

## I. What are Enterprise of investment Funds (SIK)?

The positive definition is made of these elements:

- Legal structure: legal person or merger assets
- The Aim: the increase of participation in cash
- The type of investment: investment of more than 60% of participation in portfolio securities, deposits and other assets
- The structure of supervision of the investments: the investors do not supervise each day the decision making for the investments
- The Objective: Issuance of benefits for investors

Excluded by this definition: banks, pension funds, insurance companies, legal persons that invest their funds, joint familiar investments and enterprises of collective investments that increase the capital without the promotion of their shares sale toward the public.

The authorization of the Albanian Financial Supervisory Authority (AMF): No subject can be constituted or perform the activity of the administration or the trade of shares without the authorization of Albanian Financial Supervisory Authority (AMF), otherwise it constitutes criminal act.

Registry of SIK: SIK are registered in the Registry of Funds of the Republic of Albania , held by AMF, after the licence given for the constitution and functioning by the latter.

## II. Administrative companies

Administrative companies are the only subjects that can establish enterprises of collective investments, whether as funds or as investment companies.

The Administrative company is a joint-stock company, with undefined term, in which at least 51% of the shares or of the right of vote are owned by banks or financial institutions. The Administrative company is registered near the National Center of Registration, with main object the activity of constitution and/or the administration of the enterprises of collective investments and other activities provided in this law.

The minimal value of the capital subscribed of the administrative company is 15 625 000 lekë.

The object of the commercial activity of the administrative company is the administration of the assets of the enterprises of collective investments, their marketing, shares sale, the fulfillment of administrative obligation such as the keeping of the book accounts and the preparation of financial reports. During this activity, the company acts with honesty and in full accordance with albanian legislation.

The joint-stock company can delegate the administration of a part of portfolio to a broker company.

In all cases, the administrative company shall be licenced by the AMF. The requirement to be obtained the licence for the performance of the administration activity of the enterprises of collective investments is accompanied with documents that prove the form of the company, the shareholders and supervisors suitability for the fulfillment of the activity in question and the seriousness of the business plan.

At least two executive members of the administrative council of the administrative company must have the professional knowledge and the necessary experience for the administration activity of the administrative company. The qualification criteria are provided in detail by law.

### **III. The activity outside the Republic of Albania and the activities of the foreign enterprises in the Republic of Albania**

#### **A. The activities of the administration of the enterprise of the collective investments outside the territory of the Republic of Albania**

The administrative company can perform activities outside the Republic of Albania directly or via the constitution and functioning of a branch, in accordance with law of the respective country.

The establishment of the branches in the countries of the European Union and in those permitted by AMF shall be accompanied by a notification by AMF.

#### **B. The activities of the administration of the enterprise of collective investments by administrative company, with legal seat registered outside the territory of the Republic of Albania**

The enterprise established under the licence issued by the respective authority in a country of the European Union or in a country, that is approved specifically by AMF, which accomplish the conditions provided in the provisions of this law, and which regulate the functioning of the enterprise of collective investments with public offer and which aims to market its shares in the Republic of Albania, must present some documents to AMF equivalent with those required to companies with legal seat in Albania.

### **IV. Depositor**

Any enterprise of collective investments, which is required to have licence, appoints a depositor, who must be licenced by the AMF to act as its depositor.

Depositor is a bank of the second level, which performs, for the needs of the enterprise of collective investments, the activity for the safe protection of the group of assets, the administration of the special accounts for assets and the assets division of each individual SIK from the assets of other SIK.

## V. Enterprise of collective investment

Enterprise of collective investment (SIK) are with public offer (A) or with private offer (B).

### A. Enterprise of collective investment with public offer

#### 1. Types of SIK with public offer

These are two types: in the structure as investment fund(a) or in that of a company of investment (b).

##### a) *The investment fund*

**The investment fund** is a special group of assets unregistered as a legal person, constituted under a contract, after the licence given by AMF, and administered by an administrative company, for the accumulation of the monetary assets or alike, through shares public offer in the fund, which assets are invested according to the principle of the risk diversification.

The shareholders have the right, not only to take part proportionally in the fund incomes, but moreover, to **demand, in any time, the liquidation of their shares.**

**The purchase of shares through a public offer** is done only through the payment of monetary assets where the purchaser, after the shares purchase, enters in contractual relation with the administrative company, which is obligated to administer the paid assets as part of the collective assets, in accordance with the conditions and standards indicated in prospect.

Moreover, the shares purchase can be done distributing new shares under the distribution of the parts in incomes, namely when the share value is reduced because of the allocation of new shares, or in any other case, provided by the regulation approved by AMF.

The shareholders are responsible for the obligation of the investment fund until in the amount of their participation in the fund.

#### **The foundation of the investment fund**

The investment fund can be founded only by a licenced administrative company, after the respective licence has been given by AMF.

The application for the licence and the application for the investment fund in the Registry of Funds, which is presented to AMF by the administrative company, in the name of the fund, holds the particulars with regard to the name of the administrative company and its licence, and with regard to the denomination of the fund, the objectives, its prospects and rules, the contract between the administrative company and its depositor etc.

Investment funds are two kinds:

- **Furnisher Fund**, which is the fund that invest through another fund, that is the main fund. The shares are sold to the investors through a furnisher fund, but are invested through the main fund.
- **Umbrella Fund** is the fund of the collective investment that owns special portfolio of assets, including underfunds or divided courses.

### ***b) The company of investment***

**The company of investment with public offer** is a joint-stock company, with legal seat in the Republic of Albania, constituted by the administrative company, in accordance with the law of commercial companies, only after the preliminary approval by AMF.

The object of its commercial activity is the investment of fund in securities and other assets, for the allocation of risks of investments and the distribution of the benefits to its shareholders of these funds administration results, where the rights of the investors are represented by the shares of this company.

#### **The foundation of the company of investment**

The application for the licence and the application for the registration of the company of investment in the registry of Funds is presented to AMF by the administrative company and must contain several particulars provided in detail in the article 59 of the law.

The minimal amount of the subscribed capital shall be at least 40 000 000 lekë.

#### **The costs of the company of investment**

The costs and the payment related to the constitution of the company of investment can be liquidated debiting the assets of the company of investment, only if this is defined in prospect and in the fund regulations. The maximum amount of the costs and the payment of constitution, which will be liquidated through the debiting of the assets of the company of investment, are expressed in the prospect as a percentage of the monetary assets paid in the company of investment with its constitution. Any cost and any other payment related to the constitution, that exceed the percentage defined in this manner, are taken over by the administrative company or the council of supervision, performed these payments and costs.

Costs and payment related to the constitution, that are liquidated by the assets of the company of investment, cannot exceed 3,5 % of the totality of the collected assets, issuing shares.

In respect of new costs, only the costs provided below can be paid by the assets of the company of investment:

- Tariffs of the administrative company

- Tariffs for the depositor;
- Tariffs and the costs of the supervision council;
- Cost, commissions or payment related directly with the purchase or sale of the assets of the company of investment;
- Acceptance costs for listing in stock-market or in another regulated market;
- Approved accounting expert and lawyers costs, done during the performance of the activity of the company of investment, etc.

### **The supervisory Council**

The supervisory Council of a company of investment must have at least 5 members.

At least 60% of the the supervisory Council of a company of investment with public offer must be independent, so they cannot be employed in the administrative company, cannot be depositor, accounting expert or persons, whom is given a valid licence by AMF to be broker or investment counsellor and that, effectively, perform these activity as employees of a broker company or of an authorised banc for the transactions with securities, or person, who, in the last 2 years, have a contract for the offer of services with each of them.

In order to guarantee the honesty and the professionalism in management, several persons cannot be members of the supervisory Council of the company of investment.

### **Competences of the supervisory council**

The members of the supervisory Council of the company of investment with public offer, besides the competences of the supervisory Council, given according the law for the commercial companies, represent jointly the company of investment in relation to the administrative company. Beside this, the council has other special competences listed in the relevant article of the law.

## **2. Prospect**

Prospect of the Collective enterprise investment with public offer is considered invitation for the purchase of shares in a investment fund or shares in a company of investment. The information reflected in prospect must be accurate and full. The prospect must contain the necessary information, so that the investors should be able to make the appropriate evaluation of the enterprise of collective investment and, especially, of the risks related to it.

## **3. Rules of fund**

Rules of fund for enterprise of collective investment with public offer regulates the legal relation between the administrative company and the shareholders.

## **4. Promotion of SIK**

SIK can be promoted through all the media with the condition that the information published must be accurate and honest.

## 5. Politics of investment

In an enterprise of collective investment with public offer, at least 90 % of the portfolio must be composed of:

- Transferable securities and instrument of the market money, that are marketed in regulated markets or in stock-market in the Republic of Albania, in a country of european union or in another country permitted by AMF;
- Shares of the investment fund or shares of the investment company, licenced according this law, and shares of the enterprise of the collective investment, licenced in accordance with the standarts of the European Union;
- Deposits in credit institutions, registered in the Republic of Albania, in one of the members of the EU or in a country permitted by AMF, that can be withdraw immediately or can be maturated no longer than 12 months;
- Financial derivatives instruments;
- Instruments of the money market, beside those marketed in a regulated market.

**There are several limitation to investment, but two are more important:**

- The enterprise of collective investment with public offer cannot invest more than 5 % of its assets in securities and instruments of market money of a sole issiung person.
- The enterprise of collective investment with public offer cannot invest more than 20 % of its assets in deposits in the same depositor institution.

**Tariffs**, attributable to the holders of the shares of the investment fund, are limited in:

- a)tariff of entry, added to the sum of payment in the time of the share sale;
- b)tariff of removal, descended by the net value of the fund asset, for each share in the time of liquidation;
- c)tariff of administration, calculated each day, under the net value of the fund assets, according the following formula:

$$\text{reported annual tariff of administration} \times 1/365$$

**Operative costs** of the administrative company and the costs of service, that it insures for the investment fund, except the tariffs provided in point 1 of this article, must not be invoiced to fund, where the only exclusion is the subscription of the shares by the shareholders, in case when this service is insured by the administrative company.

It is not allowed the placement of the tariffs for the results of the activity fund.

**Other costs that can be directly registered debitting the shareholders:**

- Tariffs and costs, paid to the depositor;
- Costs, commissions or remuneration for the assets sale;
- Costs of the keeping of the registry of shares, including the costs for the issuance of the transactions verification or verification of the shares balance, if is necessary, and the costs of the distribution of the incomes;
- Costs of the annual audit;

- Costs of the preparation, printing and postal tariffs for the six months and annual reports for the shareholders;
- All the tariffs and provided remuneration, paid to AMF, for the issuance of the licence for the fund;
- Taxes, paid by the fund for the assets or its income;
- Costs of communication of the changes in prospect and other communication provided;

## **B. Entreprise of SIK with private offer**

These can be constituted only as company of investment, so cannot use the structure of the investment fund.

**The company of investment with private offer** is a joint-stock company, with legal seat in the republic of albania, constituted in accordance with law for commercial companies and only after the approval by AMF. Object of the commercial activity of this company is the investment of funds, with the aim the allocation of the investment risk, giving to its investors, approached through the private offer, profit of administration results of those funds. The rights of the investors are represented by the shares in that company.

### **1) Constitution of an investment company with private offer**

The investment company with private offer can be constituted for a defined term or undefined term.

The shares of the company of investment with private offer are issued through a private offer only in accordance with the definitions in the law 9879, datë 21.2.2008 “On Securities” and according the legal acts for its implementation. In the rules of the fund and the prospect of the company of investment with private offer are defined the objectives of its investment. The company of investment with private offer can offer its shares only after the registration in the registry of Funds.

AMF approves a regulation for the definition of precise application requirements for the approval of the company of investment with private offer.

### **2) Prospect of the company of investment with private offer**

Prospect of the company of investment with private offer constitutes an offer for the purchase of shares, addressed exclusively to a given person or a limited group of investors, that fulfill the requirements provided by law nr.9879, date 21.2.2008 “On securities” and by legal acts for its implementation.

### **3) Prohibition for the promotion of the company of investment with private offer**

The company of investment with private offer must not be engaged in public campaigns for the promotion of the investment, that it administer. The public allocation of the introductory materials, that, besides the giving of information for the denomination and the activity of the company of investment, orientate the potential investors suitable for this kind of company, in the company of investment with private offer, is not considered public promotion.

### **3) Terms of presentation of results and publication of particulars**

Any presentation of business results of the company of investment with private offer is composed by the latest particulars, available at the time of presentation of the business results and is complied uniformly, as for the

period covered, inclusion or exclusion of special factors, which affect these results, such as basis for the price, costs, taxes, dividends etc.

#### **5) Investment policy of an investment company with private offer**

Requirements, prohibitions and accurate restrictions for the investment policy of an investment company with private offer are provided by a special regulation by AMF.

### **VI. Sale of the shares in the enterprises of the collective investments**

The sale of the shares in the enterprises of the collective investments with public offer is done by the administrative companies and by banks, insurance companies, broker companies or by other legal persons, that perform sale transactions for the administrative company, under a cooperation agreement between the parties.

### **VII. Determination of the assets value and the shares price of the enterprise of the collective investments**

#### **The frequency of the calculation of the value**

The administrative company must determine the assets value of the investment fund and of all its obligations and its tariffs, before the calculation of the net assets value for each share or the price for each share.

- The net assets value of the investment fund is calculated each day, at the time provided in the prospect. The administrative company notifies the AMF next day of work for the value of the assets of the investment fund, its obligations and tariffs, moreover the shares price of the investment fund, as they are in the date of calculation.
- The net assets value of the investment company is calculated at least once a month, at the time provided in prospect.
- AMF approves a special regulation, specifying different frequencies, for the determination of the net assets value.

#### **The principles and the determination manner of the portfolio value of the enterprise of the collective investments**

The calculation of the portfolio value must insure equal treatment for all the investors in the enterprise of the collective investments, regardless of the enterprise type or the fact if this is an enterprise with private or public offer.

**In the case of securities**, including the shares of the investment company, the determination of the assets value is based under the market value, that is applied in the organised and regulated markets.

**In the case where there is no marketprice**, the price of the last transaction, done for that security, or the efficiency by the last transactionm, in the case of the debt titles, is used as the basis for the calculating of the assets value.

**In the case of deposits and currency accounts or their monetary equivalent**, short term claims and obligations and of the income of the future costs, the used nominal value is raised with the accumulated interest, if not otherwise provided by AMF.

**In the case of other types of assets, that do not have a market price**, is evaluated the fair and reasonable price of these assets. Procedures for the determination of the fair and reasonable price of the assets includes their time value, by taking away money flow, comparisons with other similar assets with a known market price, the evaluation methods with other options and other manners, provided by AMF.

**The basis for the determination of the assets value** is specified in the prospect and the funds rules and is applied uniformly for each calculation of the value of the fund assets.

## **VIII. Supervision by AMF**

AMF is responsible for the the supervision of the activity of the enterprises of the collective investments, administrative companies, depositors, and any other subject, that act as such without expressed approval by MAF and given in accordance with the requirements of this law.

The supervisory activity undertaken by AMF is performed by:

- Inspection at the document place, related with the object of the activity of the subject. This inspection is performed with or not prior notification to the supervised subject;
- Receiving and analyzing reports, provided in this law;
- Implementation of the measures taken, provided by this law.

## **IX. Criminal offenses and punitive measures**

To respect the obligations provided by this law, the legislator has approved several preventive and punitive measures to against possible violations.

***Adv. ARMER JUKA***