

**DECREE  
of Národná banka Slovenska  
of 26 July 2011**

**on the own funds of management companies**

In accordance with Article 47(6) of Act No 203/2011 Coll. on collective investment (hereinafter “the Act”), Národná banka Slovenska stipulates as follows:

**Article 1**

The own funds of a management company shall comprise:

- a) the sum of the management company's original own funds and its additional own funds, less the value of deductible items referred to in Article 4,
- b) the supplementary own funds of the management company if the company performs other activities in accordance with Article 27(3) of the Act.

**Article 2**

(1) The original own funds of a management company shall comprise the difference between items constituting their value and items reducing their value.

(2) The items constituting the value of a management company's original own funds shall comprise:

- a) the paid-up share capital available for unrestricted and immediate use to cover risks or losses from business activities of the management company as soon as such risks or losses appear; if a creditor has been declared bankrupt or if a creditor has gone into liquidation, the value of the paid-up capital shall be ranked after all other claims of the creditor,
- b) the share premium,
- c) the reserve fund<sup>1</sup> and other funds created from the distribution of after-tax profits which are available for unrestricted and immediate use to cover risks or losses from business activities of a management company as soon as such risks or losses appear,
- d) retained earnings from previous years,
- e) other capital funds.

(3) Items reducing the value of a management company's original own funds shall comprise:

- a) accumulated losses from previous years,
- b) the financial result pending approval, if it is a loss,
- c) the loss for the current accounting period, including a loss in the current accounting period which arises from a value adjustment,
- d) own shares acquired by the management company, at their book value,
- e) goodwill,
- f) the net book value of software,
- g) the gross book value of interests in the share capital of the management company which are held by shareholders who own 5% or more of the share capital, up to the par value of these shares, less a proportional part of the provision for these interests which covers risks, losses and impairment.

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<sup>1</sup> Article 67 of the Commercial Code.

### Article 3

(1) The additional own funds of a management company shall comprise:

- a) subordinated debts which mature in more than one year and meet the following conditions:
  1. the contract under which the management company accepts the subordinated debt is governed by the provisions of a separate law on debt subordination,<sup>2</sup>
  2. the contract on the subordinated debt is concluded for a fixed period,
  3. under the contract on the subordinated debt, the creditor has provided funds to the management company:
    - 3a. for a period of at least five years,
    - 3b. in the whole of the agreed upon amount,
    - 3c. with repayment fixed to commence not sooner than five years from when the funds were provided to the management company,
    - 3d. with no discretion to ask for early repayment,
- b) other funds, provided that:
  1. these funds are at the free disposal of the management company for the coverage of risks arising from its own activities,
  2. these other funds are recorded in the management company's accounts,
  3. the value of these other funds has been set with due care by the managerial employees of the management company who are responsible for setting the value of assets in the common funds under the company's management and that the setting of this value has been audited by an auditor.

(2) For the purposes of paragraph (1)(a), 'subordinated debt' shall mean a liability of a management company resulting from a receipt of funds under the condition that, in the event of the management company's bankruptcy or dissolution with liquidation, the respective creditor will not be paid until after other creditors of the management company have been paid.

(3) Subordinated debts under paragraph (1)(a) shall comprise the management company's additional own funds in the amount of:

- a) 100% of their nominal value if their residual maturity period is longer than five years,
- b) 80% of their nominal value if their residual maturity period is longer than four years, but not longer than five years,
- c) 60% of their nominal value if their residual maturity period is longer than three years, but not longer than four years,
- d) 40% of their nominal value if their residual maturity period is longer than two years, but not longer than three years, or
- e) 20% of their nominal value if their residual maturity period is longer than one year, but not longer than two years.

(4) The progressive reduction in the value of subordinated debt under paragraph (3) shall not be used if it is agreed in writing that the borrower is not required to pay at fixed times either the principal of the subordinated debt or the interest thereon, where such repayments would mean that the amount of the borrower's own funds fail to meet the capital requirements laid down in the Act.

(5) A management company's subordinated debt under paragraph (1)(a) shall not account for more than one half of the amount of its original own funds as defined in Article 2.

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<sup>2</sup> Article 408a of the Commercial Code.

## **Article 4**

(1) The sum of a management company's original own funds under Article 2 and its additional own funds under Article 3 shall be reduced by:

- a) the net book value of
  - 1. the management company's interests in the share capital of other management companies or financial institutions where such interests exceed 10% of the share capital,
  - 2. the management company's subordinated claims on other management companies or financial institutions where such claims constitute part of the own funds of the other management companies or financial institutions,
- b) the sum of the net book values of
  - 1. the management company's interests in the share capital of other management companies or financial institutions where such interests do not exceed 10% of the share capital,
  - 2. the management company's subordinated claims on other management companies or financial institutions not mentioned in subparagraph (a) where such claims constitute part of the own funds of these other management companies or financial institutions,
  - 3. the management company's participating interests<sup>3</sup> in insurance undertakings,<sup>4</sup> reinsurance undertakings<sup>5</sup> and financial holding companies as defined by a separate law on insurance,<sup>6</sup>
  - 4. the management company's subordinated claims on insurance undertakings, reinsurance undertakings and financial holding companies, as defined by a separate law on insurance,<sup>6</sup> where such claims constitute part of the own funds of these undertakings and where the management company has a participating interest in these companies.

(2) For the purposes of paragraph (1), 'subordinated claim' shall mean a creditor's right to financial performance under a contract stipulating that, in the event of the borrower's bankruptcy or dissolution with liquidation, this claim will not be settled until after the claims of other creditors have been settled.

(3) The procedure mentioned in paragraph (1)(b) points 1 and 2 shall be used only if the sum calculated under paragraph (1)(b) points 1 and 2 exceeds 10% of the sum of the management company's original own funds and additional own funds.

(4) The value of a management company's original own funds as defined in Article 2 shall be reduced by 50% of the amount of the deductible items under paragraph (1), and the value of its additional own funds as defined in Article 3 shall be reduced by 50% of the amount of the deductible items under paragraph (1). If 50% of the amount of deductible items under paragraph (1) exceeds the amount of the additional own funds, the resulting surplus shall be deducted from the original own funds.

## **Article 5**

(1) The supplementary own funds of a management company shall comprise:

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<sup>3</sup> Article 8 (l) of Act No. 566/2001 Coll. on securities and investment services and on amendments to certain laws (the Securities Act) as amended by Act No. 635/2004 Coll.

<sup>4</sup> Article 2 (1) of Act No. 8/2008 Coll. on insurance and on amendments to certain laws

<sup>5</sup> Article 2 (6) of Act No. 8/2008 Coll.

<sup>6</sup> Article 49 (5)(c) of Act No. 8/2008 Coll.

- a) subordinated debts as defined in Article 3 (1)(a) which, under Article 3 (5), do not constitute part of the management company's additional own funds,
- b) subordinated debts not mentioned in subparagraph (a), provided that
  1. the contract under which the management company accepts the subordinated debt is governed by the provisions of a separate law on debt subordination,<sup>2</sup>
  2. the contract on the subordinated debt is concluded for a fixed period,
  3. under the contract on the subordinated debt, the creditor has provided funds to the management company:
    - 3a. for a period exceeding 3 years,
    - 3b. in the whole of the agreed upon amount,
    - 3c. with repayment fixed to commence not sooner than three years from when the funds were provided to the management company,
    - 3d. with no discretion to ask for early repayment,
  4. it is contractually agreed that the borrower is not required to pay at fixed times either the principal of the subordinated debt or the interest thereon, where such repayments would mean that the amount of the borrower's own funds fail to meet the capital requirements laid down in the Act.

(2) Supplementary own funds shall constitute own funds only if their purpose is to cover risks from positions in financial instruments such that the management company incurs when performing, on behalf of customers, activities as defined in Article 27(3) of the Act.

#### **Article 6** **Common provisions**

The items of a management company's own funds referred to in Articles 2 to 5 shall be included in the calculation of the management company's own funds only after they have been reduced by relevant tax obligations and if they are available for unrestricted and immediate use to cover risks or losses from business activities of the management company.

#### **Article 7**

This Decree repeals Decree No 166/2005 Coll. of the Ministry of Finance of the Slovak Republic on the own funds of a financial conglomerate and the method of calculating the adequacy of the own funds of a financial conglomerate and on amendments to certain decrees, as amended by Decree No 657/2006 Coll. and Decree No 425/2007 Coll.

#### **Article 8**

This Decree transposes the legally binding acts of the European Union specified in the Annex hereto.

#### **Article 9**

This Decree shall enter into force on 15 August 2011.

**Jozef Makúch m.p.**  
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**SCHEDULE OF TRANSPOSED LEGALLY BINDING ACTS OF THE EUROPEAN UNION**

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009)