out in Regulation (EU) 2.402/2017 of the European Parliament and of the Council of 12 December 2017 establishing a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) 1.060/2009 and (EU) 648/2012, they must, in the interests of investors in the AIFs they manage, act and take remedial action as appropriate.

**Art. 17 - (1)** AIFMs must at all times use adequate and appropriate human and technical resources necessary for the proper management of the AIF.

(2) Depending on the nature of the AIF managed by the AIFM, the AIFM shall draw up and apply sound administrative and accounting procedures and controls and safeguards in the field of electronic data processing, as well as adequate internal control mechanisms, including, in particular, rules on personal transactions of its employees or holding or managing

investments for the purpose of investing on own account and guaranteeing, at least that each transaction involving AIFs can be reconstructed as to its origin, the parties to it, its nature, its timing and the place where it was carried out and that the assets of the AIFs managed by the AIFM are invested in accordance with the rules or articles of incorporation of the AIF and the legal provisions in force.

**Art. 18 - (1)** AIFMs shall ensure that, for each AIF managed, adequate and consistent procedures are established so that an appropriate and independent valuation of the assets of the AIF can be carried out in accordance with this law, the specific applicable law and the rules or articles of incorporation of the AIF.

**(2)** The rules applicable to the valuation of the assets and the calculation of the unit net asset value of the AIF shall be laid down in the law of the country where the AIF is established and/or in its rules or articles of incorporation.

**(3)** The AIFM shall also ensure that the unit net asset value of the AIF is calculated and disclosed to investors in accordance with this law, applicable capital market legislation and the AIF rules or articles of incorporation.

**(4)** The valuation procedures used shall ensure the valuation of assets and the calculation of the unit value of net assets at least once a year.

**(5)** If the AIF is open-ended in the sense that it issues units subject to regular issue and redemption, in accordance with the regulations issued by ASF, these valuations and calculations shall also be carried out at a frequency appropriate to the assets held by the AIF and its issue and redemption frequency, in accordance with the provisions of Art. 67-74 of the European Union Regulation no. 231/2013.

**(6)** If the AIF is a closed-ended AIF as defined in Art. 2 (g) of Law no. 243/2019 on the regulation of alternative investment funds and on the amendment and completion of certain regulatory acts, these valuations and calculations shall also be carried out in the event of an increase or decrease in capital by the AIF in question.

**(7)** Investors of AIFs referred to in para. (5) and (6) shall be informed of valuations and calculations as set out in the relevant provisions of the AIF rules or articles of incorporation.

**(8)** AIFMs shall ensure that the valuation function is performed by either:

**a)** an external valuator, which shall be a legal or natural person independent of the AIF, the AIFM and any other person having close links with the AIF or the AIFM; or

**b)** the AIFM itself, provided that the valuation task is functionally independent from portfolio management and remuneration policy and that other measures ensure that conflicts of interest are limited and undue influence on employees is prevented.

The depositary appointed for an AIF may not be appointed as external valuator of that AIF unless it has functionally and hierarchically separated the exercise of its depositary functions from its duties as external valuator and any conflicts of interest are identified, managed, monitored and disclosed to the AIF investors in an appropriate manner.

**(9)** Where the valuation function is performed by an external valuator, the AIFM must demonstrate that:

**a)** the external valuator is either:

**(i)** a legal entity, corporate member of the The National Association of Romanian Authorized Valuators, hereinafter referred to as ANEVAR, whose business is to provide services in the field of financial accounting and/or business and management consulting and to

appoint as its representative to carry out valuations in accordance with capital market regulations, an ANEVAR accredited member (specialization in Business Valuation) or a member of professional valuation organizations affiliated to the European Group of Valuers Associations (TEGoVA) or other international organizations recognized by ANEVAR;

(ii) natural person who is an ANEVAR accredited member (specialisation in Business Valuation) or a member of TEGoVA affiliated professional valuation organisations or other international organisations recognised by ANEVAR;

b) the external valuator can provide sufficient professional guarantees to be able to effectively perform its proper assessment function in accordance with para. (1) to (3); and

c) the appointment of the external valuator complies with the provisions of Art. 19 para. (1) to (3) and the acts delegated by the European Commission in this field.

(10) The appointed external valuator shall not delegate the evaluation function to a third party.

(11) The AIFM shall notify the appointment of the external valuator to ASF, which may request the appointment of another external valuator in its place, if the conditions set out in para. (9) are not or are no longer fulfilled.

(12) The assessment shall be carried out with impartiality, competence, prudence and professional diligence.

(13) Where the valuation function is not performed by an external valuator, ASF may request the AIFM to have its valuation procedures and/or valuations verified by an external valuator or, where applicable, an auditor.

(14) AIFMs are responsible for the correct valuation of AIF assets, as well as for calculating the net asset value and disclosing this net asset value. The appointment by the AIFM of an external valuator shall not affect the liability of the AIFM towards the AIF and its investors.

(15) Taking into account the provisions of para. (14), the external valuator shall be liable to the AIFM for losses incurred by the AIFM as a result of negligence or wilful failure to perform its duties.

**Art.19 - (1)** The AIFM may delegate to third parties, subject to the prior approval of ASF and on the basis of a written contract, the exercise of the activities referred to in Art. 5 para. (2), in accordance with ASF regulations issued in application of this law. With regard to the activities referred to in Art. 5 para. (3), their delegation shall be carried out subject to notification to ASF, on the basis of a written contract and in accordance with the ASF regulations issued in application of this law.

(2) The delegation of the activities referred to in para. 1 shall be subject to the following conditions (1) shall be carried out under the following conditions:

a) AIFM must be able to justify its entire delegation structure with objective reasons;

b) the delegate must have sufficient resources to perform the tasks in question and the persons who actually carry out the delegate's work must be of sufficiently good repute and have sufficient experience in accordance with the regulations of ASF;

c) where the delegation concerns portfolio management or risk management, it must be granted only to entities which are authorised or registered in a Member State, whose business is asset management and which are subject to supervision by the competent authorities of the

Member States concerned or, if this condition cannot be met, it must be granted only subject to prior authorisation by ASF;

**d)** where the delegation concerns portfolio management or risk management and is granted to a third country entity, it must be ensured that, in addition to the requirements laid down in letter c), cooperation between ASF and the supervisory authority of the entity concerned;

**e)** the delegation must not hinder the proper conduct of supervision of the AIFM and, in particular, must not prevent either the AIFM from acting or the AIF from being managed in the best interests of its investors;

**f)** AIFM must be able to demonstrate that the delegate is qualified and capable of performing the functions in question, that it has been diligently selected, and that the AIFM is able to monitor the delegated activity effectively at all times, to give further instructions to the delegate at any time and to withdraw the delegation with immediate effect where this is in the interests of investors. The AIFM shall evaluate the services provided by each delegate on an ongoing basis.

**(3)** Portfolio management or risk management may not be delegated:

**a)** the depositary or a delegate of the depositary; or

**b)** any other entity whose interests may conflict with those of the AIFM or the AIF investors, unless the entity in question has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are identified, managed, monitored and disclosed to the AIF investors accordingly.

**(4)** The fact that the AIFM has delegated functions to a third party or any other sub-delegation does not affect the liability of the AIFM towards the AIF and its investors. The AIFM shall not delegate its functions to such an extent that it can no longer be considered the AIFM and become a "letterbox" entity within the meaning of Art. 82 of the European Union Regulation no. 231/2013.

**(5)** The third party entity to which activities have been delegated by the AIFM may sub-delegate any of the functions delegated to it provided that the following requirements are met:

**a)** AIFM has given its prior consent to sub-delegation;

**b)** AIFM notified ASF before the sub-delegation provisions came into force;

**c)** the conditions laid down in para. (2), all references to "delegate" being understood as references to "sub-delegate".

**(6)** no sub-delegation of portfolio management or risk management shall be assigned:

**a)** the depositary or a delegate of the depositary; or

**b)** any other entity whose interests may conflict with those of the AIFM or the AIF investors, unless the entity in question has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are identified, managed, monitored and disclosed to the AIF investors accordingly.

The relevant delegate evaluates the services provided by each sub-delegate on an ongoing basis.

**(7)** Where the subdelegate delegates any of the functions delegated to him, the conditions laid down in para. (5) shall apply mutatis mutandis.

**Art. 20 - (1)** For each AIF managed, the AIFM shall ensure that a single depositary is appointed.

**(2)** The appointment of the depositary shall be subject to a written contract. Among other things, the contract shall regulate the flow of information deemed necessary to enable the depositary to perform its functions for the AIF for which it has been appointed as depositary in accordance with this Law.

**(3)** The depositary is:

**a)** in the case of AIF established in Romania:

**(i)** a credit institution in Romania, authorised by BNR, according to the legislation applicable to credit institutions, or a branch in Romania of a credit institution, authorised in another Member State, approved by ASF for the activity of depositing CIU assets and registered in the ASF Register, which fulfil the conditions provided for by this law and the ASF regulations issued in application thereof;

**(ii)** a financial investment services company (FISC) authorised by ASF or a branch of an investment company authorised in another Member State registered in the ASF Register, the object of whose business is the related service of safe custody and administration of financial instruments on behalf of clients, including custody and related services such as fund or collateral management, as referred to in Art. 5 para. (1<sup>1</sup>) letter a) of Law no. 297/2004 and complies with capital adequacy requirements, including capital requirements for operational risks, and holds, in any case, own funds at least equal to the amount of initial capital as required by Directive 2013/36/EU and Regulation (EU) no. 575/2013;

**b)** in the case of an AIF established in another Member State of the European Union the depositary may be:

**(i)** a credit institution having its registered office in the European Union and authorised in accordance with Directive 2013/36/EU;

**(ii)** an investment company which has its registered office in the European Union, complies with the capital adequacy requirements, including the capital requirements for operational risks, and is authorised under Directive 2004/39/EC and also provides related custodial and administration services for financial instruments on behalf of clients in accordance with Section Î<sub>3</sub> point 1 of Annex I to Directive 2004/39/EC; such investment companies shall, in any event, hold own funds at least equal to the amount of initial capital prescribed in Directive 2013/36/EU and Regulation (EU) no. 575/2013; or

**(iii)** another category of institutions subject to prudential regulation and ongoing supervision and which, on 21 July 2011, fall within the categories of institutions determined by Member States as eligible for the depositary function in accordance with Art. 23 para. (3) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to UCITS;

**(c)** in the case of AIFs from a third country and subject to the provisions of para. (5) (b), the depositary may also be a credit institution or any other entity similar to the entities referred to in letters (a) and (b), provided that the conditions of para. (6)(b) are met.

**(4)** To avoid conflicts of interest between the depositary, the AIFM and/or the AIF and/or its investors:

**a)** an AIFM does not act as a depositary;

**b)** a prime broker acting as a counterparty for an AIF shall not act as a depositary for that AIF unless it has functionally and hierarchically separated the performance of its depositary functions from its prime broker duties and any conflicts of interest are identified, managed, monitored and disclosed to AIF investors in an appropriate manner. The delegation by the depositary of its custody duties to such a prime broker in accordance with para. (11) is permitted if the relevant conditions are met;

**c)** The AIFM must be a legal person independent of the depositary and may not have close links with the depositary.

**(5)** The depositary shall be established in one of the following locations:

**a)** in the case of AIFs from the European Union, in the home Member State of the AIF; in the case of AIFs from Romania, the depositary is established in Romania;

**b)** in the case of AIFs from a third country, the third country where the AIF is established or in the home Member State of the AIFM managing the AIF or in the Member State of reference of the AIFM managing the AIF.

**(6)** In compliance with the requirements laid down in para. (3), the designation of a depositary established in a third State shall be subject to the following conditions:

**a)** the competent authorities of the Member States in which the AIFs of a third country and ASF, if the home Member State of the AIFM is Romania, have signed cooperation and information exchange agreements with the competent authorities of the depositary;

**b)** the depositary is subject to prudential regulation, including minimum capital requirements, and effective supervisory measures which have the same effect as Union law and are effectively enforced;

**c)** the third country in which the depositary is established is not included in the category of non-cooperative countries and territories by the Financial Action Task Force (FATF);

**d)** the Member States in which the AIFs of a third country AIF are intended to be distributed and, if different, the home Member State of the AIFM have signed an agreement with the third country in which the depositary is established which fully complies with the standards set out in Art. 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including possible multilateral tax agreements;

**e)** the depositary shall be contractually liable to the AIF or to the investors of the AIF in accordance with para. (12) and (13) and expressly agrees to comply with para. (11).

If ASF, as competent authority of a Member State in which units of AIFs from a third country are intended to be distributed, does not agree with the assessment of the application of letters (a), (c) or (e) of the first paragraph by the competent authorities of the home Member State of the AIFM, it may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Art. 19 of Regulation (EU) no. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision no. 716/2009/EC and repealing Commission Decision 2009/77/EC.

**(7)** The depositary shall in general ensure that the cash flows of the AIF are properly monitored and shall in particular ensure that all payments made by or on behalf of investors when subscribing for units of an AIF have been received and that the cash of the AIF is fully /recorded in the cash accounts opened in the name of the AIF or in the name of the AIFM acting

on behalf of the AIF or in the name of the depositary acting on behalf of the AIF with a central bank, a credit institution authorised under Community law or a bank authorised in a non-Member State or another entity of the same nature in the relevant market where cash accounts are required, provided that such entity is subject to prudential regulation and effective supervision having the same effect as Union law and which is effectively enforced and in accordance with the principles relating to the safe custody of client funds laid down in the regulations issued pursuant to Law no. 297/2004 and Emergency Ordinance no. 32/2012. Where cash accounts are opened in the name of the depositary acting on behalf of the AIF, the cash of the entity referred to in the first subparagraph and the depositary's own cash shall not be recorded in such accounts.

**(8)** The assets of the AIF or of the AIFM acting on behalf of the AIF shall be entrusted to the depositary for safekeeping as follows:

**a)** in the case of financial instruments that may be held in custody:

**i)** the depositary shall hold in custody all financial instruments that can be recorded in a securities account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

**ii)** for this purpose, the depositary shall ensure that all financial instruments which may be registered in a financial instruments account opened in the depositary's records are registered in the depositary's records in separate accounts in accordance with the principles relating to the safe custody of client financial instruments laid down in the regulations issued pursuant to Law No 297/2004 and Government Emergency Ordinance no. 32/2012, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can at all times be clearly identified as belonging to the AIF in accordance with applicable law;

**b)** in the case of other assets:

**(i)** the depositary shall verify the ownership of the AIF or the AIFM acting on behalf of the AIF in respect of those assets and shall keep records of the assets in respect of which it is satisfied that the AIF or the AIFM acting on behalf of the AIF has ownership;

**(ii)** in order to verify whether the AIF or the AIFM acting on behalf of the AIF owns the property, the depositary shall rely on information or documents provided by the AIF or the AIFM and, where available, on external evidence;

**(iii)** the depositary shall keep its records up to date.

**(9)** In addition to the tasks referred to in para. (7) and (8), the depositary:

**a)** ensure that the sale, issue, redemption, repurchase and cancellation of AIF units are carried out in accordance with applicable national law and the AIF rules or articles of incorporation;

**b)** ensure that the value of AIF units is calculated in accordance with the applicable national law, the rules or articles of incorporation of the AIF and the procedures set out in Art. 19;

**c)** comply with the instructions of the AIFM, unless they are contrary to applicable national law or to the rules or articles of incorporation of the AIF;

**d)** ensure that, in transactions involving AIF assets, the consideration is paid to the AIF within the usual time limits;

**e)** ensure that the income of the AIF is used in accordance with applicable national law and the AIF rules or articles of incorporation.

**(10)** In performing their specific duties, the AIFM and the depositary shall act honestly, fairly, professionally and independently and in the best interests of the AIF and the AIF investors.

The depositary shall not carry out activities in relation to AIFs or AIFMs acting on behalf of AIFs which may create conflicts of interest between AIFs, investors in AIFs, AIFMs and the depositary itself, unless the depositary has functionally and hierarchically separated the performance of its depositary duties from its other potentially conflicting duties, and any conflicts of interest are identified, managed, monitored and disclosed to AIF investors in an appropriate manner; the assets referred to in para. (7) shall not be re-used by the depositary without the prior consent of the AIF or the AIFM acting on behalf of the AIF.

**(11)** The depositary shall not delegate to third parties its functions, except those referred to in para. (8).

The depositary may delegate to third parties the functions referred to in para. (8), subject to the following conditions:

**a)** the powers are not delegated with the intention of circumventing the requirements of this Law;

**b)** the depositary can demonstrate an objective reason for the delegation;

**c)** the depositary shall exercise due skill, care and diligence in selecting and appointing a third party entity to which it wishes to delegate part of its tasks and shall continue to exercise due skill, care and diligence in regularly reviewing and supervising on an ongoing basis the third party entity to which it has delegated part of its tasks and the actions taken by the third party entity in relation to the tasks delegated to it; and

**d)** the depositary shall ensure that the third party entity shall at all times, in the course of performing the tasks delegated to it, comply with the following conditions:

**(i)** the third party entity has appropriate structures and experience commensurate with the nature and complexity of the assets of the AIF or the AIFM acting on behalf of the AIF entrusted to it;

**(ii)** with regard to the delegation of custodial tasks referred to in para. (8)(a), the third party entity shall be subject to prudential regulation, including minimum capital requirements, and effective supervision in the jurisdiction concerned, and the third party entity shall be subject to regular external monitoring to verify that the financial instruments are in its possession;

**(iii)** the third party separates the assets of the depositary's clients from its own assets and from the assets of the depositary so that they can be clearly identified at any time as belonging to the clients of a particular depositary;

**(iv)** the third party entity does not use the assets without the prior consent of the AIF or the AIFM acting on behalf of the AIF and without prior notification to the depositary; and

**(v)** the third party complies with the general obligations and prohibitions laid down in para. (8) and (10).

**(12)** Taking into account the provisions of para. (11)(d)(ii), where the law of the third country requires certain financial instruments to be held in custody by a local entity and no local entity meets the delegation requirements set out in that paragraph, the depositary may delegate the functions to such local entity only to the extent provided for in the law of the third



country and only so long as there are no local entities meeting the delegation requirements, subject to the following requirements being met:

**a)** the AIF investors concerned must be duly informed that the delegation is necessary due to legal constraints in the law of the third country and the circumstances justifying the delegation before making the investment; and

**b)** AIFs or AIFMs acting on behalf of AIFs must request the depositary to delegate custody of the financial instruments concerned to such local entity.

The third party entity may also sub-delegate these functions, provided that the same requirements are met. In such cases, para. (14) shall apply *mutatis mutandis* to the relevant parties. The provision of services by securities settlement systems provided for in Law no. 253/2004 on settlement finality in payment and securities settlement systems, as amended, or the provision of similar services by securities settlement systems in third countries shall not be considered as a delegation of its custody functions.

**(13)** The depositary shall be liable to the AIF or to the investors of the AIF for any loss by the depositary or by a third party to whom custody of the financial instruments held in custody in accordance with para. (8)(a); in the event of loss of a financial instrument in custody, the depositary shall return without delay to the AIFM or AIFM acting on behalf of the AIF an identical financial instrument or one of corresponding value. The depositary shall not be liable if it can prove that the loss occurred as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all its reasonable efforts to counteract them, in accordance with the provisions of Art. 100 and 101 of European Union Regulation no. 231/2013. The depositary shall also be liable to the AIF or to the investors of the AIF for all other losses suffered by them as a result of its intentional or negligent failure to perform its obligations under this law.

**(14)** The depositary's liability shall not be affected by the delegations referred to in para. (11).

In the event of the loss of financial instruments held in custody by a third party in accordance with para. (11), the depositary may be exonerated from liability if it can prove that:

**a)** all the requirements for the delegation of its custody tasks referred to in para. (11) second subparagraph;

**b)** a written contract between the depositary and the third party expressly transfers the depositary's liability to the third party and gives the AIF or AIFM acting on behalf of the AIF the possibility to claim compensation from the third party for the loss of the financial instruments or the depositary the possibility to claim such compensation on their behalf; and

**c)** a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF expressly permits a waiver of the depositary and sets out the objective reason for such waiver.

**(15)** Where the laws of the third country requires certain financial instruments to be held in custody by a local entity and there are no local entities that meet the delegation requirements laid down in para. (11)(d)(ii), the depositary may be exempted from liability if the following conditions are met:

**a)** the rules or articles of incorporation of the AIF in question expressly permit such exemption under the conditions laid down in this Law;

**b)** the AIF investors concerned have been adequately informed of the exemption and the circumstances justifying the exemption before making the investment;

**c)** the AIF or AIFM acting on behalf of the AIF has requested the depositary to delegate custody of the financial instruments concerned to a local entity;

**d)** there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF which expressly permits such a waiver; and

**e)** there is a written contract between the depositary and the third party entity which expressly transfers the liability of the depositary to the local entity concerned and gives the AIF or AIFM acting on behalf of the AIF the possibility to claim compensation for the loss of the financial instruments from the local entity or the depositary the possibility to claim such compensation on their behalf.

**(16)** Liability towards AIF investors may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depositary, the AIFM and the investors.

**(17)** If the depositary is established in Romania, it shall make available to ASF, upon request, all information it has obtained in the performance of its duties and which may be necessary for the authority to monitor the AIF/AIFM activity. If ASF is not the competent authority to monitor the AIF or AIFM concerned, the information received shall be transmitted without delay to the competent authorities for this purpose.

## **CHAPTER IV**

### **Transparency requirements**

**Art. 21 - (1)** AIFMs established in Romania must make available, for each AIF in the European Union which they manage and for each AIF whose units they distribute in the Union, an annual report for each financial year, within 6 months of the end of the financial year. The annual report shall be made available to investors on request, free of charge, and shall be sent to ASF and, where applicable, to the competent authorities of the home Member State of the AIF managed.

Where an AIF is required to publish an annual financial report in accordance with the provisions of Law no. 297/2004, as well as with the regulations on reports drawn up by issuers whose securities are admitted to trading on a regulated market, only the additional information referred to in para. (2), either separately or as an additional part of the annual financial report. In the latter case, the annual financial report shall be published no later than 4 months after the end of the financial year.

**(2)** The annual financial report shall contain at least:

**a)** a balance sheet or a statement of assets and liabilities;

**b)** an income and expenditure account for the financial year;

**c)** a report on the activities of the financial year;

**d)** any material change in the information listed in Art. 22 that occurred during the financial year covered by the report, as determined in accordance with Art. 106 of the European Union Regulation no. 231/2013;

e) the total amount of remuneration for the financial year, broken down into fixed and variable remuneration, paid by the AIFM to its staff, and the number of beneficiaries and, where applicable, the performance fees paid by the AIFM;

f) the aggregate amount of remuneration, broken down for persons in managerial positions and for AIFM staff whose actions have a significant impact on the risk profile of the AIF.

3) The accounting information in the annual reports shall be prepared in accordance with Romanian accounting standards, if Romania is the home Member State of the AIF, respectively with the accounting standards of the home Member State of the AIF established in other Member States, or in accordance with the accounting standards of the third country in which the AIF is established and with the accounting rules laid down in the AIF's rules or articles of incorporation, such accounting information being audited by persons empowered by law for this purpose in accordance with the provisions of Government Emergency Ordinance no. 90/2008 on the statutory audit of annual financial statements and consolidated annual financial statements and the public interest supervision of the accounting profession, approved with amendments by Law no. 278/2008, as amended. The audit report, including the assessments contained therein, shall be reproduced in full in the annual report.

(4) The provisions of Title IX "Financial Audit" of Law no. 126/2018 on Markets in Financial Instruments shall be applied accordingly by AIFMs and AIFs.

**Art. 22 - (1)** AIFMs shall provide investors, before investing in AIFs, for each AIF in the European Union which they manage and for each AIF whose units they distribute in the European Union, in accordance with the rules or articles of incorporation of the AIF, with the following information, as well as the changes which may determine the investors' decision to invest or not to invest in such collective investment undertakings:

a) a description of the investment strategy and objectives of the AIF, information on where the master AIF is established and where the master funds are established, whether the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may use, any associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the risks associated with it, any restrictions on the use of leverage and any arrangements for the re-use of assets and collateral, and information on the maximum level of leverage that AIFMs are entitled to use for AIFs;

b) a description of the procedures by which the AIF may change its investment strategy or policy or both;

c) a description of the main legal implications of the contractual relationship established for the purpose of the investment, including information on jurisdiction, applicable law and the possible existence of legal instruments allowing for the recognition and enforcement of judgments in the territory where the AIF is established;

d) the identity of the AIFM, the depositary, the auditor and any other service providers of the AIF and a description of their duties and the rights of investors;

e) a description of how the AIFM complies with the requirements laid down in Art. 9 para. (7);

**f)** a description of any management function delegated by the AIFM in accordance with Annex 1 and any custody function delegated by the depositary, the identity of the delegate and any conflicts of interest that may arise as a result of such delegations;

**g)** a description of the AIF valuation procedure and the methodology for determining the value of the assets, including the methods used for the valuation of hard-to-value assets in accordance with Art. 18;

**h)** a description of the liquidity risk management of the AIF, including redemption rights in both normal and exceptional situations and existing redemption agreements with investors;

**i)** a description of all fees, charges and expenses which are directly or indirectly borne by investors and the maximum amount thereof;

**j)** a description of how the AIFM ensures fair treatment of investors and, if an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors obtaining such preferential treatment and, where applicable, their legal or economic links to the AIF or AIFM;

**k)** the last annual report in accordance with Art. 21;

**l)** the procedure and conditions for the issue and sale of units;

**m)** the most recent net asset value of the AIF or the most recent market price for units of the AIF in accordance with Art. 18;

**n)** where applicable, the performance history of the AIF;

**o)** the identity of the prime broker and a description of any material arrangements the AIF has with its prime brokers and how conflicts of interest are managed in relation to them and the clause in the contract with the depositary relating to the possibility of transfer and re-use of AIF assets and information on any transfer of liability to the prime broker;

**p)** a description of how and when the information referred to in para. (4) and (5).

**(2)** AIFMs shall inform investors before investing in AIFs of any agreement entered into by the depositary to be contractually released from liability in accordance with Art. 20 para. (14).

The AIFM shall also inform investors without delay of any change in the depositary's liability.

**(3)** Where the AIF is required to publish a prospectus in accordance with the provisions of Law no. 297/2004 and the regulations issued in application thereof, only the information referred to in para. (1) and (2) supplementing the information in the prospectus shall be provided separately or as additional information in the prospectus.

**(4)** For each AIF in the European Union which it manages and for each AIF whose units it distributes in the European Union, the AIFM shall communicate regularly to investors:

**a)** the percentage of AIF assets subject to special measures due to their illiquid nature;

**b)** the new AIF liquidity management measures;

**c)** the current risk profile of the AIF and the risk management systems used by the AIFM to manage those risks.

**(5)** AIFMs managing leveraged AIFs in the European Union or AIFMs distributing units of one or more leveraged AIFs in the European Union shall communicate periodically for each such AIF:

a) any changes to the maximum level of leverage that the AIFM may use for the AIF and the rights to re-use collateral or any other type of collateral granted under the leverage agreement;

b) the total amount of leverage used by the AIF concerned.

**Art.23 - (1)** AIFMs shall periodically report to ASF the main markets they operate on and the main instruments they trade on behalf of the AIFs they manage.

This information relates to the top 5 instruments they trade, the top 5 markets in which they are members or actively trade, as well as the top 10 exposures and the top 5 concentrations of each AIF managed, as determined in accordance with the European Union Regulation no. 231/2013.

**(2)** For each AIF in the European Union which it manages and for each AIF whose units it distributes in the European Union, the AIFM must send the following information to ASF:

- a) the percentage of AIF assets subject to special measures due to their illiquid nature;
- b) any new AIF liquidity management measure;
- c) the current risk profile of the AIF and the risk management systems used by the AIFM to manage market, liquidity, counterparty and other risks, including operational risks;
- d) information on the main categories of assets in which the AIF has invested; and
- e) the results of the stress tests carried out in accordance with Art. 15 para. (3)(b) and Art. 16 para. (1) second subpara.

**(3)** At the request of ASF, AIFMs are obliged to submit the following documents:

a) an annual report for each AIF in the European Union managed by the AIFM and for each AIF whose units it distributes in the European Union for each financial year in accordance with Art. 21 para. (1);

b) at the end of each quarter, a detailed list of all AIFs that the AIFM manages.

**(4)** An AIFM managing one or more AIFs which make significant use of leverage shall periodically provide to ASF information on the overall level of leverage used by each AIF managed, a breakdown by leverage resulting from borrowings of cash or securities and by leverage embedded in financial derivative instruments, and the extent to which AIF assets have been re-used under arrangements giving rise to leverage.

The information shall include the identity of the 5 largest sources of cash or securities borrowing for each AIF managed by the AIFM and the amount of leverage received from each of those sources for each of those AIFs.

In the case of third country AIFMs, the reporting obligations are limited to the EU AIFs they manage and to third country AIFs whose units they distribute in Romania.

**(5)** Where effective monitoring of systemic risk so requires, ASF may request additional information, both periodically and on an ad hoc basis. ASF shall inform ESMA of the obligations of AIFMs to provide additional information. Upon ESMA's request, ASF shall impose additional reporting obligations on AIFMs.

## CHAPTER V

### AIFMs managing certain types of AIFs

**Art. 24 -(1)** ASF shall use the information to be submitted under Art. 23 to determine the extent to which the use of leverage contributes to the creation of systemic risks in the financial system, the risk of disorderly markets or risks that may affect the long-term growth of the economy.

**(2)** ASF shall ensure that all information submitted pursuant to Art. 23 in respect of all AIFMs it supervises, as well as information collected pursuant to Art. 7, is communicated to the competent authorities of the other Member States, ESMA and ESRB, through the procedures set out in Art. 58 on supervisory cooperation. ASF shall also, without delay, provide information through those procedures and on a bilateral basis to the competent authorities of other Member States directly concerned, if an AIFM established in Romania or an AIF managed by that AIFM could become a significant source of counterparty risk for a credit institution or other systemically important institutions in other Member States.

**(3)** The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with them at all times taking into account the provisions of Art. 112 of the European Union Regulation no. 231/2013. ASF assess the risks associated with the use of leverage by an AIFM in relation to the AIF it manages and, where it considers it necessary to ensure the stability and integrity of the financial system, after notifying ESMA, the ESRB and the competent authorities of the AIF concerned, may order a cap on the leverage that AIFMs are entitled to use or other restrictions on the management of the AIFM in relation to the AIF it manages in order to limit the extent to which the use of leverage contributes to the creation of systemic risks in the financial system or the risk of disorderly markets. ASF shall duly inform ESMA, the ESRB and the competent authorities of the AIF of the measures taken in this regard in accordance with Art. 58.

**(4)** The notification referred to in para. (3) shall be made at least 10 working days before the proposed measure enters into force or is renewed. The notification shall include details of the proposed measure, the reasons for adopting the measure and the expected time of its entry into force. In exceptional circumstances, ASF may decide that the proposed measure shall enter into force within the period referred to in the first sentence.

**(5)** If ASF proposes to take measures contrary to the recommendations made by ESMA on the corrective measures to be imposed on the AIFM, it shall notify ESMA to that effect and explain its reasons.

**Art. 25 - (1)** The provisions of para. (5) and (6) and Art. 26-29 shall apply:

**a)** AIFMs managing one or more AIFs which, either individually or jointly, under an agreement to obtain control, obtain control of an unquoted company in accordance with para. (5);

**b)** AIFMs which cooperate with one or more other AIFMs pursuant to an agreement whereby AIFs managed by those AIFMs jointly acquire control of an unquoted company in accordance with para. (5).

**(2)** The provisions of para. (5) and (6) and Art. 26 to 29 shall not apply where the unlisted companies concerned are:

**a)** small and medium-sized enterprises, as defined in Art. 3 of Law no. 346/2004 on the stimulation of the establishment and development of small and medium-sized enterprises, as subsequently amended and supplemented; or

**b)** special purpose entities for the acquisition, ownership or management of real estate.

(3) In compliance with the provisions of para. (1) and (2), Art. 26 para. (1) shall also apply to AIFMs managing AIFs which acquire a holding in an unquoted company but do not have control over it.

(4) The provisions of Art. 27 para. (1) to (3) and Art. 29 shall also apply to AIFMs managing AIFs which have obtained control over issuers. For the purposes of those articles, para. 1 and 2 shall apply *mutatis mutandis*.

(5) In the case of an unlisted company, taking into account the provisions of Art. 26-29, control means more than 50% of the voting rights of the companies. In calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following shall also be taken into account, subject to the condition that control within the meaning of the first subparagraph is established by:

- a) a company controlled by the AIF; and
- b) a natural or legal person acting in his own name but representing the AIF or a company controlled by the AIF.

(6) The percentage of voting rights shall be calculated on the basis of the total number of shares carrying voting rights, even if the exercise of voting rights is suspended. Subject to the provisions of Art. 3, point 17, for the purposes of Art. 28 para. (1) to (3) and Art. 30, with regard to issuers, control shall be determined in accordance with Art. 203 para. (1) of Law no. 297/2004 and the regulations issued in application thereof.

(7) The provisions of para. (1) to (6) and Art. 26 to 29 shall be applied in accordance with the relevant conditions and restrictions of Law no. 467/2006 and taking into account the stricter rules laid down in Law no. 297/2004 and the Law on companies no. 31/1990, republished, as amended and supplemented, hereinafter referred to as Law no. 31/1990, regarding the acquisition of equity interests in issuers and unlisted companies, which shall apply accordingly.

**Art. 26. - (1)** Where an AIF acquires, disposes of or holds shares of an unlisted company, the AIFM managing that AIF shall notify ASF of the proportion of voting rights of the unlisted company held by the AIF whenever that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2) Where, individually or jointly, an AIF acquires control of an unlisted company in accordance with Art. 25 para. (1) in conjunction with para. (5), the AIFM managing that AIF shall notify ASF of the acquisition of control, and:

- a) the non-listed company; respectively
- b) shareholders whose identity and address the AIFM knows or can be provided by the non-listed company or by a register to which the AIFM has or can obtain access.

(3) The notification provided for in para. (2) shall contain the following additional information:

- a) the situation resulting from the operation in terms of voting rights;
- b) the conditions under which control has been obtained, including information about the identity of the various shareholders involved, any natural or legal person entitled to exercise voting rights for the shareholders and, where applicable, the series of companies through which voting rights are effectively held;
- c) the date of obtaining the control.

**(4)** In the notification to the non-listed company, AIFM shall require the board of directors of the company to inform without delay the representatives of the employees or, if there are no such representatives, the employees themselves, of the fact that the AIF managed by the AIFM has obtained control and to provide them with the information referred to in para. (3). AIFM shall endeavour to ensure that the employees' representatives or, where there are no such representatives, the employees themselves are duly informed by the management board.

**(5)** The notifications referred to in para. (1) and (2) shall be made as soon as possible, but no later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has obtained control of the non-listed company.

**Art. 27 - (1)** Where, individually or jointly, an AIF acquires control of an unlisted company or an issuer in accordance with Art. 25 para. (1) in conjunction with para. (5), the AIFM managing that AIF shall disclose the information referred to in para. (2):

**a)** the company concerned;

**b)** shareholders of the company whose identity and address the AIFM knows or can be communicated by the company or through a register to which the AIFM has or can obtain access;

**c)** ASF

**(2)** The communication provided for in para. (1) shall contain the following information:

**a)** the identity of the AIFM which, either individually or in agreement with other AIFMs, manages the AIFs which have obtained control;

**b)** the policy for the prevention and management of conflicts of interest, in particular between AIFMs, AIFs and the firm, including information on the specific safeguards established to ensure that any agreement between the AIFM and/or AIF and the firm is concluded on objective terms; and

**c)** the company's internal and external communication policy, in particular with regard to employees.

**(3)** In notifying the company in accordance with para. (1)(a), AIFM shall require the board of directors of the company to communicate without delay to the employees' representatives or, if there are no such representatives, to the employees themselves the information referred to in para. (1). The AIFM shall endeavour to ensure that the employees' representatives or, where there are no such representatives, the employees themselves are duly informed by the board of directors.

**(4)** Where, individually or jointly, an AIF acquires control of an unlisted company in accordance with Art. 25 para. (1) in conjunction with para. (5), the AIFM managing that AIF shall disclose or ensure that the AIF or the AIFM acting on behalf of the AIF disclose the intentions of the AIF with regard to the business of the non-listed company and the likely employment consequences, including any material change, as determined by ASF rules, in the terms and conditions of employment:

**a)** unlisted companies; and

**b)** shareholders of the non-listed company whose identity and address the AIFM knows or can be communicated by the non-listed company or through a register to which the AIFM has or can obtain access.



(5) The AIFM managing the AIF concerned shall request and make every effort to ensure that the board of directors of the non-listed company communicates the information referred to in the first subparagraph to the representatives of the employees of the non-listed company or, if there are no such representatives, to the employees themselves.

(6) Where an AIF acquires control of an unlisted company in accordance with Art. 25 para. (1) in conjunction with para. (5), the AIFM managing that AIF must disclose to ASF and the investors of the AIF concerned information on the financing of the acquisition.

**Art. 28 - (1)** Where, individually or jointly, an AIF acquires control of an unlisted company in accordance with Art. 25 para. (1) in conjunction with para. (5), the AIFM managing that AIF must:

a) either request and use its best endeavours to ensure that the annual report of the non-listed company, drawn up in accordance with para. (2), is transmitted by the board of the company to all employees' representatives or, if there are no such representatives, to the employees themselves, within the period prescribed by the applicable national law; or

b) for each such AIF, include in the annual report referred to in Art. 21 the information referred to in para. (2) relating to the non-listed company concerned.

(2) The additional information to be included in the annual report of the company or the AIF in accordance with para. (1) shall include at least a fair review of the development of the business of the company as at the end of the period covered by the annual report. The report shall also indicate:

a) any significant events occurring after the end of the financial year;

b) the likely evolution of the company; and

c) as regards the acquisition of own shares, the information referred to in Art. 105<sup>1</sup> of Law no. 31/1990.

(3) The AIFM managing the AIF concerned:

a) request and make every effort to ensure that the board of directors of the non-listed company complies with the obligation to disclose the information referred to in para. (2) concerning the company in question to the representatives of its employees or, if there are no such representatives, to the employees themselves, within the period laid down in Art. 21 para. (1); or

b) communicate to AIF investors the information referred to in para. (2) in so far as it is already available, within the period laid down in Art. 21 para. (1) and in any case no later than the date on which the annual report of the non-listed company is drawn up in accordance with applicable national law.

**Art. 29 - (1)** Where, individually or jointly, an AIF acquires control of an unlisted company or of an issuer in accordance with Art. para (1) in conjunction with para. (5), within 24 months of the AIF obtaining control of the company, the AIFM managing that AIF:

a) is not authorised to facilitate, support or require the distribution, reduction of capital, repurchase of shares and/or acquisition of own shares by the company concerned in accordance with para (2);

b) in so far as the AIFM is authorised to vote for the AIF at meetings of the company's governing bodies, does not vote in favour of the distribution, capital reduction, repurchase of shares and/or acquisition of own shares by the company concerned in accordance with para. (2); and

c) make every effort to prevent the distribution, reduction of capital, repurchase of shares and/or acquisition of own shares by the company concerned in accordance with para. (2).

(2) The obligations imposed on AIFMs in accordance with para. (1) relate to the following:

a) any distribution to shareholders made if, at the end of the last financial year, the net asset value shown in the company's annual accounts is or, as a result of such distribution, would become less than the amount of the subscribed capital plus any reserves not distributable under the law or the statutes, it being understood that, if the unpaid part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of the subscribed capital;

b) any distribution to shareholders the amount of which would exceed the amount of the profit at the end of the last financial year plus any profit brought forward and amounts withdrawn from reserves available for this purpose, less any losses brought forward and amounts placed in reserve in accordance with the law or the statutes;

c) to the extent that acquisitions of own shares are permitted, acquisitions made by the company, including shares previously acquired by the company and held by it and shares acquired by a person acting in his own name but on behalf of the company, the effect of which would be to reduce the net asset value below the value referred to in letter (a).

(3) For the purposes of para. (2):

a) the term "distribution" referred to in para. (2) (a) and (b) includes, in particular, the payment of dividends and interest on shares;

b) the capital reduction provisions shall not apply to a reduction of subscribed capital, the purpose of which is to offset losses incurred or to place certain amounts in a non-distributable reserve, provided that the amount of such reserve does not exceed 10% of the reduced subscribed capital; and

c) the restriction provided for in para. (2) lit. c) shall be applicable to the provisions of Art. 104 of Law no. 31/1990.

## CHAPTER VI

Conditions relating to the distribution and management by AIFMs from an EU Member State of AIFs from the EU in the European Union

**Art. 29<sup>1</sup> - (1)** AIFM established in Romania, authorised in accordance with the provisions of this law, may carry out pre-marketing activities in the European Union, unless the information presented to potential professional investors:

a) are sufficient to enable investors to commit themselves to subscribe to units of a particular AIF;

b) are equivalent to subscription forms or similar documents either in draft or final form; or

c) equivalent to the articles of incorporation, prospectus or other offering documents in final form of an AIF which has not yet been established.

(2) Where a draft prospectus or other offering documents are provided, they may not contain sufficient information to enable investors to make an investment decision and shall clearly state that:

a) the documents do not constitute an offer or invitation to subscribe for AIF units; and  
b) the information presented therein should not be regarded as reliable, as it is incomplete and subject to change.

(3) AIFM established in Romania, authorised in accordance with the provisions of this law, shall not be required to notify ASF or the competent authorities of the Member States in which it carries out pre-marketing activities of the contents or recipients of the pre-marketing or to comply with any conditions or requirements other than those provided for in this Article, before commencing pre-marketing activities.

(4) AIFMs shall ensure that investors do not subscribe for units of an AIF during the pre-marketing period and that investors contacted in the framework of pre-marketing may subscribe for units of that AIF only as a result of the cross-border distribution activity permitted in accordance with Art. 30 to 32.

(5) Any subscription made by professional investors, within 18 months of the date on which the AIFM commenced pre-marketing activity, in units of an AIF which is the subject of disclosures made in the context of pre-marketing activity or of an AIF established as a result of pre-marketing activity, shall be deemed to be distribution activity and shall be subject to the applicable notification procedures set out in Art. 30 to 32.

(6) The AIFM established in Romania, authorised in accordance with the provisions of this law, shall send to ASF, within two weeks from the start of the pre-marketing, an informal letter, on paper or by electronic means.

(7) The letter referred to in para. (6) shall specify the Member States and periods during which pre-marketing activity takes place or has taken place and shall include a brief description of the activity, including information on the investment strategies presented and, where applicable, a list of AIFs and AIF sub-funds which are or have been subject to pre-marketing activity.

(8) ASF shall immediately inform the competent authorities of the Member States in which the AIFM carries out or has carried out pre-marketing activities.

(9) AIFM shall ensure that pre-marketing activity is properly documented.

**Art. 30 - (1)** An AIFM established in Romania authorised under this law may distribute to professional investors in Romania units of any AIF in the European Union which it manages, as soon as the conditions laid down in this law are met. Where the AIF from the European Union is a feeder AIF, the distribution right provided for in the first paragraph shall be subject to the condition that the master AIF is also an AIF from the European Union managed by an authorised AIFM from the European Union.

(2) AIFMs shall notify ASF of each AIF in the European Union whose units they intend to distribute in Romania. The notification shall contain the documentation and information set out in Annex 2.

(3) Within 20 working days from the date of receipt of the complete documentation related to the notification, ASF shall inform the AIFM about the possibility to start the distribution of the AIF units identified in the notification. If ASF is of the opinion that the AIFM's management of the AIF does not comply with this law or that the AIFM does not

comply with this law, the authority may order not to start the distribution of the units of the respective AIF. In case of a positive decision of ASF, the AIFM may start the distribution of the AIF's shares or units in Romania from the date of the information given by ASF. If the AIF indicated above is an AIF from another Member State, ASF shall also inform the competent authorities of the AIF that the AIFM may start the distribution of the AIF's units.

(4) In the event of a substantial change established by ASF regulations, of the information communicated in accordance with para. (2), the AIFM shall notify ASF in writing at least 30 days before its implementation in the case of a planned change or immediately after the occurrence of an unplanned change.

If, as a result of a planned change, the AIFM's management of the AIF no longer complies with this law or if the AIFM no longer complies with this law, ASF shall inform the AIFM without delay that the change in question will not be implemented.

(5) Where a planned change is implemented in accordance with the provisions of para. (1) and (2) or if an unplanned change has taken place as a result of which the AIFM's management of the AIF no longer complies with this law or the AIFM no longer complies with this law, ASF shall take all necessary measures in accordance with Art. 50, including, if necessary, expressly prohibiting the distribution of AIF units.

(6) In compliance with the provisions of Art. 47 para. (1), AIFs managed by an AIFM established in Romania authorised in accordance with this law may only be distributed to professional investors.

**Art. 31 - (1)** An AIFM established in Romania authorised in accordance with this law may distribute to professional investors from other Member States units of an AIF from the European Union which it manages, as soon as the conditions laid down in para. (2)-(8). Where the European Union AIF is a feeder AIF, the distribution right provided for in the first paragraph shall be subject to the condition that the master AIF is also a European Union AIF managed by an authorised European Union AIFM.

(2) The AIFM shall send to ASF a notification of each AIF in the European Union whose units it intends to distribute. The notification shall contain the documentation and information set out in Annex 3.

(3) Within 20 working days from the date of receipt of the complete notification documentation, ASF shall send it to the competent authorities of the Member States in which the distribution of the AIF units is intended, including a statement that the AIFM concerned is authorised to manage AIFs on the basis of a particular investment strategy. The transmission shall only take place if the AIFM's management of the AIF complies with this law and the AIFM complies with this law.

(4) ASF shall notify the AIFM of the transmission without delay. The AIFM may start distributing the AIF's units in the host Member State of the AIFM from the date of that notification. Where the AIF indicated above is an AIF from another Member State, ASF shall also inform the competent authorities of the AIF that the AIFM may start distributing the units of the AIF in the host Member State of the AIFM.

(5) The provisions referred to in Annex no. 3 (h) shall be subject to the laws and supervisory measures of the host Member State of the AIFM.

(6) The notification letter sent by the AIFM in accordance with para. (2) and the declaration referred to in para. (3) shall be in a language customary in the sphere of international finance, including by electronic means.

(7) In the event of a material change established by ASF regulations to the information communicated in accordance with para. (2), the AIFM shall notify ASF in writing at least 30 days before the implementation of the planned change or immediately after the occurrence of an unplanned change. If, as a result of the planned change, the AIFM's management of the AIF no longer complies with this law or if the AIFM no longer complies with this law, ASF shall inform the AIFM without delay that the change is not to be implemented.

(8) Where a planned change is implemented in accordance with the provisions of para. (1) and (2) or if the AIFM no longer complies otherwise with the provisions of this law, ASF shall inform the AIFM, within 15 working days of receipt of all the information referred to in para. (7), that such change cannot be implemented and shall notify the competent authorities of the host Member State of the AIFM accordingly.

(8<sup>1</sup>) If a planned change is implemented contrary to the provisions of para. (7) and (8) or if an unplanned change has taken place as a result of which the AIFM's management of the AIF no longer complies with the provisions of this law or the AIFM no longer complies with this law, ASF shall take all necessary measures in accordance with Art. 50, including, if necessary, expressly prohibiting the distribution of AIF units, and shall immediately notify the competent authorities of the host Member State of the AIFM.

(8<sup>2</sup>) If the amendments are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the provisions of this law or the compliance of the AIFM with this law, ASF shall inform, within one month of the notification referred to in para. (7), the competent authorities of the host Member State of the AIFM of those changes.

(9) Taking into account the provisions of Art. 47 para. (1), AIFs which are managed and whose units are distributed by AIFMs referred to in para. (1) may only be distributed to professional investors.

**Art. 31<sup>1</sup> - (1)** An AIFM established in Romania, authorised in accordance with this law, may withdraw its notification regarding the distribution of units of certain or all AIFs in a Member State for which it has made a notification to ASF, in accordance with the provisions of Art. 31, if the following conditions are cumulatively met:

**a)** with the exception of AIFs of the closed-ended type and funds covered by Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, a general offer is made to redeem or repurchase, free of charge or deduction, all units of that AIF held by investors in the Member State concerned and the offer is publicly available for at least 30 working days and is addressed, directly or through financial intermediaries, on an individual basis to all investors in that Member State whose identity is known;

**b)** the intention to cease the distribution of units of some or all of the AIFs it manages within the territory of the Member State concerned is disclosed by means of a communication medium, including electronic means, which is customary for the distribution of units of AIFs and appropriate for a typical AIF investor;

**c)** any contractual arrangements with financial intermediaries or other persons to whom distribution has been delegated are amended or terminated with effect from the date of

withdrawal of the notification in order to prevent a further direct or indirect offer or placing of the units identified in the notification referred to in para. (3).

(2) As from the date of withdrawal of the notification, the AIFM shall not make any further direct or indirect offer or placing of units of the AIF it manages in the Member State for which it has notified ASF in accordance with para. (3).

(3) The AIFM shall send to ASF a notification containing the information referred to in para. (1).

(4) ASF shall verify whether the notification submitted by the AIFM in accordance with para. (3) is complete and shall, no later than 15 working days after receipt of the complete notification, transmit that notification to the competent authority of the Member State identified in the notification provided for in para. (3) and ESMA.

(5) After the notification referred to in para. (4), ASF shall immediately notify the AIFM of such transmission.

(6) It shall be prohibited for AIFMs to carry out, on the territory of the Member State identified in the notification provided for in para. (3), of pre-marketing activities in relation to the units of the AIF referred to in the notification or similar investment strategies or ideas for a period of 36 months from the date of withdrawal of the notification.

(7) AIFMs shall provide investors who maintain their investments in AIFs following the procedure provided for in this Article and also ASF, the information provided for in Art. 21 and 22.

(8) ASF shall transmit to the competent authority of the Member State identified in the notification referred to in para. (3) information on any changes to the documents referred to in Annex 3 (b) to (f).

(9) If ASF is identified as the competent authority in a notification similar to that under para. (3) in another Member State, it shall have the same rights and obligations as a competent authority of a host Member State of the AIFM in accordance with the national law of that Member State implementing the provisions of Art. 45 of Directive 2011/61/EU.

(10) Without prejudice to other monitoring and surveillance activities provided for in Art. 48 to 50, as from the date of the transmission provided for in para. (8), the competent authority of the Member State identified in the notification referred to in para. (3) shall no longer require the AIFM concerned to demonstrate compliance with national and secondary legislation governing distribution requirements as set out in Art. 5 of Regulation (EU) 2019/1.156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) no. 345/2013, (EU) no. 346/2013 and (EU) no. 1.286/2014, hereinafter Regulation (EU) 2019/1.156.

(11) In applying the provisions of para. (7), the AIFM may use any means of electronic or other means of distance communication.

**Art. 31<sup>2</sup> - (1)** An AIFM authorised in another Member State may carry out pre-marketing activities in Romania, unless the information presented to potential professional investors:

a) are sufficient to enable investors to commit themselves to subscribe to units of a particular AIF;

**b)** are equivalent to subscription forms or similar documents either in draft or final form; or

**c)** equivalent to the articles of incorporation, prospectus or other offering documents in final form of an AIF which has not yet been established.

**(2)** Where a draft prospectus or other offering documents are provided, they may not contain sufficient information to enable investors to make an investment decision and shall clearly state that:

**a)** the documents do not constitute an offer or invitation to subscribe for AIF units; and

**b)** the information presented therein should not be regarded as reliable, as it is incomplete and subject to change.

**(3)** An AIFM authorised in another Member State shall not be required to notify ASF of the content or recipients of the pre-marketing or to fulfil any conditions or requirements other than those provided for in this Article before commencing pre-marketing activity in Romania.

**(4)** The AIFM shall ensure that investors in Romania do not subscribe for units of an AIF during the pre-marketing period and that investors contacted in the framework of pre-marketing actions may subscribe for units of that AIF only as a result of the cross-border distribution activity allowed in accordance with Art. 30-32.

**(5)** Any subscription made by professional investors, within 18 months from the date on which the AIFM has commenced pre-marketing activity in Romania, in units of an AIF which is the subject of information provided in the context of pre-marketing activity or of an AIF established as a result of pre-marketing activity, shall be deemed to be distribution activity and shall be subject to the applicable notification procedures set out in Art. 30-32.

**(6)** ASF may request the competent authorities of the home Member State of an AIFM that is or has been carrying out pre-marketing activity in Romania to provide additional information on the pre-marketing activity that is or has been carried out in Romania.

**(7)** A third party may carry out pre-marketing activities on behalf of an AIFM authorised in another Member State only if it is authorised as an investment company in accordance with Law no. 126/2018, as amended, as a credit institution in accordance with Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and additions by Law no. 227/2007, as amended, as an IMC under Government Emergency Ordinance no. 32/2012, as an AIFM under this Law or as a delegated agent under Law no. 126/2018, as amended.

**(8)** The third party referred to in para. (7) shall be subject to the conditions laid down in this Article.

**(9)** An AIFM authorised in another Member State shall ensure that pre-marketing activity carried out in Romania is properly documented.

**Art. 32 - (1)** If an AIFM established in another Member State intends to distribute to professional investors in Romania the units of an AIF from the European Union which it manages, the competent authority of the home Member State of the AIFM must submit to ASF a notification in accordance with the provisions of Art. 31 para. (3), accompanied by the relevant declaration, in accordance with the ASF regulations.

**(2)** The AIFM may start distributing AIF units in Romania from the date of such notification.

(3) Taking into account the provisions of Art. 47 para. (1), AIFs which are managed and whose units are distributed by AIFMs referred to in paragraph 1 shall be subject to the following conditions (1) may only be distributed to professional investors.

**Art. 32<sup>1</sup> - (1)** An AIFM authorised in another Member State may withdraw its notification with regard to the distribution in Romania of the units of some or all of the AIFs it manages, for which ASF has received a notification in accordance with Art. 32, if the following conditions are cumulatively met:

a) with the exception of closed-end AIFs and funds covered by Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, a general offer is made to redeem or repurchase, free of charge or deduction, all units of that AIF held by investors in Romania, and that offer is publicly available for at least 30 business days and is addressed, directly or through financial intermediaries, on an individual basis to all investors in Romania whose identity is known;

b) the intention to cease the distribution of the units of some or all of the AIFs it manages, on the territory of Romania, is made public by means of a means of communication, including electronic means, which is customary for the distribution of units of AIFs and appropriate for a typical AIF investor;

c) any contractual arrangements with financial intermediaries or other persons to whom distribution has been delegated are amended or terminated with effect from the date of withdrawal of the notification in order to prevent a further direct or indirect offer or placing of the units identified in the notification referred to in para. (3).

(2) As from the date of withdrawal of the notification, the AIFM shall not make any further direct or indirect offer or placement to investors in Romania of units of the AIFs it manages.

(3) The AIFM shall submit to the competent authority of the home Member State a notification containing the information referred to in para. (1).

(4) It is prohibited for AIFMs to carry out pre-marketing activities on the territory of Romania in relation to the units of AIFs mentioned in the notification or in relation to similar investment strategies or ideas for a period of 36 months from the date of withdrawal of the notification.

(5) AIFMs shall provide investors who retain their investments in AIFs following the procedure referred to in this Article and the competent authority of the home Member State with the information provided for in Art. 21 and 22.

(6) ASF shall have the same rights and obligations as a competent authority of a host Member State of the AIFM as provided for in Art. 49.

(7) Without prejudice to other monitoring and surveillance activities provided for in Art. 48 to 50, as from the date of the transmission provided for in para. (3), ASF shall no longer require the AIFM concerned to demonstrate compliance with the national legislation governing distribution requirements as set out in Art. 5 of Regulation (EU) 2019/1.156.

(8) In applying the provisions of para. (5), AIFM may use any means of electronic or remote communication.

**Art. 33 - (1)** An AIFM established in Romania authorised in accordance with this law may, either directly or by setting up a branch:



a) manage AIFs established in another Member State, provided that the AIFM is authorised to manage that type of AIF;

b) to provide in other Member States the services referred to in Art. 5 para. (5) for which it has been authorised.

(2) AIFMs intending to carry out and/or provide for the first time the activities and services referred to in para. (1) shall communicate the following information to ASF:

a) the Member State in which it wishes to manage the AIF directly or by setting up a branch or to provide the services referred to in Art.5 para. (5);

b) a programme of activity stating in particular the services it wishes to provide and the AIF it wishes to manage.

(3) Where the AIFM wishes to establish a branch, it shall communicate, in addition to the information referred to in para. (2), the following information:

a) the organisational structure of the branch;

b) the address in the home Member State of the AIF from which the documents may be obtained;

c) the names and contact details of the persons responsible for the administration of the branch.

(4) Within 30 days of receipt of the complete documentation in accordance with para. (2) or within 60 days of receipt of the complete documentation in accordance with para. (3), ASF shall transmit this complete documentation to the competent authorities of the host Member State of the AIFM. The transmission shall take place only if the AIFM's management of the AIF complies with this law and the AIFM complies with this law. The documentation shall also include a declaration by ASF that the AIFM in question is authorised in Romania. ASF shall immediately inform the AIFM of the transfer, and the AIFM may start providing the relevant services in its host Member State from the moment of receipt of the confirmation of the transfer from ASF.

(5) In the event of a change in the information communicated in accordance with para. (2) and, where applicable, para. (3), the AIFM shall notify ASF in writing at least 30 days before the implementation of the planned change or immediately after an unplanned change has taken place; if, as a result of the planned change, the AIFM's management of the AIF no longer complies with the provisions of this law or if the AIFM no longer complies with the provisions of this law, ASF shall inform the AIFM within 15 working days of receiving all the information referred to in this paragraph that the change in question need not be implemented.

(6) If a planned change is implemented without taking into account the provisions of para. (5) or if an unplanned change has taken place as a result of which the AIFM's management of the AIF no longer complies with the provisions of this law or the AIFM no longer complies with the provisions of this law, ASF shall take all necessary measures in accordance with Art. 50 and shall, without undue delay, inform the competent authority of the host Member State of the AIFM.

(7) If the amendments are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance of the AIFM with this law, ASF shall, without undue delay, inform the competent authorities of the host Member States of the AIFM of those amendments.

**Art. 34 - (1)** If ASF receives a notification pursuant to Art. 33 para. (2) and (3), accompanied by a declaration of the type referred to in Art. 33 para. (4) from a competent authority of another Member State concerning the intention of an AIFM established in that Member State to manage an AIF in Romania, either directly or through the establishment of a branch, or to provide the services referred to in Art. 5 para. (5), ASF shall not impose any additional obligations on the AIFM concerned in relation to matters covered by this law.

**(2)** AIFM may start the management activities of the AIF in Romania from the date of such notification.

## **CHAPTER VII**

### Specific rules relating to third countries

Art. 35 - An AIFM established in Romania authorised under this law may manage AIFs from a third country whose units are not distributed in the European Union under the following conditions:

- a)** the AIFM complies with all the requirements of this Law except Art. 20 and 21; and
- b)** there are adequate arrangements for cooperation between ASF and the supervisory authorities of the third country in which the AIF from a third country is established in order to ensure at least an efficient exchange of information enabling ASF to carry out its duties under this law.

**Art. 36 - (1)** An AIFM established in Romania authorised in accordance with this law may distribute to professional investors in Romania or in another Member State the units of AIFs from a third country which it manages and of AIFs from the European Union of the "feeder" type to which the requirements referred to in Art. 30 para. (1) as soon as the conditions laid down in this law are met.

**(2)** AIFMs shall comply with all the requirements laid down in this Law, except for Chap. VI. In addition, the following conditions shall apply:

**a)** appropriate cooperation arrangements between ASF and the supervisory authorities of the third country in which the AIF is established from a third country are necessary to ensure at least an efficient exchange of information, having regard to the provisions of Art. 58 para. (3), enabling ASF to carry out its duties under this law;

**b)** the third State in which the AIF is established is not included in the category of non-cooperative States and territories by the FATF;

**c)** the third State in which the AIF is established has signed an agreement with Romania and each Member State in which the distribution of units of the AIF from a third State is intended, which fully complies with the standards set out in Art. 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including possible multilateral tax agreements.

**(3)** Where an AIFM established in Romania authorised in accordance with this law intends to distribute units of an AIF from a third country in Romania, that AIFM shall send a notification to ASF in relation to each of the AIFs from a third country whose units it intends

to distribute. The notification shall contain the documentation and information set out in Annex 2.

(4) Within 20 working days from the date of receipt of the complete notification pursuant to para. (3), ASF shall inform the AIFM whether it may start distributing on the territory of Romania the units of the AIF identified in the notification referred to in para. (3). ASF may prohibit the distribution of the units of the AIF concerned only if the management of the AIF by the AIFM does not comply with this law or if the AIFM does not comply with this law. In case of a positive decision, the AIFM may start marketing the AIF's units in Romania from the date of the notification sent by ASF to that effect. At the same time, ASF shall inform ESMA that the AIFM may start distributing AIF units in Romania.

(5) Where AIFM intends to distribute units of an AIF from a third country in a Member State other than Romania, the AIFM concerned shall notify ASF of each third country AIF whose units it intends to distribute. The notification shall contain the documentation and information set out in Annex 3.

(6) Within 20 working days from the date of receipt of the complete notification documentation, ASF shall transmit it to the competent authorities of the Member State in which the distribution of AIF units is intended. The transmission shall only take place if the AIFM's management of the AIF complies with this law and if the AIFM complies with this law. The notification referred to above shall also include a statement by ASF that the AIFM concerned is authorised to manage AIFs on the basis of a particular investment strategy.

(7) Upon transmission of the complete documentation related to the notification, ASF shall notify AIFM of the transmission without delay. AIFM may start distributing the AIF units in the relevant host Member States of the AIFM from the date of that notification by ASF. At the same time, ASF shall inform ESMA that the AIFM may start distributing AIF units in the host Member States of the AIFM.

(8) The provisions referred to in letter h) of Annex 3 shall be subject to the laws and supervisory measures of the host Member States of AIFMs.

(9) The notification letter sent by the AIFM in accordance with para. (5) and the declaration referred to in para. (6) are in a language customary in the sphere of international finance, the transmission and completion of the documents referred to in para. (6) may also be done by electronic means.

(10) In the event of a material change established by ASF regulations to the information communicated in accordance with para. (3) or para. (5), the AIFM shall notify ASF in writing at least 30 days before the implementation of the planned change or immediately after the occurrence of an unplanned change. If, as a result of the planned change, the AIFM's management of the AIF no longer complies with this law or if the AIFM no longer complies with this law, ASF shall inform the AIFM without delay that the change shall not be implemented. If the amendments are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance of the AIFM with this law, ASF shall, without delay, inform ESMA, to the extent that the amendments concern the termination of the distribution of units of certain AIFs or the distribution of units of additional AIFs, and, where applicable, the competent authorities of the host Member States of the AIFM of those amendments.

(11) In compliance with the provisions of Art. 47 para. (1), in the case of the distribution of units in another Member State, AIFs which are managed and whose units are distributed by AIFMs referred to in para. (1) to (10) may only be distributed to professional investors.

**Art. 37 - (1)** If an AIFM established in another Member State intends to distribute to professional investors in Romania the units of an AIF from a third country which it manages, ASF must receive from the competent authority of the home Member State of the AIFM a notification in accordance with the provisions of Art. 36 para. (6), accompanied by a statement that the AIFM concerned is authorised to manage AIFs on the basis of a particular investment strategy.

(2) If ASF, as a competent authority of a Member State other than the home Member State of the AIFM, does not agree with the assessment of the application of Art. 36 para. (2)(a) and (b) by the competent authorities of the home Member State of the AIFM, ASF may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Art. 19 of Regulation (EU) no. 1095/2010.

(3) AIFM may start distributing AIF units in Romania from the date of such notification.

(4) In compliance with Art. 47 para. (1), AIFs which are managed and whose units are distributed by AIFMs referred to in para. (1) to (3) may only be distributed to professional investors.

**Art. 38 - (1)** Subject to the provisions of Art. 36, an AIFM established in Romania or in another Member State may distribute to professional investors, exclusively on the territory of Romania, units of AIFs from a third country which it manages and of feeder AIFs which do not comply with the requirements laid down in Art. 30 para. (1), subject to the cumulative fulfilment of the following conditions:

a) AIFMs comply with all the requirements laid down in this Law, with the exception of Art. 20. The AIFM concerned shall, however, ensure that one or more entities are designated to perform the tasks set out in Art. 20 para. (9) to (11) if the AIFM does not perform those functions. The AIFM shall provide its supervisory authorities with information on the identity of the entities responsible for carrying out the tasks referred to in Art. para. (9) - (11);

b) there are adequate cooperation arrangements for the purpose of systemic risk oversight and in accordance with international standards between ASF and the AIFM's home Member State established in another Member State and the supervisory authorities of the third country in which the AIF is established, in order to ensure at least an efficient exchange of information enabling ASF or the competent authorities of other Member States to carry out their duties under this law;

c) the third country in which the AIF from a third State is established is not included in the category of non-cooperative countries and territories by the FATF.

(2) ASF shall issue regulations in application of para. (1).

**Art. 39 - (1)** An AIFM established in a third country which intends to manage AIFs in the European Union and/or to distribute units of AIFs it manages in the European Union in accordance with Art. 40 and 41 or Art. 42 and 43 must obtain prior authorisation from ASF in accordance with this law, if Romania is defined as the AIFM's Member State of reference, in accordance with the provisions of para. (4).

**(2)** An AIFM established in a third country which intends to obtain prior authorisation as referred to in para. (1), shall comply with this Law, except for Chap. VI. If and to the extent that compliance with a provision of this Law is incompatible with the law applicable to AIFMs from a third country and/or AIFs from a third country whose units are distributed in the European Union, the AIFM is not required to comply with that provision of this Law if it can demonstrate that:

**a)** it is impossible to comply at the same time with that provision and a mandatory provision of the applicable law AIFM established in the third country and/or AIF from the third country whose units are distributed in the European Union;

**b)** the applicable law to the AIFM established in the third country and/or the AIF from the third country provides for an equivalent rule which has the same regulatory object and offers the same level of protection for the investors of the AIF concerned; and

**c)** the AIFM established in the third country and/or the AIF from the third country complies with that equivalent standard.

**(3)** An AIFM established in a third country which intends to obtain the prior authorisation referred to in para. (1) must appoint a legal representative established in Romania. The legal representative shall be the contact point of the AIFM in the European Union and any official correspondence between the competent authorities and the AIFM and between the investors in the European Union of that fund and the AIFM in accordance with this law shall be conducted through this legal representative. The legal representative shall perform together with the AIFM the compliance function in relation to the management and distribution activities carried out by the AIFM under this Law.

**(4)** The reference Member State of the AIFM established in a third country shall be determined as follows:

**a)** if the AIFM established in a third country intends to manage only one European Union AIF or more such European Union funds established in the same Member State and does not intend to distribute units of the AIF in the European Union in accordance with Art. 40 and 41 or Art. 42 and 43, then the home Member State of such fund or funds shall be considered as the Member State of reference and the competent authorities of that Member State shall be the competent authorities for the authorisation procedure and for the supervision of the AIFM;

**b)** if the AIFM established in a third country intends to manage more than one AIF in the European Union established in different Member States and does not intend to distribute units of AIFs in the European Union in accordance with Art. 40 and 41 or Art. 42 and 43, then the Member State of reference shall be:

**(i)** either the Member State in which most of the funds are established; or

**(ii)** the Member State in which the majority of the assets are managed;

**c)** if the AIFM established in a third country intends to distribute units of a single AIF from the European Union in a single Member State of the European Union, then the Member State of reference shall be determined as follows:

**(i)** the home Member State of the fund or the Member State in which the AIFM intends to distribute units of the fund, if the fund is authorised or registered in a Member State;

**(ii)** the Member State in which the AIFM intends to distribute units of the fund, if the fund is not authorised or registered in a Member State;

**d)** if the AIFM established in a third country intends to distribute units of a single AIF from a third country to a single Member State, then the Member State of reference shall be that Member State;

**e)** if the AIFM established in a third country intends to distribute units of a single AIF in the European Union but in different Member States, then the Member State of reference shall be determined as follows:

**(i)** the home Member State of the fund or one of the Member States in which the AIFM intends to make an effective distribution, if the fund is authorised or registered in a Member State; or

**(ii)** one of the Member States in which the AIFM intends to make an effective distribution, if the fund is not authorised or registered in a Member State;

**f)** if the AIFM established in a third country intends to distribute units of a single AIF from a third country but in different Member States, then the Member State of reference shall be one of those Member States;

**g)** if the AIFM established in a third country intends to distribute units of more than one AIF from the European Union to the European Union, then the Member State of reference shall be determined as follows:

**(i)** the home Member State of those funds or the Member State in which the AIFM intends to make an effective distribution for the major part of those funds, provided that those funds are all registered or authorised in the same Member State;

**(ii)** the Member State in which the AIFM intends to carry out an effective distribution for the majority of those funds, to the extent that not all of those funds are registered or authorised in the same Member State;

**h)** if the AIFM established in a third country intends to distribute units of more than one AIF from the European Union and from a third country or more than one such fund from a third country into the European Union, then the Member State of reference shall be the Member State in which the AIFM intends to carry out an effective distribution for the majority of those funds.

**(5)** In accordance with the criteria laid down in para. (4) (b), (c) and (i), (e), (f) and (g)(i), more than one reference Member State is possible. In such a case, Member States shall require that AIFMs from a third country which intend to manage AIFs in the European Union without distributing units of these funds and/or to distribute units of AIFs which they manage in the European Union in accordance with Art. 40 and 41 or Art. 42 and 43 submit an application to the competent authorities of all Member States which may be Member States of reference in accordance with the criteria set out in para. (4) and referred to above in order to determine their Member State of reference; those competent authorities shall decide jointly on the Member State of reference for AIFMs from a third country within 30 days of receipt of such an application. The competent authorities of the Member State which is designated as the reference Member State shall inform the AIFM from a third country of this designation without delay; if the AIFM from a third country is not duly informed of the decision of the relevant competent authorities within 7 days of the decision being taken or if the relevant competent authorities have not taken a decision within 30 days, the AIFM from a third country may choose its reference Member State; the AIFM may communicate its intention to carry out an effective

distribution in a particular Member State by submitting its marketing strategy to the competent authorities of the Member State indicated by it.

**(6)** AIFMs from a third country which intend to manage AIFs in the European Union without distributing their units and/or to distribute, in accordance with Art. 40 and 41 or Art. 42 and 43, units of AIFs they manage in the European Union shall submit an application for authorisation to ASF, if Romania is the Member State of reference.

**(7)** After receiving the application for authorisation, ASF shall assess whether the way in which the AIFM has established Romania as its Member State of reference complies with the criteria set out in para. (4). If ASF finds that these criteria are not met, it shall refuse the application for authorisation of the AIFM from a third country and explain the reasons for the refusal. If ASF finds that the criteria laid down in para. (4), it shall inform ESMA and request ESMA to issue an opinion on its assessment. In the notification to ESMA, ASF shall also include the AIFM's justification for its assessment of the Member State of reference and provide information on the marketing strategy of the AIFM; the time limit referred to in Art. 8 para. (6) shall be suspended during the assessment of ESMA's deliberation.

**(8)** If ASF proposes to grant authorisation despite ESMA's negative opinion, it shall inform ESMA thereof and explain its reasons. If ASF proposes to grant authorisation despite ESMA's negative opinion and AIFM intends to distribute units of the AIF it manages in Member States other than Romania, ASF shall also inform the competent authorities of the Member States concerned and explain its reasons. Where appropriate, ASF shall also inform the competent authorities of the home Member States of the AIFs managed by the AIFM of its decision and explain its reasons.

**(9)** Subject to the provisions of para. (11), ASF shall not grant the authorization if the following additional conditions are not met:

**a)** Romania is indicated by the AIFM as the Member State of reference in accordance with the criteria set out in para. (4), the AIFM's decision is justified by the presentation of its marketing strategy and the procedure set out in para. (5) has been followed;

**b)** AIFM has appointed a legal representative established in Romania;

**c)** the legal representative, together with the AIFM, shall be the contact person of the AIFM in a third country for the AIF investors concerned, for ESMA and for the competent authorities in relation to the activities for which the AIFM holds an authorisation in the European Union and shall have the necessary tools to perform the compliance function under this Law;

**d)** appropriate cooperation arrangements are in place between ASF, the competent authorities of the home Member State of the AIF concerned and the supervisory authorities of the third country in which the AIFM is established to ensure at least an efficient exchange of information enabling the competent authorities to carry out their duties;

**e)** the third country in which the AIFM is established is not included in the category of non-cooperative countries and territories by the FATF;

**f)** the third country in which the AIFM is established has signed an agreement with Romania that fully complies with the standards set out in Art. 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information on tax matters, including possible multilateral tax agreements;

**g)** the effective exercise by ASF of its supervisory functions under this law is not hindered by the laws, regulations or administrative provisions of a third State which apply to AIFMs or by limitations on the supervisory and investigatory powers of supervisory authorities of third States.

**(10)** If a competent authority for an AIF in the European Union does not conclude the necessary cooperation agreements referred to in para. (9) (d) within a reasonable period of time, ASF, as competent authority of the Member State of reference, may refer the matter to ESMA.

**(11)** ASF shall grant the authorisation in accordance with the provisions of chap. II, which shall apply *mutatis mutandis*, it being understood that:

**a)** the information referred to in Art. 7 para. (2) shall be supplemented by:

**(i)** a justification prepared by the AIFM on its assessment of the establishment of the Member State of reference in accordance with the criteria set out in para. (4), accompanied by information on its marketing strategy;

**(ii)** a list of the provisions of this Law with which the AIFM may not comply, since, in accordance with para. (2), compliance by the AIFM with those provisions is incompatible with compliance with a provision of the law applicable to AIFMs established in a third country and/or AIFs from a third country whose units are distributed in the European Union;

**(iii)** written evidence based on regulatory technical standards developed by ESMA that the relevant third-country law provides for a rule which is equivalent to provisions with which compliance is impossible, which has the same regulatory objective and provides the same level of protection for investors in the fund concerned and the AIFM complies with the equivalent rule in question; such written evidence shall be accompanied by a legal opinion on the existence of the relevant incompatible mandatory provision in the third-country law and shall include a description of the regulatory objective pursued and the nature of the protection provided to investors; and

**(iv)** the name of the legal representative of the AIFM and where he is established;

**b)** the information referred to in Art. 7 para. (3) may be limited to AIFs in the European Union which the AIFM intends to manage and to those funds managed by the AIFM whose units the AIFM intends to distribute in the European Union on the basis of a passport;

**c)** the provisions of Art. 8 para. (1) (a) shall apply without prejudice to the provisions of para. (2);

**d)** the provisions of Art. 8 para. (1) (d);

**e)** the phrase "the information referred to in Art. 7 para. (2) (a) to (d), (f) and (g)" in Art. 8 para. (6) shall be replaced by "the information referred to in para. (7)(a)".

**(12)** If ASF considers that, in order to obtain a derogation from compliance with certain provisions of this law, AIFM may invoke the applicability of the provisions of para. (2), the Authority shall notify ESMA without delay and document this assessment with the information provided by the AIFM in accordance with para. (11)(a)(ii) and (iii). The period referred to in Art. 8 para. (6) shall be suspended while ESMA; if ASF proposes to grant authorisation despite ESMA's negative opinion, it shall inform ESMA thereof and explain its reasons; if ASF proposes to grant authorisation despite ESMA's negative opinion and AIFM intends to distribute units of the AIFs it manages in Member States other than Romania, ASF shall also inform the competent authorities of the Member States concerned thereof and explain its reasons.



**(13)** As the competent authority of the Member State of reference, ASF shall inform ESMA without delay of the initial authorisation process, any changes to the authorisation of the AIFM and any withdrawal of authorisation. ASF shall inform ESMA of applications for authorisation which it has rejected, providing information on the AIFMs which have applied for authorisation and the reasons for such rejections.

**(14)** Where an AIFM from a third country referred to in para. (1), changes its marketing strategy within 2 years after its initial authorisation and if this change would have affected the determination of the Member State of reference if the changed strategy had been the initial strategy, then the AIFM shall inform ASF as competent authority of the initial Member State of reference of its new marketing strategy before its implementation and shall indicate the new Member State of reference in accordance with the criteria set out in para. (4) and on the basis of the new strategy; AIFM shall justify its assessment by presenting its new marketing strategy to the initial Member State of reference; at the same time, AIFM shall provide information on its legal representative, including the name and place of establishment in the new Member State of reference.

**(15)** ASF shall assess whether the determination made by the AIFM in accordance with the first subparagraph is correct and notify ESMA of this assessment; in the notification to ESMA, ASF shall also include the justification provided by the AIFM for its assessment of the Member State of reference and provide information on the AIFM's new marketing strategy; after receiving ESMA's opinion, ASF shall inform the AIFM in the third country, its legal representative and ESMA of its decision.

**(16)** If ASF agrees with the AIFM's assessment, it shall also inform the competent authorities of the new Member State of reference of the change; ASF shall, without delay, transfer a copy of the authorisation and the supervisory file of the AIFM to the new Member State of reference; from the date of the transfer of the authorisation and the supervisory file, the competent authorities of the new Member State of reference shall become competent to authorise and supervise the AIFM.

**(17)** The procedure provided for in para. (14) to (16) shall also apply if ASF becomes the competent authority of the new reference Member State. Where the final assessment of ASF is contrary to ESMA's opinion:

- a)** ASF shall inform ESMA thereof and explain its reasons;
- b)** where the AIFM distributes units of the AIFs it manages in Member States other than Romania, ASF shall also inform the competent authorities of the Member States concerned thereof and explain the reasons; where applicable, ASF shall also inform the competent authorities of the home Member States of the AIFs managed by the AIFM of their decision and explain the reasons.

**(18)** If it appears from the development of the AIFM's current business activity in the European Union during the 2 years following authorisation that the marketing strategy, as presented by the AIFM at the time of authorisation, has not been complied with, or it appears that the AIFM has made false statements in relation to the strategy or the AIFM has not complied with the provisions of para. (14) to (17) when it has changed its marketing strategy, then ASF, as the competent authority of the original Member State of reference, shall request the AIFM to indicate the correct Member State of reference on the basis of the marketing strategy it actually applies; the procedure provided for in para. (14) to (17) shall apply mutatis

mutandis; if the AIFM does not comply with ASF's request in accordance with ASF's regulations, the latter may withdraw the AIFM's authorisation.

**(19)** If the AIFM changes its marketing strategy after the period referred to in para. (14) and intends to change its Member State of reference on the basis of its new marketing strategy, the AIFM may submit to ASF an application for change of Member State of reference. The procedure referred to in para. (14) to (16) shall apply *mutatis mutandis*.

**(20)** Any dispute arising between AIFM and ASF, as the competent authority of the Member State of reference of the AIFM, shall be settled in accordance with Romanian law, being under the jurisdiction of the Romanian courts. Any dispute arising between the AIFM or the AIF and the European Union investors of the AIF concerned shall be settled in accordance with the law of a Member State and shall fall within the jurisdiction of that Member State.

**(21)** ASF, if it is not the Member State of reference for AIFMs from a third country, may refer the matter to ESMA if it does not agree with:

- a)** the establishment of another Member State of reference by the AIFM;
- b)** assessment of the application of the conditions laid down in para. (7), (8) and (9) (9) (a) to (e) and (g) by the competent authority of the Member State of reference of the AIFM;
- c)** the authorisation issued by the competent authority of the Member State of reference of the AIFM;
- d)** the assessment applicable to the provisions referred to in para. (12);
- e)** the assessment relating to the establishment of a specific reference Member State in accordance with para. (14)-(17).

**(22)** If a competent authority of another Member State refuses ASF's request for exchange of information in accordance with the technical standards adopted by the European Commission, ASF may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Art. 19 of Regulation (EU) no. 1.095/2010.

**Art. 40 - (1)** An AIFM established in a duly authorised third country which intends to distribute to professional investors in the European Union, on the basis of a passport, the units of an AIF in the European Union which it manages and for which Romania is designated as the Member State of reference, shall comply with the conditions set out in para. (2)-(11).

**(2)** Where the AIFM intends to distribute units of an AIF from the European Union in Romania, the AIFM concerned shall send a notification to ASF in relation to each AIF from the European Union whose units it intends to distribute; the notification shall contain the documentation and information set out in Annex no. 2.

**(3)** Within 20 working days from the date of receipt of the complete notification pursuant to para. (2), ASF shall inform the AIFM whether it may start distributing within its territory the units of the AIF identified in the notification referred to in para. (2). ASF may prevent the distribution of the units of the AIF concerned only if the management of the AIF by the AIFM does not comply with this law or if the AIFM does not comply with this law. In case of a positive decision, the AIFM may start the distribution of the AIF's units in the European Union from the date of the notification to that effect made by ASF; at the same time, ASF shall inform ESMA and the competent authorities of the AIF that the AIFM may start the distribution of the AIF's units in Romania.

**(4)** Where the AIFM intends to distribute units of an AIF from the European Union in Member States other than Romania, the AIFM concerned shall send a notification to ASF in

relation to each AIF from the European Union whose units it intends to distribute. The notification shall contain the documentation and information set out in Annex 3.

(5) Within 20 working days from the date of receipt of the complete notification documentation, ASF shall transmit it to the competent authorities of the Member States where the distribution of the AIF's units is intended. The transmission shall take place only if the AIFM's management of the fund also complies with this law and if the AIFM complies with this law. In the complete documentation relating to the notification of ASF it shall also include a statement that the AIFM concerned is authorised to manage AIFs on the basis of a particular investment strategy.

(6) Upon transmission of the complete documentation relating to the notification, ASF shall notify the AIFM without delay of the transmission. The AIFM may start distributing AIF units in the relevant host Member States of the AIFM from the date of that notification. At the same time, ASF shall also inform ESMA and the competent authorities of the AIF that the AIFM may start distributing AIF units in the host Member States of the AIFM.

(7) The provisions referred to in letter (h) of Annex 3 shall be subject to the legislation and supervision of the host Member States of AIFMs.

(8) The notification letter sent by the AIFM in accordance with para. (4) and the declaration referred to in para. (5) shall be in a language customary in the sphere of international finance, and the transmission and completion of the notification documentation shall be possible also by electronic means.

(9) In the event of a substantial change in the information communicated in accordance with para. (2) and/or para. (4), AIFM shall notify ASF in writing at least 30 days before the implementation of the planned change or immediately after the occurrence of an unplanned change. If, as a result of the planned change, the AIFM's management of the AIF no longer complies with this law or if the AIFM no longer complies with this law, ASF shall inform the AIFM without delay that the change is not to be implemented.

(10) If a planned change is implemented in compliance with the provisions of the first and second paragraphs or if an unplanned change has taken place as a result of which the AIFM's management of the AIF no longer complies with this law or the AIFM no longer complies with this law, ASF shall take all necessary measures in accordance with Art. 50, including, if necessary, expressly prohibiting the distribution of AIF units.

(11) If the amendments are acceptable because they do not affect the compliance of the AIFM's management of AIFs with this law or the compliance of AIFMs with this law, ASF shall inform ESMA without delay, in so far as the amendments concern the termination of the distribution of units of certain AIFs or the distribution of units of additional AIFs and, where applicable, the competent authorities of the host Member States of those amendments.

(12) Subject to the provisions of Art. 47, in the case of distribution of units in Romania or in other Member States, AIFs which are managed and whose units are distributed by AIFMs referred to in para. (1) to (11) may only be distributed to professional investors.

**Art. 41 - (1)** If an AIFM established in a duly authorised third country intends to distribute to professional investors in Romania, on the basis of a passport, the units of an AIF from the European Union which it manages, the competent authorities of the Member State of reference of the AIFM must submit to ASF a complete documentation, including a declaration, provided for in Art. 40 para. (5).

(2) An AIFM established in a third country may start distributing AIF units in Romania from the date of notification to ASF by the competent authorities of the Member State of reference of the AIFM.

(3) In compliance with Art. 47 para. (1), AIFs which are managed and whose units are distributed by AIFMs referred to in para. (1) and (2) may only be distributed to professional investors.

**Art. 42 - (1)** An AIFM established in a duly authorised third country which intends to distribute the units of an AIF from a third country which it manages to professional investors in the European Union on the basis of a passport and for which Romania has been designated as the AIFM's Member State of reference shall comply with the conditions set out in para. (2)-(11).

(2) In addition to the requirements of this law for AIFMs from the European Union, the following conditions must be met for AIFMs established in a third country:

a) there are adequate cooperation arrangements between ASF and the supervisory authorities of the third State where the AIF is established, in order to ensure at least an efficient exchange of information enabling ASF to carry out its duties under this law;

b) the third country in which the AIF is established is not included in the category of non-cooperative countries and territories by the FATF;

c) the third State in which the AIF is established has signed an agreement with Romania and each Member State in which the distribution of units of the AIF from the third State is intended, which fully complies with the standards set out in Art. 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

(3) If the AIFM intends to distribute in Romania, as the AIFM's Member State of reference, units of AIFs from a third country, it shall submit to ASF a notification for each AIF from a third country whose units it intends to distribute in Romania. The notification shall contain the documentation and information set out in Annex 2.

(4) Within 20 working days from the date of receipt of the complete notification pursuant to para. (3), ASF shall inform the AIFM whether it may start distributing in Romania the units of the fund identified in the notification referred to in para. (3). ASF may prohibit the AIFM from distributing the units of the AIF concerned only if the management of the AIF by the AIFM does not comply with this law or if the AIFM does not comply with this law. In case of a positive decision, the AIFM may start the distribution of the AIF's units in Romania from the date of notification to this effect by ASF. At the same time, ASF shall inform ESMA that the AIFM may start distributing AIF units in Romania.

(5) Where AIFM intends to distribute units of an AIF from a third country to Member States other than Romania, the AIFM concerned shall notify ASF of each third country AIF whose units it intends to distribute. The notification shall contain the documentation and information set out in Annex 3.

(6) Within 20 working days from the date of receipt of the complete notification documentation, ASF shall transmit it to the competent authorities of the Member States where the distribution of AIF units is intended. The transmission shall only take place if the AIFM's management of the fund complies with this law and the AIFM generally complies with this

law. The full documentation relating to the ASF notification shall include a statement that the AIFM concerned is authorised to manage AIFs on the basis of a particular investment strategy.

(7) After transmission, ASF shall notify the AIFM without delay of the transmission of the complete related documentation. AIFM may start distributing AIF units in the relevant host Member States of the AIFM from the date of that notification. At the same time, ASF shall inform ESMA that the AIFM may start distributing AIF units in the host Member States of the AIFM.

(8) The provisions set out in letter (h) of Annex no. 3 shall be subject to the law and supervision of the host Member States of AIFMs.

(9) The notification letter sent by the AIFM in accordance with para. (5) and the declaration referred to in para. (6) are in a language customary in the sphere of international finance, the transmission and completion of the documents referred to in para. (6) shall also be possible by electronic means.

(10) In the event of a substantial change in the information communicated in accordance with para. (3) or para. (5), AIFM shall notify ASF in writing at least 30 days before the implementation of the planned change or immediately after an unplanned change. If, as a result of the planned amendment, the AIFM's management of the AIF no longer complies with this law or if the AIFM no longer complies with this law, ASF shall inform the AIFM without delay that the amendment is not to be implemented.

(11) If a planned change is implemented in compliance with the provisions of the first and second paragraphs or if an unplanned change has taken place as a result of which the AIFM's management of the AIF no longer complies with this law or the AIFM no longer complies with this law, ASF shall order all necessary measures in accordance with Art. 50, including, if necessary, expressly prohibiting the distribution of AIF units. If the amendments are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance of the AIFM with this law, ASF shall, without delay, inform ESMA, in so far as the amendments concern the cessation of the distribution of units of certain AIFs or the distribution of units of additional AIFs, and, where applicable, the competent authorities of the host Member States of the AIFM of those amendments.

(12) In compliance with Art. 47 para. (1), in the case of the distribution of units in Romania or in other Member States, AIFs which are managed and whose units are distributed by AIFMs referred to in para. (2) to (11) may only be distributed to professional investors.

**Art. 43 - (1)** If an AIFM established in a third country authorised in another Member State intends to distribute to professional investors in Romania, on the basis of a passport, the units of an AIF from a third country which it manages, the competent authorities of the Member State of reference of the AIFM must submit to ASF the complete documentation relating to the notification, including a declaration, provided for in Art. 42 para. (6).

(2) If ASF, as a competent authority of a Member State other than the AIFM's Member State of reference, does not agree with the assessment of the application of the conditions corresponding to Art. para (2) (a) and (b) by the competent authorities of the Member State of reference of the AIFM, ASF may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Art. 19 of Regulation (EU) no. 1095/2010.

(3) An AIFM established in a third country may start distributing AIF units in Romania from the date of notification to ASF by the competent authorities of the Member State of reference of the AIFM.

(4) In compliance with Art. 47 para. (1), AIFs which are managed and whose units are distributed by AIFMs referred to in para. (1) to (3) may only be distributed to professional investors.

**Art. 44 - (1)** An AIFM established in a third country authorised by ASF may manage an AIF from the European Union established in a Member State other than Romania, in its capacity as Member State of reference, either directly or by setting up a branch, provided that the AIFM is authorised to manage that type of AIF.

(2) An AIFM established in a third country intending to manage for the first time an AIF from the European Union established in a Member State other than Romania shall submit to ASF the following information:

a) the Member State in which it intends to manage the AIF, either directly or by setting up a branch;

b) an activity programme of activity stating in particular the services it intends to provide and the AIF it intends to manage.

(3) Where an AIFM established in a third country intends to establish a branch, in addition to the information referred to in para. (2), it shall also communicate the following information:

a) the organisational structure of the branch;

b) the address in the home Member State of the AIF from which the documents may be obtained;

c) the names and contact details of the persons responsible for the administration of the branch.

(4) ASF shall transmit, within 30 days of receipt of the complete documentation in accordance with para. (2) or within 60 days of receipt of the complete documentation in accordance with para. (3), this complete documentation to the competent authorities of the host Member State of the AIFM. The transmission shall take place only if the AIFM's management of the AIF complies with this law and the AIFM complies with this law.

(5) In the complete documentation, ASF shall also include a statement that the AIFM in question is authorised in Romania. ASF shall immediately notify the AIFM of the transmission. Upon receipt of the notification of transmission, the AIFM may start providing those services in the host Member State of the AIFM. At the same time, ASF shall inform ESMA that the AIFM has been authorised to start managing AIFs in the host Member States of the AIFM.

(6) In the event of a change in the information communicated in accordance with para. (2) and, where relevant, with para. (3), the AIFM shall notify ASF in writing at least 30 days before the implementation of the planned change or immediately after an unplanned change. If, as a result of the planned amendment, the AIFM's management of the AIF no longer complies with this law or if the AIFM no longer complies with this law, ASF shall inform the AIFM without undue delay that the amendment is not to be implemented.

(7) If a planned change is implemented in compliance with the provisions of the first and second paragraphs or if an unplanned change has taken place as a result of which the

AIFM's management of the AIF no longer complies with this law or the AIFM no longer complies with this law, ASF may order all necessary measures in accordance with Art. 50, including, if necessary, explicitly prohibiting the distribution of AIF units. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance of the AIFM with this law, the competent authorities of the Member State of reference shall, without undue delay, inform the competent authorities of the host Member States of the AIFM of those changes.

**Art. 45 - (1)** An AIFM established in a third country may manage an AIF from the European Union established in Romania, either directly or by setting up a branch, provided that the competent authorities of the Member State of reference of the AIFM send to ASF the information and documents referred to in Art. 44 para. (2) and (3).

**(2)** An AIFM established in a third country may start distributing the units of the AIF to professional investors in Romania from the date of notification to ASF by the competent authorities of the Member State of reference of the AIFM.

**Art. 46 - (1)** Subject to the provisions of Art. 39-43, an AIFM established in a third country may distribute to professional investors in Romania units of the AIFs it manages, provided that the following conditions are met:

**a)** the AIFM established in a third country complies with Art. 21 to 23 in the case of each AIF whose units it distributes, and with Art. 25 to 29 in the case of an AIF whose units are distributed by that AIFM falling under Art. 25 para. (1);

**b)** appropriate cooperation arrangements for the supervision of systemic risk, in line with international standards, are concluded between the competent authorities of the Member States where AIFs' units are distributed and, where applicable, the competent authorities of the AIFs in the European Union concerned and the supervisory authorities of the third country where the AIFM is established, as well as, where applicable, the supervisory authorities of the third country where the AIF is established, in order to ensure an efficient exchange of information enabling the competent authorities to carry out their duties under this Law;

**c)** the third country in which the AIFM or AIF is established is not included in the category of non-cooperative countries and territories by the FATF.

**(2)** ASF may refer the matter to ESMA if it, as the authority of the Member State of reference in which the distribution of AIF units is intended, finds that the competent authority for AIFs in the European Union does not enter into the necessary cooperation arrangements referred to in para. (1)(b) within a reasonable time.

**(3)** ASF may establish by regulation stricter rules for AIFMs established in third countries regarding the distribution of AIF units to investors in Romania.

## **CHAPTER VIII**

### **Distribution to retail investors**

**Art. 47. - (1)** AIFMs established in Romania, in another Member State or in a third country may distribute to retail investors in Romania units of the AIFs they manage in accordance with this law and with the regulations issued by ASF, irrespective of whether the units of those AIFs are distributed on the domestic market or on the cross-border market or whether those AIFs are established in the European Union or in a third country.

(2) ASF shall establish by regulations:

a) the types of AIF whose units AIFMs indicated in para. (1) may distribute them to retail investors in Romania;

b) additional obligations imposed for the distribution of AIF units to retail investors in Romania.

(3) The information to the European Commission and ESMA made in accordance with the provisions of Art. (1) para. (8) shall also include information on the regulations referred to in para. (2) and any subsequent amendments thereto.

**Art. 47<sup>1</sup>.** - Without prejudice to Art. 26 of Regulation (EU) 2015/760, AIFMs established in Romania, authorised in accordance with the provisions of this law, shall provide, in each Member State in which they intend to distribute AIFs to retail investors, structures which ensure:

a) processing subscription, redemption and refund orders and making other payments to unit-holders in accordance with the conditions laid down in the AIF's articles of incorporation and operating documents;

b) the provision of information to investors on how the orders referred to in letter (a) are to be transmitted and on the arrangements for the payment of redemption and redemption proceeds in respect of units held by investors;

c) facilitating access to information relating to the exercise by investors of the rights they acquire as a result of their investment in the AIF in the Member State where the units of that AIF are distributed;

d) making the information and documents referred to in Art. 21 and 22 available to investors for the purpose of examining them and obtaining copies thereof;

e) making available to investors, on a durable medium, relevant information on the operations carried out by these structures;

f) the function of contact point for communication with the competent authority of the host Member State.

**Art. 47<sup>2</sup> - (1)** Without prejudice to Art. 26 of Regulation (EU) 2015/760, AIFMs authorised in another Member State which distribute AIFs to retail investors in Romania are required to provide structures which ensure:

a) processing subscription, redemption and refund orders and making other payments to unit-holders in accordance with the conditions laid down in the AIF's articles of incorporation and operating documents;

b) the provision of information to investors on how the orders referred to in letter (a) are to be transmitted and on the arrangements for the payment of redemption and redemption proceeds in respect of units held by investors;

c) facilitating access to information relating to the exercise by investors of the rights they acquire as a result of their investment in the AIF;

d) making the information and documents referred to in Art. 21 and 22 available to investors for the purpose of examining them and obtaining copies thereof;

e) making available to investors, on a durable medium, relevant information on the operations carried out by these structures;

f) the function of contact point in communication with ASF



(2) As the competent authority of the host Member State of the AIFM, ASF shall not require the AIFM to have a physical presence on the territory of Romania or to appoint a third party for the purpose of fulfilling its obligations under para. (1).

(3) AIFMs authorised in another Member State which distribute AIFs to retail investors in Romania shall ensure that the arrangements referred to in para. (1) are made available, including by electronic means:

a) in Romanian;

b) by the AIFM or by a third party subject to regulation and supervision applicable to the tasks to be performed, or by both.

Where the tasks are to be carried out by a third party, the appointment of that third party shall be the subject of a written contract specifying which of the tasks referred to in para. (1) shall not be carried out by the AIFM and that the third party shall receive from the AIFM all relevant information and documents.

## CHAPTER IX

### Competent authorities

**Art.48 - (1)** ASF is responsible for the prudential supervision of AIFMs established in Romania, regardless of whether the AIFM manages and/or distributes units of an AIF in another Member State or not and in compliance with the provisions of this law.

(2) If an AIFM established in Romania and authorised under this law which manages or distributes units of AIFs on the territory of another Member State, either directly or through a branch, refuses to provide the competent authorities of its host Member State with information falling within the scope of their responsibility or does not take the necessary measures to cease the breach of the relevant rules, ASF shall be informed by the competent authority of the host Member State. As soon as possible, ASF will:

a) take all appropriate measures to ensure that the AIFM concerned provides the information requested by the competent authorities of its host Member State or that the notified infringements cease;

b) request the necessary information from the supervisory authorities of third countries, if it is the Member State of reference of that AIFM;

c) inform the competent authority of the host Member State of the nature of the measures taken.

(3) Where a competent authority of the host Member State of the AIFM reasonably considers that the AIFM is in breach of its obligations under the rules for which it does not have a supervisory responsibility and notifies it to ASF, in its capacity as competent authority of the home Member State, ASF shall take the necessary measures and, if necessary, request additional information from the competent supervisory authority of the third country.

(4) If ASF does not agree with the application of the measures corresponding to the procedures under Art. 49 para. (3) - (8) by the host Member State of the Romanian AIFM, it may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Art. 19 of Regulation (EU) no. 1.095/2010.

**Art. 49 - (1)** Where AIFMs from another Member State manage and/or distribute AIFs through a branch in Romania, ASF, in its capacity as competent authority of the host Member

State of the AIFM, shall be responsible for supervising compliance by AIFMs with Art. 12 and 14.

(2) AIFMs from another Member State which manage or distribute units of AIFs on the territory of Romania, either directly or through a branch, must provide ASF with the information necessary to supervise compliance by AIFMs with the applicable rules falling under the responsibility of ASF. These requirements may not be stricter than those which ASF imposes on AIFMs for which it is the home Member State in order to monitor their compliance with the same rules.

(2<sup>1</sup>) In applying the provisions of para. (1) and (2), AIFMs from other Member States which manage an AIF in Romania directly or through a branch must comply with the obligations set out in the articles of incorporation and operating documents of those AIFs, which are similar to those set out in Art. 167 para. (1) of the Government Emergency Ordinance no. 32/2012 and in accordance with Law no. 243/2019 on the regulation of alternative investment funds and for the amendment and completion of certain regulations and regulations issued by ASF in application thereof, as the competent authority of the home state of the AIF.

(3) If ASF becomes aware that an AIFM for which it is the host Member State, which manages and/or distributes units of an AIF on the territory of Romania either directly or through a branch, is in breach of one of the rules for which it has a supervisory responsibility, ASF shall require the AIFM concerned to bring that breach to an end and inform the competent authority of the home Member State thereof, in accordance with ASF's regulations.

(4) Where the AIFM referred to in para. (3) refuses to provide ASF with the information falling within its sphere of responsibility or does not take the necessary measures to put an end to the breach referred to in para. (3), then ASF shall inform the competent authorities of the home Member State of that AIFM accordingly. ASF shall subsequently be informed of the nature of the measures taken by the competent authorities of the home Member State of the AIFM.

(5) Where, although the competent authorities of the home Member State of the AIFM have taken measures pursuant to para. (4) or, even if adopted, those measures have not had the desired effect in that Member State, the AIFM still refuses to provide ASF with the information requested in accordance with para. (2) or persists in infringing the laws, regulations or administrative provisions referred to in para. (3) and in force in Romania, then, after informing the competent authorities of the home Member State of the AIFM, ASF may take further measures, in accordance with the legal prerogatives at its disposal, including those provided for in Art. 50 and 51, in order to penalise the breach of those laws, regulations or administrative provisions and to prevent the AIFM in question from carrying out further operations on the territory of Romania. If the AIFM manages AIFs in Romania, ASF may request the AIFM to cease managing those AIFs.

(6) If ASF, as the competent authority of the host Member State, reasonably considers that the AIFM is in breach of its obligations under the rules for which it does not have a supervisory responsibility, then ASF shall communicate those findings to the competent authority of the home Member State of the AIFM.

(7) If, although the competent authorities of the home Member State of the AIFM have taken measures or, even if measures have been taken, those measures prove inadequate or the home Member State of the AIFM does not act within a reasonable time, the AIFM continues

to act in a manner that is clearly prejudicial to the interests of the AIF investors concerned and to the financial stability or integrity of the market in Romania, then, after informing the competent authorities of the home Member State of the AIFM, ASF shall take the appropriate measures necessary to protect the Romanian investors of the AIF concerned and the financial stability and integrity of the capital market in Romania, including the possibility of prohibiting the AIFM from further distributing units of the AIF concerned in Romania.

**(8)** The procedures referred to in para. (6) and (7) shall also apply where ASF justifiably considers that it cannot agree to the authorisation of an AIFM from a third country by the Member State of reference.

**Art. 50 - (1)** ASF shall be vested with all supervisory and investigative powers necessary for the exercise of its functions. These powers shall be exercised in any of the following ways:

- a)** directly;
  - b)** in cooperation with other authorities;
  - c)** under their responsibility, by delegation to entities to which tasks have been delegated;
  - d)** by referring the matter to the competent judicial authorities.
- (2)** ASF has the following powers:
- a)** to have access to any documents held by natural or legal persons to which this Law applies, in whatever form, and to receive a copy of them;
  - b)** to request information from any natural or legal persons to whom AIFMs have outsourced certain operational functions or activities or which are related to the activities of AIFMs or AIFs and, where necessary, to obtain written or oral explanations from such persons;
  - c)** to carry out inspections at the premises of legal persons subject to this law, with or without prior warning;
  - d)** to request from the AIFM the telephone and data exchange records in relation to those facts found by ASF to be contrary to this law or which are suspected of being so;
  - e)** to request from AIFMs or natural or legal persons to whom AIFMs have outsourced certain operational functions or activities to cease any practice contrary to the provisions adopted pursuant to this law;
  - e<sup>1</sup>)** to request the competent judicial authorities to freeze or seize AIF assets managed by AIFMs subject to this law;
  - (f)** to order, by issuing individual acts referred to in Art. 6 para. (3) of Government Emergency Ordinance no. 93/2012, approved with amendments and additions by Law no. 113/2013, as subsequently amended and supplemented, the temporary prohibition of professional activity by AIFMs, AIFs, AIF depositaries, natural persons involved in the activity of AIFMs referred to in Art. 51 para. (2), respectively natural or legal persons to whom AIFMs have outsourced certain operational functions or activities;
  - g)** to adopt, within the limits of its legal powers, measures to ensure that AIFMs or AIF depositaries comply with this law;
  - h)** to request AIFMs or internally managed AIFs to suspend the issue or redemption of AIF units in the interest of the holders of such units or in the public interest;
  - i)** to withdraw, under the conditions of Art. 11 and 52, the authorisation granted to an AIFM or the authorisation granted to an AIF depositary, both as a primary sanction, if those

entities no longer meet the conditions at the time of authorisation/approval, and as a complementary sanction;

**j)** to refer the matter to the competent prosecution authorities;

**k)** prohibit the distribution in the European Union of units of AIFs managed by AIFMs established in third countries or of AIFs from a third country managed by AIFMs from a Member State without the necessary authorisation pursuant to Art. 39 or the notification required pursuant to Art. 36 para. (3) art. 40 para. (2) and art. 42 para. (3) or if the conditions laid down in Art. 46 are not met;

**l)** impose restrictions on AIFMs established in third countries on the management of an AIF in the event of excessive risk concentration in a particular market or on a cross-border basis.

**m)** to suspend the authorisation to carry on certain activities or to perform certain functions, if it is found or there are reasonable grounds for believing that the interests of investors or the good reputation of the AIFM concerned will be harmed by the continued pursuit of those activities or functions.

**n)** to hear any person and request information in relation to its activities on the capital market and/or in relation to requests for assistance made by authorities similar to ASF under international agreements to which ASF is a party;

**o)** to request and be entitled to receive from credit institutions authorised by the National Bank of Romania the information necessary for the investigations of ASF, as well as to respond to requests for assistance received by ASF on the basis of international agreements to which the latter is a party.

**p)** to request, giving reasons, the members of the management board or the supervisory board of the AIFM or self-managed AIF, respectively the directors or the members of the management board of the AIFM or self-managed AIF, to convene a meeting of their members or, as the case may be, a general meeting of shareholders, setting out the matters to be placed on the agenda, in order to apply the provisions of this law.

**(3)** If ASF, as the competent authority of the Member State of reference, considers that an unauthorised AIFM from a third country is in breach of its obligations under this Law, it shall notify ESMA thereof immediately and in detail.

**(4)** ASF may use its powers to take the necessary measures to ensure the orderly functioning of the markets if the activities of one or more AIFs in the market of a financial instrument could affect the orderly functioning of that market.

**Art. 51 - (1)** Violation of the provisions of this law and of the regulations adopted in its application shall entail contraventional or criminal liability, according to the law.

**(2)** The following acts committed by AIFMs, self-managed AIFs, AIF depositaries and/or by members of the board of directors or the supervisory board of an AIFM or self-managed AIF, directors or members of the management board of an AIFM or self-managed AIF and representatives of the internal control department of an AIFM or self-managed AIF, as well as by natural persons exercising managerial functions or professional activities regulated by this law, in accordance with their obligations under this law, shall constitute offences:

**(a)** failure to comply with the conditions underlying the authorisation/licensing and the operating conditions laid down in Art. 2, 4 and 6 to 10;

- b)** failure to comply with the prudential rules laid down in Art. 12;
- c)** non-compliance with the provisions of Art. 13 on remuneration policies;
- d)** "repealed"
- e)** failure to comply with the provisions of Art. 15 para. (1) to (3) and (5) on risk management, Art. 16 on liquidity management and Art. 16<sup>1</sup> on the requirements applicable to securitisations in the AIF portfolio;
- f)** non-compliance with the provisions of Art. 18 para. (1), (3) - (9), (11) and (12) on the valuation of AIF assets;
- g)** failure to comply with the provisions of Art. 19 on the delegation of collective portfolio management or risk management activities;
- h)** non-compliance with the provisions of Art. 20 para. (1) - (11) relating to depositaries and the agreement between the depositary and the IMC;
- i)** failure to comply with the transparency and reporting obligations laid down in Art. 21 and 23 and the transparency obligations laid down in Art. 22;
- j)** failure to comply with the obligations incumbent on AIFMs as a result of obtaining control of non-listed companies and issuers referred to in Art. 25 to 29;
- k)** non-compliance with the conditions for the distribution and management in the European Union by AIFMs from an EU Member State of AIFs from the EU, as well as with the specific rules relating to third countries laid down in art. 29<sup>1</sup>, art. 30 para. (2) and (4)-(6), art. 31 para. (2) and (6)-(9), art. 31<sup>1</sup>, art. 31<sup>2</sup>, art. 32 para. (2) and (3), art. 32<sup>1</sup>, art. 33 para. (2), (3) and (5)-(7), art. 34 para. (2), art. 35 lit. a), art. 36 para. (2), (3), (5) and (9)-(11), art. 37 para. (3) and (4), art. 38 para. (1) lit. a), art. 39 para. (1), (2), (6)-(8) and (14)-(18), art. 40 para. (2), (4) and (8)-(12), art. 41 para. (2) and (3), art. 42 para. (3), (5), (9)-(12), art. 43 para. (3) and (4), art. 44 para. (2), (3), (6) and (7), art. 45 para. (2), art. 46 para. (1) lit. a), art. 47 para. (2), art. 47<sup>1</sup>, art. 47<sup>2</sup> and art. 49 para. (2<sup>1</sup>);
- l)** unlawfully hindering the exercise of the rights conferred by law to ASF, as well as the unjustified refusal to respond to the requests of ASF in the exercise of its prerogatives.
- m)** failure to comply with the requests of ASF referred to in Art. 50 para. (2) letter p);
- n)** failure to comply with the obligations laid down in the regulations issued by ASF on training, education and professional development.

**Art. 51<sup>1</sup> - (1)** Infringement of the provisions of Regulation (EU) no. 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and of the regulations adopted in application thereof shall be ascertained and sanctioned by ASF, as the competent authority, and shall give rise to criminal liability under the law.

**(2)** The acts referred to in Art. 21 para. (1) of Regulation (EU) no. 345/2013, committed by the EuVECA administrator, EuVECA depositaries and/or by members of the Management Board or the Supervisory Board of the EuVECA administrator, directors or members of the management board of the EuVECA administrator and representatives of the internal control department of a EuVECA administrator, as well as by natural persons exercising management functions or professional activities covered by Regulation (EU) no. 345/2013, in accordance with their obligations under that Regulation.

**(3)** Infringement of the provisions of Regulation (EU) no. 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds

and of the regulations adopted in application thereof shall be ascertained and sanctioned by ASF, as the competent authority, and shall give rise to a contravention of the law.

**(4)** The acts referred to in Art. 22 para. (1) of Regulation (EU) no. 346/2013 committed by the EuSEF manager, EuSEF depositaries and/or members of the EuSEF manager's administrative board or supervisory board, directors or members of the management board of the EuSEF manager and representatives of the internal control department of a EuSEF manager, as well as natural persons exercising management functions or professional activities covered by Regulation (EU) no. 346/2013, in accordance with their obligations under that Regulation.

**Art. 51<sup>2</sup>** - Failure by an AIFM to comply with Art. 3-13 on sustainability risks, transparency of sustainable investments and the promotion of environmental and social features of financial products of Regulation (EU) 2019/2.088 of the European Parliament and of the Council of 27 November 2019 on sustainability disclosures in the financial services sector and of regulations adopted in implementation thereof, hereinafter Regulation (EU) 2019/2.088, or the provisions of Art. 5-7 on transparency of sustainable investments and financial products promoting environmental features in pre-contractual information and periodic reports of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 establishing a framework to facilitate sustainable investments and amending Regulation (EU) 2019/2.088, hereinafter referred to as Regulation (EU) 2020/852, constitute infringements and shall be sanctioned by ASF, as competent authority, in accordance with Art. 52.

**Art. 51<sup>3</sup> - (1)** Infringement of the provisions of Regulation (EU) no. 231/2013 shall be ascertained and sanctioned by ASF, as the competent authority, and shall entail a contravention liability under the law.

**(2)** Violation of the provisions of Art. 5 para. (3), art. 16-29, art. 30-37, art. 67-74, art. 82, art. 100, art. 101, art. 106, art. 110, art. 112 and Annex IV of Regulation (EU) no. 231/2013, committed by AIFMs, self-managed AIFs, AIF depositaries and/or by members of the board of directors or the supervisory board of an AIFM or self-managed AIF, directors or members of the management board of an AIFM or self-managed AIF and representatives of the internal control department of an AIFM or self-managed AIF, as well as by natural persons exercising managerial functions or professional activities covered by this law.

**Art. 52 - (1)** By derogation from the provisions of Art. 8 para. (2) of Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, the commission of the contraventions referred to in Art. 51, Art. 51<sup>1</sup> para. (2) and (4), art. 51<sup>2</sup> and art. 51<sup>3</sup> shall be punished as follows:

**a)** with a warning or a fine from 1,000 lei to 22,098,000 lei, for natural persons;  
**b)** with a warning or a fine of 0.1% to 5% of the net turnover in the financial year preceding the sanction, depending on the seriousness of the offence committed, for legal persons.

**(2)** If the turnover achieved in the financial year preceding the sanction is not available at the date of the sanction, the net turnover of the financial year in which the legal person achieved turnover, the year immediately preceding the reference year, shall be taken into account. Reference year means the year preceding the sanction.

**(3)** By way of derogation from the provisions of Art. 8 para. (2) of Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, in the case of a newly established legal person that has not registered a turnover in the year preceding the sanctioning, it shall be sanctioned with a fine from 10,000 lei to 1,000,000 lei.

**(4)** In the case of contraventions referred to in Art. 51 para. (2), ASF may also apply one of the following complementary sanctions in addition to the main sanction:

**a)** suspension of the authorisation;

**b)** withdrawal of authorisation;

**c)** a ban for a period of between 90 days and 5 years on the right to hold an office, carry out an activity or provide a service for which authorisation is required under this Law.

**(4<sup>1</sup>)** In the case of infringements referred to in Art. 51<sup>1</sup> para. (4) (together with the main contravention sanction, ASF may also apply the complementary sanction of removal from the ASF Register for the commission of the acts referred to in Art. 2 para. (1) (b) and (e) - (i) of Regulation (EU) no. 345/2013.

**(4<sup>2</sup>)** In the case of infringements referred to in Art. 51<sup>1</sup> para. (4), together with the main contravention sanction, ASF may also apply the complementary sanction of removal from the ASF Register for the commission of the acts referred to in Art. 22 para. (1) (b) and (e) - (i) of Regulation (EU) no. 346/2013.

**(5)** ASF shall make public any sanction or administrative measure imposed for non-compliance with the provisions of this Law and the regulations adopted for its application, unless such publication risks seriously disturbing the financial markets, harming the interests of investors or causing disproportionate damage to the parties concerned.

**(6)** Depending on the nature and seriousness of the offence, in the case of the offences referred to in Art. 51, 51<sup>1</sup>, 51<sup>2</sup> or 51<sup>3</sup>, ASF may apply administrative measures, such as:

**a)** a public statement indicating the person responsible for the infringement and the nature of the infringement;

**b)** a decision requiring the person responsible for the breach to cease the conduct and to refrain from repeating it;

**c)** other warning measures and/or with the aim of preventing or remedying situations of non-compliance with legal provisions, according to the regulations of ASF.

**(7)** The main contravention penalties may be applied cumulatively with one or more complementary contravention penalties provided for in this Law.

**(8)** The administrative measures referred to in para. (6) may be applied separately or together with the principal or complementary sanctions provided for in this Law.

**(9)** In the case of two or more contraventions, the fine for the most serious contravention shall be imposed, by way of derogation from the provisions of Art. 10 para. (2) of Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, as amended and supplemented.

**(10)** In the case of sanctions imposed for the commission of the offences referred to in Art. 51, 51<sup>1</sup> para. (2) and (4), art. 51<sup>2</sup> and 51<sup>3</sup>, the sanctioned persons shall pay the fine established in the ASF sanctioning decision within 15 days at the latest from the date of its communication, by derogation from the provisions of art. 16 para. (1) and Art. 28 para. (1) of Government Ordinance no. 2/2001, approved with amendments and additions by Law no.

180/2002, as subsequently amended and supplemented, relating to the payment of half of the minimum fine provided for in this Article.

**Art. 52<sup>1</sup> - (1)** In the event of the withdrawal of the authorisation of an AIFM by a sanctioning decision as provided for in Art. 52 para. (4) letter b), ASF shall designate, by the same decision and taking into account the criteria set out in para. (4), an authorised AIFM as provisional administrator, which shall carry out acts of administration for the preservation of the assets of the managed entities, as well as the compulsory transfer of the administration to another AIFM and the publication of this situation, with the filing of all the necessary diligences in this respect.

**(2)** Within 15 days of his appointment by ASF, the provisional administrator appointed in accordance with para. (1) shall publish, in at least 3 national daily periodicals, the list of the entities taken under temporary management and shall make known, in this way, its availability to receive requests to take over those entities, with a view to their management by other AIFMs.

**(3)** The provisional administrator shall be obliged to provide applicants with all the information necessary for them to make an informed decision.

**(4)** In considering the tenders received, the interim administrator shall take into account the following criteria:

**a)** the level of initial capital of the offering AIFM;

**b)** the extent to which the distribution network which the new AIFM can provide covers the initial distribution network;

**c)** the proposed management fee;

**d)** the experience and performance in management;

**e)** the volume of assets under management at the time of valuation;

**f)** the sanctions applied by ASF, where applicable.

**(5)** The provisional administrator is required to identify and propose to ASF the appointment of another AIFM within 90 days of its appointment.

**(6)** During the period of its activity, the provisional administrator shall draw up and publish the reports related to the activity of the entities taken into temporary administration, within the term and in accordance with the requirements provided for by this Law, by Regulation (EU) no. 231/2013, by Law no. 24/2017 on issuers of financial instruments and market operations, republished, and the regulations issued by ASF in application thereof, as the case may be.

**(7)** If the provisional administrator exceeds the time limit specified in para. (5), ASF may by decision extend his mandate, once for a period of 90 days, or may decide to change him with another authorised AIFM, which change must take place before the end of the mandate of the previous provisional administrator.

**(8)** The management fee charged by the interim manager appointed in accordance with the procedure laid down in this Article may not be higher than the fee charged by the AIFM whose authorisation has been withdrawn in accordance with para. (1).

**(9)** If, even after the expiry of the time-limits laid down in para. (7), the condition laid down in para. (5) has not been fulfilled, ASF shall be entitled to order the liquidation of the fund and to appoint a liquidator:

**a)** is also a financial auditor or audit firm approved by ASF according to the regulations issued by ASF;



b) take the necessary steps for the withdrawal from trading of the managed entities, if applicable.

(10) In case of non-compliance with the provisions of para. (2) to (4) and (6), the interim manager shall refund the fees received to the entities under temporary management.

(11) Once the AIFM's authorisation has been withdrawn as a sanction, ASF may suspend the subscription and redemption process of the fund units of the entities managed by the manager concerned in accordance with the provisions of Art. 5 para. (4) of Law no. 243/2019.

**Art. 53** - The performance without authorisation of any activity or operation specific to AIFMs for which this law requires authorisation constitutes the offence of unlawful exercise of a profession or activity and is punishable under Art. 348 of Law no. 286/2009 on the Criminal Code, as amended.

**Art. 54 - (1)** Committing the offences referred to in Art. 51 para. (2) shall be ascertained by ASF by means of the specialised personnel empowered to exercise powers regarding the supervision, investigation and control of compliance with the legal provisions and regulations applicable to the capital market.

(2) Upon receipt of the verification documents resulting from the authorisation, supervision or control activity, according to which one of the infringements referred to in Art. 51 para. (2), ASF shall order, by issuing individual acts, the application of sanctions provided for in Art. 52. ASF may also, by individual acts, order the extension of investigations, the taking of precautionary measures and/or the hearing of the persons concerned by the verification acts.

**Art.55** - When individualizing the sanction, the provisions of Art.5 para. (5) and (6) and art. 21 para. (3) of Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions.

**Art. 56 - (1)** By derogation from the provisions of Art. 13 and 14 of Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, the limitation period for the application and enforcement of the contravention sanction is 3 years from the date of the offence.

(2) In the case of continuous contraventions, the limitation period of 3 years shall start to run from the date on which the offence is established.

**Art. 57 - (1)** Insofar as this law does not provide otherwise, the provisions relating to contraventions shall be supplemented by the provisions of Government Ordinance no. 2/2001, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, with the exception of Art. 28 para. (1) and Art. 29.

(2) By way of derogation from the provisions of Art. 7 para. (1) and Art. 11 para. (1) and (2) of the Administrative Litigation Law no. 554/2004, with subsequent amendments and additions, the administrative acts adopted by ASF according to the provisions of this law or for the application of the regulations adopted at the European Union level in the fields provided for by this law, duly motivated, may be appealed, within 30 days from the date of communication, to the Bucharest Court of Appeal, Administrative and Fiscal Litigation Section. The individual administrative act by which ASF imposes the sanction of a fine constitutes an enforceable title.

(3) If ASF has not resolved the AIFM's request for authorisation within 6 months from the submission by the latter of the complete documentation provided for by this law and the regulations issued in application thereof, the AIFM may appeal to the Bucharest Court of Appeal.

**Art. 57<sup>1</sup> - (1)** The reporting to ASF of possible or certain infringements of the provisions of this law and/or of Regulation (EU) no. 231/2013 shall be carried out in accordance with the regulations issued by ASF

(2) ASF shall establish independent and autonomous communication channels, which are secure and guarantee confidentiality, for the receipt of reports of violations of the provisions of this law, hereinafter referred to as secure communication methods.

(3) Secure communication methods shall be considered independent and autonomous, provided that they fulfil the following criteria cumulatively:

a) are separate from the general communication channels of ASF, including those through which ASF communicates internally and with third parties as part of its regular business;

b) are designed, established and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access by unauthorised employees of ASF;

c) allow for the durable storage of information, in accordance with the regulations issued by ASF, in order to allow further investigations. ASF shall keep the records referred to in this letter in a confidential and secure database.

(4) Secure communication methods allow reporting of possible or certain infringements in at least the following ways:

a) written reporting of infringements, in electronic or paper format;

b) oral reporting of infringements via telephone lines, whether recorded or unrecorded;

c) meeting with specialised employees of ASF, if applicable.

(5) ASF shall ensure that a report of a violation received by means other than the secure communication methods provided for in this Article is transmitted immediately, without modification, to the specialized employees of ASF using the secure communication methods.

(6) The process of handling by ASF of the reports submitted by persons complaining of violations of the provisions of this law shall be carried out in accordance with the provisions of para. (2)-(5) and regulations issued by ASF, with insurance:

a) the establishment of specific procedures for receiving reports of infringements and taking follow-up action;

b) an adequate level of protection for those employees of AIFMs or AIF custodians who report breaches within those entities, at least in relation to acts of retaliation, discrimination and other unfair treatment;

c) the protection of personal data both in relation to the person reporting a breach of this Law and in relation to the natural person suspected of having committed a breach, in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter referred to as Regulation (EU) no. 679/2016, and other legal provisions in force in the field of personal data protection;

d) confidentiality of the person reporting a breach, unless national law requires disclosure of his or her identity in the context of investigations or subsequent legal proceedings.

(7) The reporting by employees of AIFMs or AIF depositaries provided for in para. (5) shall not be considered as a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative act and shall not give rise to liability on the part of the person making the report.

**Art. 58 - (1)** ASF shall exercise its powers for the purpose of cooperation with the competent authorities of the other Member States, as well as with ESMA and ESRB, whenever necessary for the performance of its duties or for the exercise of its powers under this Law.

(2) ASF shall cooperate with the competent authorities of the other Member States, including in cases where the practices under investigation do not constitute a breach of a rule in force in Romania.

(3) ASF shall transmit to the competent authorities of the other Member States and to ESMA the information necessary to carry out its duties under this law.

ASF, as the competent authority of the home Member State, shall forward to the host Member States of the AIFMs concerned a copy of the relevant cooperation agreements they have concluded in accordance with Art. 35 and 36, Art. 39 and/or Art. 42 and 43, and the information received from the supervisory authorities of third countries in accordance with the cooperation agreements concluded with them in respect of AIFMs or, where applicable, pursuant to Art. 48 para. (3) or Art. 49 para. (5) or Art. 49 para. (6) respectively, the competent authorities of the host Member State of the AIFM concerned.

If ASF, as competent authority of a host Member State, considers that the cooperation agreement concluded between the home Member State of the AIFM, i.e. in accordance with Art. 35 and 36, Art. 39 and/or Art. 42 and 43, does not comply with the requirements laid down in the applicable regulatory technical standards, ASF may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Art. 19 of Regulation (EU) no. 1.095/2010.

(4) Where ASF has clear and demonstrable grounds for suspecting that an AIFM which is not subject to its supervision is committing or has committed acts in breach of this law, it shall notify ESMA, the competent authorities of the home Member State and those of the host Member State of the AIFM concerned thereof in as much detail as possible.

(5) Where ASF receives information from the competent authorities of a Member State in accordance with para. (4), it shall take the necessary measures, inform ESMA, communicate the results of its action to the notifying competent authorities and, as far as possible, communicate to them the relevant facts which have become known in the meantime. This provision shall not affect the powers of the notifying competent authorities.

**Art. 59 - (1)** As regards the transfer of personal data between ASF and the competent authorities of other Member States or third countries, ASF shall be considered a data controller in accordance with Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as amended and supplemented, and shall be subject to the conditions stipulated by that law.

(2) Personal data shall be kept by ASF for a maximum of 5 years, and at the end of this period the data shall be archived in accordance with the legal provisions in force.

**Art.60 - (1)** ASF is entitled to transfer data and data analysis to a third country on a case-by-case basis, provided that the relevant conditions of Law no. 677/2001, as amended, are met, and ensures that the transfer is necessary according to this law. The third State concerned shall not transfer the data to another third State without the express written consent of ASF.

**(2)** ASF may not disclose information received from a competent authority of another Member State to a supervisory authority of a third State unless it has received the express consent of the competent authority that transmitted the information and unless, where appropriate, the information is disclosed only for the purpose for which that competent authority gave its consent.

**Art. 61 - (1)** ASF shall communicate information to the competent authorities of other Member States, ESMA and ESRB, in cases where this is relevant for monitoring and responding to the potential implications of the activity of an individual AIFM or several AIFMs taken together on the stability of systemically important financial institutions and the orderly functioning of the markets in which AIFMs operate.

**(2)** Subject to the conditions laid down in Art. 35 of Regulation (EU) no. 1.095/2010, ASF shall communicate all information relating to the activities of AIFMs under its responsibility to ESMA and ESRB.

**Art. 62 - (1)** The competent authorities of a Member State may request the cooperation of ASF in the framework of a supervisory activity or for the purpose of an on-the-spot verification or investigation in the territory of the latter, within the powers conferred by this law. If ASF receives a request for on-the-spot verification or investigation, it shall take one of the following actions:

- a)** carry out the verification or investigation itself;
- b)** allows the applicant authority to carry out the verification or investigation;
- c)** allow auditors or experts to carry out the verification or investigation.

**(2)** In the case referred to in para. (1) letter (a), the competent authority of the Member State which has requested cooperation may require members of its own staff to assist the staff carrying out the verification or investigation on behalf of ASF. The verification or investigation shall, however, be subject to the general control of ASF. In the case referred to in para. (1) letter (b), ASF may require that members of its own staff assist the staff carrying out the verification or investigation.

**(3)** ASF may refuse to exchange information or to comply with a request for cooperation in carrying out an investigation or on-the-spot verification only in the following circumstances:

- a)** the investigation, on-the-spot verification or exchange of information may affect national security or public order in Romania;
- b)** legal proceedings have already been instituted against the same persons for the same acts before the Romanian authorities;
- c)** a final judgment has already been rendered in Romania for the same facts and against the same persons. ASF shall notify the requesting competent authorities of any decision taken pursuant to the first subparagraph, stating the reasons for their decision.

## **CHAPTER X**

### Transitional and final provisions

**Art. 63 - (1)** The administrators of the Romanian OCIUs referred to in Art. 114 para. (1) and art. 115 para. (1) and (2) of Law no. 297/2004, which operate before the date of entry into force of this law, shall take all necessary measures to comply with this law, being obliged that within a maximum period of 12 months from the entry into force of this law:

**a)** request ASF, depending on the value of the portfolios managed and taking into account the provisions of Art. 2 para. (2), either authorisation or registration as an AIFM; or, as the case may be,

**b)** ensure that the supervisory authority of the home Member State notifies ASF in accordance with the procedure laid down in Art. 34.

**(2)** The obligation to register with ASF provided for in para. (1) shall also apply to managers of venture capital funds and managers of social entrepreneurship funds wishing to distribute units within the EEA under the EuVECA or EuSEF designation, whose activity is regulated as of 22 July 2013 by Regulation (EU) no. 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and Regulation (EU) no. 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds.

**(3)** Art. 30-32 shall not apply to the distribution of AIF units which are the subject of an ongoing offer for sale to the public pursuant to a prospectus drawn up and published in accordance with the provisions of Law no. 297/2004 and of the regulations issued in application thereof, during the validity of the prospectus.

**(4)** To the extent that AIFMs manage closed-end AIFs before the date of entry into force of this Law, AIFMs which do not make additional investments after that date may nevertheless continue to manage such AIFs without an authorisation under this Law.

**(5)** To the extent that AIFMs manage closed-ended AIFs and the subscription period for their investors ended before the entry into force of this Law and the duration of operation of the funds expires at the latest 3 years after 22 July 2013, AIFMs may nevertheless continue to manage such AIFs without having to comply with the provisions of this Law, with the exception of Art. 21 and 25-29, or apply for authorisation under this Law.

**(6)** ASF shall issue regulations implementing the provisions of this law, taking into account the technical standards adopted by the European Commission and the guidelines issued by ESMA in relation to the establishment and operation of AIFMs, including as regards the treatment applicable to OCIUs whose units are admitted to trading on a regulated market or alternative trading system, within 60 days of the entry into force of this law.

**Art. 63<sup>1</sup>** - The processing of personal data at the level of ASF shall be carried out exclusively for the purpose of fulfilling the duties of authorization, supervision, investigation, cooperation with other public authorities and investor protection, in compliance with the provisions of this law and in accordance with the provisions of Regulation (EU) no. 679/2016.

**Art. 64.** - This Law shall enter into force 30 days after the date of its publication in the Official Gazette of Romania, Part I.

Annexes nos. 1-3 are an integral part of this Law.

\*

This law transposes:

1. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) no. 1060/2009 and (EU) no. 1095/2010, published in the Official Journal of the European Union, L 174 of 1 July 2011;

2. the provisions of Art. 3 of Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Fund Managers with regard to over-reliance on credit ratings, published in the Official Journal of the European Union, L 145 of 31 May 2013;

3. the provisions of Art. 92 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, published in the Official Journal of the European Union, Series L, no. 173 of 12 June 2014.

4. Directive (EU) 2019/1.160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU as regards the cross-border distribution of collective investment undertakings, published in the Official Journal of the European Union (OJEU), L 188 of 12 July 2019;

5. Art. 61 of Directive (EU) 2019/2.034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment companies and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, published in the Official Journal of the European Union (OJEU), Series L, no. 314 of 5 December 2019.

This law was adopted by the Romanian Parliament in compliance with the provisions of Art. 75 and Art. 76 para. (2) of the Constitution of Romania, republished.

PRESIDENT OF THE  
CHAMBER OF DEPUTIES  
VALERIU-ȘTEFAN ZGONEA

PRESIDENT OF THE SENATE  
CĂLIN-CONSTANTIN-ANTON  
POPESCU-TĂRICEANU

Bucharest, 14 April 2015.

No. 74.

**ANNEX no. 1**

### Remuneration policies and practices

1. In establishing and applying total remuneration policies, including salaries and discretionary pension payments, for those categories of staff whose professional activities have a significant impact on the risk profile of the alternative investment fund managers (AIFMs) or the alternative investment funds (AIFs) they manage, including persons in senior management positions, risk-takers and controllers, and any employee who receives total remuneration which

places him in the same remuneration category as the directors and risk-takers, the AIFM shall comply with the following principles in a manner and to an extent appropriate to its size, internal organisation and the nature, scale and complexity of its activities:

**a)** the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that is inconsistent with the risk profile, rules or articles of incorporation of the AIF it manages;

**b)** the remuneration policy is consistent with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages, as well as with the interests of AIF investors, and includes measures to avoid conflicts of interest;

**c)** the management body of the AIFM, as part of its supervisory function, shall adopt and periodically review the general principles of the remuneration policy and shall be responsible for its application;

**d)** the application of the remuneration policy is subject, at least once a year, to a central and independent internal assessment of compliance with the remuneration policies and procedures adopted by the management body as part of its supervisory function;

**e)** staff members in control functions shall be remunerated on the basis of the achievement of the objectives related to their functions, independently of the performance of the business sectors they control;

**f)** the remuneration of persons in risk management and compliance functions shall be directly overseen by the remuneration committee;

**g)** where the remuneration is performance related, its total amount shall be calculated on the basis of an assessment combining the performance of the individual and of the business unit concerned or of the AIF in question and the overall performance of the AIFM, and both financial and non-financial criteria shall be taken into account when assessing individual performance;

**h)** performance assessment is carried out within a multi-year framework appropriate to the life cycle of the AIF managed by the AIFM, to ensure that the assessment process is based on longer-term performance and that the actual payment of the performance-dependent components of remuneration is made over a period which takes into account the redemption policy of the AIF managed and their investment risks;

**i)** guaranteed variable pay is exceptional, only applies to new staff and is limited to the first year;

**j)** there is an appropriate balance between the fixed and variable components of total remuneration and the fixed component represents a sufficiently high percentage of total remuneration to allow for the application of as flexible a policy as possible regarding the variable components of remuneration, including the possibility of not paying any variable component of remuneration;

**k)** payments related to early termination of a contract reflect performance achieved over time and are designed not to reward failure;

**l)** the performance measurement used in the calculation of the variable components of remuneration or the variable components of remuneration as a whole includes a comprehensive adjustment mechanism that includes all relevant types of possible risks;

**m)** depending on the legal structure of the AIF and its rules or articles of incorporation, a significant proportion, which shall be at least 50% of any variable remuneration, shall consist

of units of the AIF concerned or equivalent property rights or share-linked instruments or equivalent instruments other than cash, unless the management of the AIF represents less than 50% of the total portfolio managed by the AIFM, in which case the 50% minimum shall not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of AIFMs, AIFs under management and investors in such AIFs. Member States or their competent authorities may limit the types of such instruments or the way in which they are designed or prohibit certain instruments, as appropriate. This principle shall apply both to the percentage of the variable component of remuneration that is deferred in accordance with letter (n) and to the percentage of the variable component of remuneration that is not deferred;

**n)** a substantial proportion, in any case at least 40%, of the variable remuneration component is deferred for a period appropriate in terms of the life cycle and redemption policy of the AIF concerned and is properly aligned with the nature of the risks assumed by the AIF concerned.

The period referred to in this point shall be at least 3 to 5 years, unless the life cycle of the AIF concerned is shorter; remuneration due under deferral arrangements shall not be paid earlier than on a pro rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred;

**o)** variable remuneration, including the deferred part, shall be paid or granted only if it is sustainable in relation to the financial situation of the AIFM as a whole and is justified by the performance of the AIF business unit and the person concerned.

The total variable remuneration is generally significantly reduced in the event of poor or negative performance of the AIFM or AIF concerned, taking into account both current remuneration and reductions in the payment of amounts previously earned, including through the application of the malus principle or clawback mechanisms;

**p)** the pension policy is consistent with the business strategy, objectives, values and long-term interests of the AIFM and the AIF managed.

If the employee leaves the AIFM before retirement, discretionary pension payments are withheld by the AIFM for 5 years in the form of instruments as defined in letter m).

If an employee reaches retirement age, discretionary pension payments are paid to that employee in the form of instruments as defined in letter m), withheld for 5 years;

**q)** staff are required to undertake not to use personal or insurance hedging strategies relating to remuneration or liability to undermine the effects of the risk alignment set out in their remuneration regimes;

**r)** variable remuneration is not paid by means of instruments or methods that facilitate the avoidance of the requirements of this Law.

**2.** The principles set out in point 1 shall apply to any remuneration paid by the AIFM, to any amount paid directly by the AIF, including performance fees, or to any disposal of AIF units, for those categories of staff whose professional activities have a significant impact on their risk profile or on the risk profile of the AIF they manage, including directors, risk-takers and controllers, as well as to any employee receiving total remuneration which places them in the same remuneration category as directors and risk-takers.



**3.** AIFMs which are important in terms of their size or the size of the AIFs they manage, their internal organisation and nature, the scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise a competent and independent review of the remuneration policies and practices and incentives designed to manage risks.

The Remuneration Committee is responsible for the preparation of remuneration decisions, including decisions which have risk and risk management implications for the AIFM or the AIF concerned and which are to be taken by the management body as part of its supervisory function. The remuneration committee shall be chaired by a non-executive member of the management body of the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not hold an executive position in the AIFM concerned.

Documentation and information to be provided if distribution in Romania is intended

**a)** A notification letter containing a programme of operations identifying the alternative investment funds (AIFs) whose AIFM units it intends to distribute and information on where the AIFs are established

**b)** the rules or articles of incorporation of the AIF

**c)** identification details of the AIF depositary

**d)** a description of the AIF or any information about it made available to investors

**e)** information on the place of establishment of the master AIF, if the AIF in question is a feeder fund

**f)** any additional information referred to in Art. 22 para. (1) of the law for each AIF whose units the AIFM intends to distribute

**g)** where applicable, information on the arrangements made to prevent the distribution of AIF units to retail investors, including where AIFMs rely on the work of independent entities to provide investment services in relation to AIFs.

Documentation and information to be provided if distribution in Member States other than Romania is intended

**a)** A notification letter containing a programme of operations identifying the alternative investment funds (AIFs) whose AIFM units it intends to distribute and information on where the AIFs are established

**b)** the rules or articles of incorporation of the AIF

**c)** identification details of the AIF depositary

**d)** a description of the AIF or any information about it made available to investors

**e)** information on the place of establishment of the master AIF, if the AIF in question is a feeder fund

**f)** any additional information referred to in Art. 22 para. (1) of the law for each AIF whose units the AIFM intends to distribute

**g)** Indication of the Member State(s) in which the AIFM intends to distribute to professional investors units of an AIF

**h)** Information on arrangements made for the distribution of AIF units and, where applicable, information on arrangements made to prevent the distribution of AIF units to retail investors, including where the AIFM relies on the work of independent entities to provide investment services in relation to the AIF.

**i)** the necessary information, including the address, for invoicing or for the communication of any fees or charges applicable by the competent authority of the host Member State;

**j)** information on the structures that ensure the performance of the tasks provided for in Art. 47<sup>1</sup> of the Law.