

Legal notice

All effort has been made to ensure the accuracy of this translation, which is based on the original Slovenian text. All translations of this kind may, nevertheless, be subject to a certain degree of linguistic discord. In case of any uncertainties regarding the English translation the questions may be addressed to:

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The original text of this act is written in the Slovenian language; in case of any doubt or misunderstanding, the Slovenian text shall therefore prevail. Original text can be found on the web page http://zakonodaja.gov.si/rpsi/r04/predpis_ZAKO6294.html

ACT**AMENDING THE FINANCIAL CONGLOMERATES ACT (ZFK-B)****Article 1**

In paragraph (1) of Article 1 of the Financial Conglomerates Act (*Uradni list RS* [Official Gazette of the Republic of Slovenia], Nos. 43/06 and 87/11) the text "Directive 2002/87/EC of the European Parliament and of the Council of 24 November 2002 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331 of 15.12.2010, p. 120, hereinafter Directive 2010/78/EU)" shall be replaced with the text "2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/ES, 2002/87/ES, 2006/48/ES and 2009/138/ES as regards the supplementary supervision of financial entities in a financial conglomerate (OJ L 326, 8.12.2011, p. 113)".

Article 2

At the end of the first indent of point 6 of Article 2, the semicolon shall be replaced by a comma and the word "or" shall be added.

Point 6 shall be followed by a new point 6a reading as follows:

"6a alternative investment fund manager:

– shall mean a legal entity who has obtained an authorisation from the Securities Market Agency to supply services of managing one or more alternative investment funds in the Republic of Slovenia according to the act governing alternative investment funds;

– shall mean a legal entity from another Member State whose principal activity is the management of one or more alternative investment funds, for which it has obtained an authorisation from another Member State's supervisory authority or

– shall mean a legal entity established in a third country, which, if established in the Republic of Slovenia, would require an authorisation according to the act governing alternative investment funds;"

In point 7 the number '6' shall be replaced by the number '6a.'

Point 8 shall be amended to read as follows:

"8. 'Financial sector' shall mean the sector which is composed of one or more entities from the banking sector, insurance sector or securities market sector, where

a) the banking sector shall be composed of the following:

- the banks referred to in point 1 of this Article;

- financial institutions other than banks referred to in point 1 of this Article, whose principal activity is to acquire equity holdings or to supply mutually recognised financial services referred to in points 2 to 12 and 15 of Article 10 of the Banking Act (*Uradni list RS*, No. 99/10 – official consolidated text, 9/11 – ZPlaSS-B, 35/11, 52/11 – as amended, 59/11, 85/11, 48/12 and 105/12), or

- companies which provide ancillary services under the act governing banking;

b) the insurance sector shall be composed of the following:

- insurance undertakings referred to in point 2 of this Article;

- reinsurance undertakings referred to in point 3 of this Article;

- insurance holding companies according to the act governing insurance business, or

- pension companies referred to in point 4 of this Article;

c) the securities market sector shall be composed of the stockbroking companies referred to in point 5 of this Article;

d) for the purpose of identifying financial conglomerates and for the purpose of supplementary supervision, asset management companies shall be considered to be a part of the sector within the financial sector referred to in points 8.a, 8.b or 8.c of this Article, into which they are categorised pursuant to Article 6 of this Act or, unless they belong exclusively to a particular financial sector referred to in points 8a, 8b or 8c of this sector, they shall be considered to be a part of the smallest sector within the financial sector;

d) for the purpose of identifying financial conglomerates and for the purpose of supplementary supervision, alternative investment fund managers shall be considered to be a part of the sector within the financial sector referred to in points 8.a, 8.b or 8.c of this Article, into which they are categorised pursuant to Article 6a of this Act or, unless they belong exclusively to a particular financial sector referred to in points 8a, 8b or 8c of this sector, they shall be considered to be a part of the smallest sector within the financial sector;"

9. Point 9 shall be amended to read as follows:

"9. 'Sectoral rules' shall mean the provisions of legislative acts and implementing regulations which lay down the rules of establishment, operation and supervision of regulated entities in individual financial sectors;"

11. Point 11 shall be amended to read as follows:

"11. According to this Act, a 'subsidiary undertaking or entity' shall mean the following:

- a subsidiary undertaking in accordance with the act regulating commercial companies;

- an entity over which, in the opinion of the competent authorities, a parent entity effectively exercises a dominant influence and

- a subsidiary entity of a subsidiary entity;"

In the second indent of point 13 the text ", whereby a regulated entity shall also be considered an entity controlled by the subsidiary entity referred to in the first indent of this point".

At the beginning of the fourth indent of point 14, the word "entity" shall be followed by the words "including any sub-groups,".

16. Point 16 shall be amended to read as follows:

"16. 'Relevant competent authority'

– shall mean a competent authority empowered by sectoral rules to perform a consolidated supervision of a group of entities including a regulated entity in a financial conglomerate, particularly the parent entity at the top of each sector;

– shall mean a coordinator in accordance with Articles 19, 20 or 21 of this Act;

– shall mean other competent authorities, where so decided by the competent authorities referred to in the first and the second indents of this Point;".

Article 3

Paragraph (1) of Article 5 shall be amended to read as follows:

"(1) 'Risk concentration' shall mean any exposure with a loss potential that is large enough to threaten the solvency or the financial position of the regulated entities in a financial conglomerate.".

In paragraph (2), the words "of this Article" shall be deleted.

Article 4

Article 6 shall be followed by a new Article 6a, which shall read as follows:

"Article 6a

(Admission of alternative investment fund managers)

(1) Competent authorities shall decide what sectoral (banking, insurance or securities market) rules shall be applied to the admission of an alternative investment fund manager to the consolidated supervision framework for banks and stockbroking companies and/or to the supplementary supervision framework for insurance undertakings within an insurance group.

(2) When making the decision from the preceding paragraph, the competent authorities shall apply, *mutatis mutandis*, the sectoral rules regarding the form and extent of admission of financial institutions to the supplementary supervision framework for banks and stockbroking companies, or the sectoral rules regarding the form and extent of admission of reinsurance undertakings to the supplementary supervision framework for insurance undertakings within an insurance group.

(3) When an alternative investment fund manager is a part of a financial conglomerate, the relevant competent authority shall, acting in cooperation with a competent authority responsible to exercise control over alternative investment fund managers, include him/her into supplementary supervision under this Act within the selected financial sector group, pursuant to the provision of Paragraph (1) of this Article.".

Article 5

In paragraph (2) of Article 8, the words "paragraph (1) of this Article" shall be replaced with the words "the preceding paragraph".

In paragraph (4) the word "conglomerate" shall be replaced by the word "conglomerate".

Article 6

In paragraph (3) of Article 9 the words "of this Article" shall be deleted.

In paragraph (6), the words "1,440,000,000,000 tolar" shall be replaced by the words "six billion euros".

Paragraph (6) shall be followed by a new paragraph (7) to read as follows:

"(7) The competent authorities shall assess the failure to comply with the supplementary supervision provisions referred to in Articles 12, 13 and 14 of this Act and examine the quantitative indicators specified in Articles 9 and 10 of this Act and the assessment of financial groups in terms of risk."

Article 7

Paragraph 2 of Article 12 shall be amended to read as follows:

(2) In the event of compliance with the criteria referred to in Paragraph (2) of Article 9 of this Act and non-compliance with the criterion referred to in Paragraph (6) of Article 9 of this Act, the competent authorities may reach a common agreement not to consider a group as a financial conglomerate or not to apply the provisions of this Act which govern risk concentration, intra-group transactions or internal control systems and risk control to this group when they consider the application of these provisions unnecessary or that it might prove inappropriate or misleading in respect of supplementary supervision."

At the end of paragraph (3), new text "and shall publish them, save for exceptional cases when they deem it important for the implementation of supplementary supervision."

Article 8

New paragraphs (5) and (6) shall be added after paragraph (4), which shall read as follows:

"(5) Notwithstanding paragraphs (1), (2) and (3) of this Article, the competent authorities shall not exclude an entity from the calculation of the ratios referred to in Article 9 of this Act if such entity has moved from a Member State to a third country and evidence exists that it has changed its place of establishment in order to avoid compliance with statutory requirements.

(6) When identifying a financial conglomerate, the relevant competent authorities may, acting by common consent from calculation of the coefficients from Article 9, exclude one or more entities or one or more participations in entities from a minor sector within the financial sector, provided that the participations in these entities are crucial for identifying a financial conglomerate and are jointly negligible with regard to supplementary supervision objectives."

The current paragraph (5), which shall be renumbered as paragraph (7), shall be amended to read as follows:

"(7) The relevant competent authorities may, in exceptional cases and by common agreement, include in the basis for calculating the compliance with the criteria referred to in Articles 9 and 10 of this Act the structure of income and/or off-balance sheet activities instead of the balance sheet total or add one or more of the following parameters when they consider it particularly important for the achievement of supplementary supervision objectives: the revenue structure, off-balance sheet activities, assets under management."

The current paragraph (6) shall become paragraph (8) and shall be amended to read as follows:

(8) When a financial conglomerate has already been identified, the relevant competent authorities shall make the decisions referred to in Paragraphs (1) to (6) of this Article based on the proposal made by this financial conglomerate's coordinator."

Article 9

In paragraph (2) of Article 14, the words "1,440,000,000,000 tolar" shall be replaced by the words "six billion euros" and the words "1,200,000,000,000 tolar" shall be replaced by the words "five billion euros".

Article 10

At the beginning of the first sentence of paragraph (1) of Article 15, the words "competent authorities" shall be followed by a comma.

Paragraph (4) shall be amended to read as follows:

"(4) The coordinator shall notify the competent authorities that have authorised regulated entities in the group, the relevant authorities of the Member State in which the mixed financial holding company has its head office and the Joint Committee of the identification of a financial conglomerate and appointment of a coordinator."

Article 11

The words "and the Joint Committee" shall be added at the end of paragraph (1) of Article 16.

In paragraph (3,) the number "8" shall be replaced by the words "of eight".

Article 12

In paragraph (4) of Article 23, the text "of the Joint Committee" shall be followed by the text "and the regulatory technical standards of the European Commission".

Article 13

New paragraphs (2) and (3) shall be added after paragraph (1) of Article 34, which shall read as follows:

"(2) Regulated entities in a financial conglomerate shall regularly report to their relevant competent authorities the details of their legal and organisation structure and management including the indication of all regulated entities, non-regulated subsidiary entities and each branch.

(3) Regulated entities shall publish a description of their legal and organisation structure and management at the financial conglomerate level or, instead of making such publication, shall refer to equivalent information to be made public in accordance with the sectoral rules."

In the current paragraph (2), which shall be renumbered as paragraph (4), the words "the preceding paragraph" shall be replaced by the words "paragraphs (1), (2) and (3) of this Article".

The current paragraph (3) shall be renumbered as paragraph (5).

A new paragraph (6) shall be added after paragraph (5) to read as follows:

"(6) The competent authorities shall harmonise the use, i.e. the implementation of supplementary supervision regarding internal control systems and equity and risk management as well control procedures in accordance with the act governing banking.

Article 14

Article 44 shall be followed by a new Article 44a, which shall read as follows:

"Article 44a

(College of relevant competent authorities)

(1) For the purposes of cooperation and implementation of the tasks of coordinator and relevant competent authorities referred to in Chapter 3.3. (Performance of supplementary supervision) of this Act, coordination and cooperation with the relevant competent authorities of third countries shall be the responsibility of colleges of relevant competent authorities established in accordance with the act governing banking or the act governing insurance business (hereinafter: College of Relevant Competent Authorities), including the obligation to protect confidential information, if this would ensure more effective cooperation in the performance of their duties.

(2) Arrangements for coordination and cooperation with the relevant competent authorities of third countries referred to in the preceding paragraph, as well as the coordination agreement referred to in Article 38 of this Act, shall be incorporated into a written agreement on coordination and cooperation to be concluded by the members of the college of relevant competent authorities in accordance with the act governing banking.

(3) As the chair of the college of relevant competent authorities, the coordinator shall decide what other relevant competent authorities may participate in the meeting or activities of the college."

Article 15

After paragraph (2) of Article 45a, a new paragraph (3) shall be added to read as follows:

"(3) The coordinator shall communicate the information referred to in paragraphs (1), (2) and (3) of Article 34 and point 1 of Article 46 of this Act to the Joint Committee. The Joint Committee shall provide the relevant competent authorities with the information on the legal and organisational structure and management of the financial conglomerate."

Article 16

Point 1 of Article 46 shall be amended to read as follows:

"1. the legal and organisational structure and management of the group, including an indication of all regulated entities, unregulated subordinated entities and major branches that constitute the financial conglomerate, holders of qualifying holders of the parent undertaking at the head of the group, and an indication of the relevant competent authorities of the regulated entities in the group;"

Article 17

The introductory sentence of paragraph (1) of Article 54 shall be amended to read as follows:

2(1) A fine of between EUR 42,000 and EUR 250,000 shall be imposed for an offence on a regulated entity:"

Point 9 shall be followed by a new point 9a reading as follows:

"9a for failure to notify the relevant competent authorities of the details of the legal and organisational structure and management, including an indication of all regulated entities, unregulated subordinated entities and major branches in accordance with paragraph (2) of Article 34 of this Act;"

In point 10, the word "third" shall be replaced by the word "fifth".

In paragraph (2), the words "600,000 to 3,000,000 tolar" shall be replaced with the words "2,500 to 10,000 euros".

A new paragraph (3) shall be inserted to read as follows:

"(3) A fine between EUR 42,000 and EUR 376,000 shall be imposed on a regulated entity that is considered a medium-sized or large company under the act governing commercial companies for the offence referred to in paragraph (1) of this Article.

Article 18

In the introductory sentence of paragraph (1) of Article 55 the words "3,000,000 to 3,000,000 tolar" shall be replaced with the words "12,500 to 125,000 euros".

In paragraph (2), the words "100,000 to 1,000,000 tolar" shall be replaced with the words "400 to 4,200 euros".

Article 19

In the introductory sentence of paragraph (1) of Article 56 the words "10,000,000 to 50,000,000 tolar" shall be replaced with the words "42,000 to 209,000 euros".

Point 9 shall be followed by a new point 9a reading as follows:

"9a a regulated entity for failure to publish a description of the legal and organisational structure and the management or for failure of the legal entity to make reference to equivalent information instead of the publication of such description in accordance with paragraph (3) of Article 34 of this Act;

In paragraph (2), the words "500,000 to 2,000,000 tolar" shall be replaced with the words "2,000 to 8,500 euros".

In paragraph (3), the words "3,000,000 to 30,000,000 tolar" shall be replaced with the words "12,500 to 125,000 euros".

In paragraph (4), the words "100,000 to 1,000,000 tolar" shall be replaced with the words "400 to 4,200 euros".

Article 20

In the introductory sentence of paragraph (1) of Article 57 the words "10,000,000 to 50,000,000 tolar" shall be replaced with the words "42,000 to 209,000 euros".

In paragraph (2), the words "500,000 to 2,000,000 tolar" shall be replaced with the words "2,000 to 8,500 euros".

TRANSITIONAL AND FINAL PROVISIONS

Article 21

(1) For the purpose of defining another competent authority referred to in the third indent of point 16 of Article 2 of this Act, the following shall be particularly taken into account:

– the market share of the regulated entities of the financial conglomerate in other Member States, in terms of total assets of the banking sector or of the securities market sector, or in terms of the total premiums written in the insurance sector, in particular if the market share exceeds 5%;

– the importance in the conglomerate of any regulated entity established in another Member State.

(2) The provision of the preceding paragraph shall cease to apply from the date of entry into force of the regulatory technical standard adopted in accordance with point (b) of paragraph (1) of Article 21a of Directive 2002/87/EC.

(2) The minister responsible for finance shall publish the notification of the adoption of the regulatory technical standard referred to in the preceding paragraph of this Article in *Uradni list Republike Slovenije*.

Article 22

This Act shall enter into force on the fifteenth day following its publication in *Uradni list Republike Slovenije*.

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National Assembly
of the Republic of Slovenia
Janko Veber, m.p.
President