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**27 October 2006**

**Law on the supervision of institutions for occupational retirement provision**

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***TITLE I – General provisions***

**CHAPTER I - Purpose and definitions**

**Article 1**

This law regulates a matter referred to in Article 78 of the Constitution.

It transposes 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.

**Article 2**

For the purposes of this Law and its implementing decrees and regulations, the following definitions shall apply:

- 1° “institution for occupational retirement provision”, or “institution”: an institution, irrespective of its legal form, the purpose of which is to provide retirement benefits in the context of an occupational activity;

- 2° “retirement benefits”: benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments in case of death, disability, incapacity for work or cessation of employment or in the form of support payments or services in case of sickness, indigence or death;
- 3° “pension scheme”: a contract, an agreement, a trust deed or a rule stipulating which retirement benefits are granted and under which conditions;
- 4° “sponsoring undertaking”: any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or a combination thereof and which pays contributions into an institution for occupational retirement provision;
- 5° “member”: any person whose occupational activities entitle or will entitle him/her to retirement benefits in accordance with the provisions of a pension scheme;
- 6° “beneficiary”: any person receiving retirement benefits;
- 7° “Member State”: a State that is a member of the European Economic Area;
- 8° “home Member State”: the Member State in which the institution for occupational retirement provision has its registered office and its head office or, if it does not have a registered office, its head office;
- 9° “host Member State”: the Member State, other than the home Member State, whose social and labour legislation relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members;
- 10° “cross-border activity”: the activity which, for an institution for occupational retirement provision authorized in a Member State, consists in managing occupational pension schemes which, in respect of the provisions applicable to the relationship between the sponsoring undertaking and members, are subject to the social and labour legislation of another Member State;
- 11° “activity in a State that is not a member of the European Economic Area”: the activity which, for an institution for occupational retirement provision authorized in Belgium, consists in managing occupational pension schemes which, in respect of the provisions applicable to the relationship between the sponsoring undertaking and members, are not subject to the social and labour legislation of a Member State;
- 12° “obligation of result”: the undertaking of an institution for occupational retirement provision to guarantee a specific result based on the contributions paid;

- 13° “obligation of means”: the undertaking of an institution for occupational retirement provision to manage the funds entrusted to it in the most efficient way possible in view of operating a pension scheme, regardless of the nature of the retirement benefits;
- 14° “biometric risks”: risks linked to death, disability, incapacity for work and longevity.
- 15° “separate fund”: liabilities and assets, or the undivided part of the collectively managed assets, which, on the basis of separate accounting, relate to one or several pension schemes in view of conferring a privilege upon members and beneficiaries of this or these pension schemes;
- 16° “competent authorities”: the authorities empowered by national legislation or regulations to supervise institutions for occupational retirement provision;
- 17° “the CBFA”: the Banking, Finance and Insurance Commission, as referred to in Article 44 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

For the purposes of this Law and its implementing decrees and regulations, the organizer is considered to be a sponsoring undertaking within the meaning of Article 3, § 1, 5° of the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits.

## **CHAPTER II – Scope**

### **Article 3**

§ 1. Without prejudice to the transitional provisions of Title V and with the exception of the provisions relating to primary incapacity for work, retirement benefits as referred to in Article 2, 2° may be managed only by:

- 1° an institution for occupational retirement provision governed by Belgian law, as referred to in Title II of this Law;
- 2° an institution for occupational retirement provision governed by the law of a Member State other than Belgium, as referred to in Title III of this Law;
- 3° an insurance company as referred to in Article 2 of the Law of 9 July 1975 on the supervision of insurance companies.

§ 2. The following are not subject to Titles II to V of this Law:

- 1° insurance companies as referred to in § 1, 3°, inasmuch as the King has not issued a decree as referred to in Article 227;
- 2° institutions which, from among the types of benefits referred to in Article 74, exclusively manage solidarity schemes and commitments as referred

to in Article 46 of the Programme Law (I) of 24 December 2002 or of Articles 10 and 11 of the aforementioned Law of 28 April 2003.

### **CHAPTER III – Supervision**

#### **Article 4**

The CBFA supervises compliance with the provisions of this Law.

The CBFA may conclude collaboration protocols with other competent authorities, both Belgian and foreign, with respect to implementing the rules applicable to institutions for occupational retirement provision, including the relevant provisions of social and labour legislation.

#### **Article 5**

Without prejudice to Article 56 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, institutions for occupational retirement provision subject to the supervision of the CBFA bear the costs of the latter's supervision of them, in proportion to the contributions they receive; their share may not, however, exceed three thousandths of the said contributions.

These costs include, in particular, the operating costs:

- 1° of the CBFA, including the costs incurred by the secretariat of the Commissions and Boards referred to in points 2° to 5° below;
- 2° of the Board for the Voluntary Supplementary Pensions for the Self-employed referred to in Article 60 of the aforementioned Law of 24 December 2002;
- 3° of the Commission for the Voluntary Supplementary Pensions for the Self-employed established by Article 61 of the aforementioned Law of 24 December 2002;
- 4° of the Board for Supplementary Pensions referred to in Article 52 of the aforementioned Law of 28 April 2003;
- 5° of the Commission for Supplementary Pensions established by Article 53 of the aforementioned Law of 28 April 2003;
- 6° of the Insurance Commission established by Article 41 of the Law of 9 July 1975 on the supervision of insurance companies.

### **CHAPTER IV – Naming of institutions for occupational retirement provision**

#### **Article 6**

In Belgium only the following institutions may publicly use the term *institution for occupational retirement provision* (abbreviated IORP), in particular in their legal name, company object and documents:

- 1° institutions for occupational retirement provision authorized in Belgium in accordance with Title II of this Law;
- 2° institutions for occupational retirement provision governed by the law of another Member State admitted to engage in cross-border activities in Belgium in accordance with Title III of this Law.

## ***TITLE II – Institutions for occupational retirement provision governed by Belgian law***

### **CHAPTER I – General provisions**

#### **Article 7**

This Title applies to institutions for occupational retirement provision governed by Belgian law.

#### **Article 8**

Each institution for occupational retirement provision shall be established as a legal person separate from the sponsoring undertaking.

It shall take the form of a Pension Financing Organization (OFP) governed by Chapter II of this Title.

### **CHAPTER II – The Pension Financing Organization**

#### Section I – Legal personality

#### **Article 9**

A Pension Financing Organization has legal personality subject to the conditions defined in this Chapter.

Its registered office and head office are established in Belgium.

The Pension Financing Organization is an institution under civil law.

#### **Article 10**

A Pension Financing Organization must limit its company object to the activities referred to in Article 2, 2°, and those arising therefrom.

It may not derive any material gain other than that relating to the fulfilment of the object for which it was established.

### **Article 11**

A Pension Financing Organization shall possess legal personality as from the date when its Articles of Association and the documents appointing the members of its board of directors and, where applicable, the persons authorized to represent the institution in accordance with Article 28, paragraph 3, have been submitted in accordance with Article 49.

Without prejudice to Article 52, commitments may be made in the name of the Pension Financing Organization before the latter has obtained legal personality. Unless otherwise agreed, those who undertake such commitments in any capacity whatsoever are jointly and severally liable, unless the Pension Financing Organization has obtained legal personality within two years of such a commitment being made and has, in addition, taken over the commitment within six months of acquiring legal personality. Commitments taken over by the Pension Financing Organization are deemed to have been originally contracted by the latter.

### **Article 12**

All official documents, invoices, announcements, publications and any other documents issued by a Pension Financing Organization must mention its legal name, preceded or followed immediately by the words “Pension Financing Organization” or by the abbreviation “OFP”, as well as the address of its registered office.

Anyone who acts on behalf of a Pension Financing Organization in respect of a document as referred to in the first paragraph which omits any of the wording required under this Article may be held personally liable for all or part of the commitments made in the said document by the Pension Financing Organization.

## Section II – General Meeting

### **Article 13**

The General Meeting shall have the broadest powers to take or ratify actions concerning the Pension Financing Organization.

### **Article 14**

[§ 1. With the exception of sponsoring undertakings concerned only by the activities referred to in Article 55, paragraph 1, 2°, each sponsoring undertaking shall be a member of the Pension Financing Organization for as long as the latter is responsible for managing its pension scheme(s).

§ 2. The following may be members of a Pension Financing Organization:

- 1° the sponsoring undertaking(s);

- 2° members or beneficiaries, or their representatives.
- 3° other undertakings linked to or associated with one of those referred to in 1°, within the meaning of Articles 11 or 12 of the Code on Companies of 7 May 1999.

The members referred to in paragraph 1, 1° and 2°, must together hold at least two-thirds of the voting rights at the General Meeting.

§ 3. The General Meeting shall consist of all members of the Pension Financing Organization.

The Articles of Association may divide members into ordinary and extraordinary members.

Each ordinary member shall have at least one vote.

Extraordinary members shall not have the right to vote unless the Articles of Association provide otherwise.

§ 4. The Pension Financing Organization must have at least one ordinary member.

The Articles of Association must establish a procedure to ensure that the Pension Financing Organization may not function without any ordinary members for more than six months.

Without prejudice to the provisions of Section V, if, after the period referred to in paragraph 2, the Pension Financing Organization has no ordinary members, the extraordinary members or, in the absence of these, the board of directors, may decide to dissolve the Pension Financing Organization. Should the extraordinary members or the board of directors fail to reach an agreement, any extraordinary member and any member of the board may demand the dissolution of the Pension Financing Organization.]

*Article replaced by Article 83 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

## **Article 15**

Where a legal person is appointed member of a Pension Financing Organization, it is required to designate from amongst its partners, managers, directors, members of the management committee or employees [at least one permanent representative] entrusted with carrying out this task in the name of and on behalf of the legal person.

*Paragraph 1 amended by Article 84, 1°, of the Law of 6 May 2009, Belgian Official Gazette, 19 May 2009*

[Each representative] is subject to the same conditions and incurs the same civil and criminal responsibilities as if he/she performed this task in his/her own name and on

his/her own account, without prejudice to the joint responsibility of the legal person he/she represents. The latter may not remove [a representative] unless it simultaneously designates a successor.

*Paragraph 2 amended by Article 84, 2°, of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

### **Article 16**

The board of directors of a Pension Financing Organization shall keep a register of members of the General Meeting at its registered office. This register shall include each member's surname, given names and place of residence, or in the case of a legal person, its legal name, legal form and the address of its registered office. In addition, the board of directors shall see to it that all decisions regarding members' admission, resignation or expulsion are recorded in the register within eight days of the decision becoming known to the board.

Any interested party may inspect this register at the registered office of the Pension Financing Organization.

### **Article 17**

A General Meeting shall be convened by the board of directors under the circumstances provided for by law or by the Articles of Association, or if at least one-fifth of the members request a meeting, and at least once a year.

Every member shall receive notice of a General Meeting.

Every member may be represented by an ordinary member or, if the Articles of Association allow it, by an extraordinary member. The Articles of Association may limit the number of proxies a member may hold.

### **Article 18**

The Articles of Association shall determine the procedures, deadlines and conditions for convening a General Meeting, for its conduct and for the nature of the decision-making process.

In the absence of any provision to the contrary in law or in the Articles of Association, the following rules shall apply:

- 1° notice of the General Meeting shall be given to every member at least eight days in advance; the agenda shall be attached to the notice of meeting; any proposal signed by at least one-twentieth of the members must be placed on the agenda;
- 2° the General Meeting is validly held when at least one ordinary member is present or represented;
- 3° each ordinary member has an equal vote;

- 4° resolutions are adopted by a simple majority of the votes validly cast –either in person or by proxy – by members entitled to vote, or, if only one member is present or represented, then unilaterally by that member; abstentions or invalidly cast votes are not taken into account;
- 5° the General Meeting may not adopt resolutions that are not on the agenda;
- 6° in the event of a tied vote, the resolution is deemed to have been defeated.

### **Article 19**

The resolutions of the General Meeting shall be recorded in the minutes, which are to be kept at the registered office of the Pension Financing Organization.

Every member shall have the right to inspect the minutes and resolutions of the General Meeting as well as all documents on which the General Meeting deliberates.

This right of inspection may be exercised free of charge unless the Articles of Association should stipulate otherwise.

### **Article 20**

A decision by the General Meeting is required in order to:

- 1° amend the Articles of Association;
- 2° appoint, remove and discharge directors;
- 3° appoint, remove and remunerate accredited statutory auditors and accredited audit firms;
- 4° expel members;
- 5° approve the annual financial statements and annual report;
- 6° approve the discharge of the directors as well as of the accredited auditors and accredited audit firms;
- 7° ratify the financing plan referred to in Article 86 and its amendments;
- 8° ratify the statement of investment policy principles referred to in Article 95;
- 9° ratify management agreements with sponsoring undertakings;
- 10° ratify collective transfers;
- 11° dissolve and wind up the Pension Financing Organization.

*Subsection 1 – Provisions common to all operational bodies*

**Article 21**

The operational bodies of a Pension Financing Organization are those that have been entrusted with its governance [...]. They consist of the board of directors and, where applicable, other operational bodies as referred to in Subsection 3.

*Article amended by Article 85 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

**Article 22**

Operational tasks include at least:

- 1° the collection of contributions to the pension schemes and the payment of retirement benefits;
- 2° the investment policy;
- 3° asset and liability management;
- 4° providing information to the CBFA, sponsoring undertakings, members and beneficiaries;
- 5° elaborating and following up on internal control procedures;
- 6° executing resolutions of the General Meeting;
- 7° preparing annual financial statements and the annual report;
- 8° monitoring outsourcing and advisers whose services have been used;
- 9° drawing up internal rules;
- 10° drawing up a regulation for conflicts of interest and a procedure for handling complaints.

Each operational task must be clearly assigned to an operational body.

**Article 23**

[Where a legal person is appointed a member of an operational body of a Pension Financing Organization, that legal person must designate from among its partners, managers, directors, members of the management committee or employees a permanent representative entrusted with carrying out this task in the name of and on behalf of the legal person.

This representative is subject to the same conditions and incurs the same civil and criminal responsibilities as if he/she performed this task in his/her own name and on his/her own account, without prejudice to the joint responsibility of the legal person he/she represents. The latter may not remove its representative unless it simultaneously designates a successor.]

*Article replaced by Article 86 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

#### **Article 24**

The members of the operational bodies of a Pension Financing Organization must have the necessary professional reputation and appropriate qualifications and experience to carry out their functions. Qualifications and experience shall be assessed in particular in light of the functions to be performed and of the extent to which the services are sought of advisers who possess such qualifications and experience.

#### **Article 25**

[Article 19 of the Law of 22 March 1993 on the legal status and supervision of credit institutions applies here.]

*Article replaced by Article 32 of the Law of 6 April 2010 – Belgian Official Gazette, 23 April 2010*

#### **Article 26**

Members of operational bodies do not contract any personal obligation in this capacity with respect to the commitments of the Pension Financing Organization. Their responsibility is limited to fulfilling the mandate they have been given and to any errors in management which they might make.

Members of the operational bodies of a Pension Financing Organization are jointly liable vis-à-vis the members and beneficiaries of pension schemes for any damage resulting from the violation of the obligations imposed on them by or pursuant to the laws regulating pension schemes managed by the Pension Financing Organization.

The said members are released from their liabilities as defined in paragraphs 1 and 2 above, in respect of offences in which they did not take part, only if no fault can be imputed to them and if they cannot be said to have failed to do everything within their power to prevent or limit the aforesaid damage.

#### *Subsection 2 – Board of directors*

#### **Article 27**

The board of directors determines the general policy of the Pension Financing Organization and supervises the other operational bodies.

## **Article 28**

The board of directors has the power to perform all acts necessary or useful for carrying out the company object of the Pension Financing Organization, with the exception of those acts which the law or the Articles of Association reserve to the General Meeting.

The board of directors represents the Pension Financing Organization in legal and other acts.

By way of derogation from paragraph 2, the task of representing the Pension Financing Organization in both legal and other acts may, in accordance with the rules laid down in the Articles of Association, be delegated to one or more persons, whether or not they are directors or members of the General Meeting, acting jointly, severally or in concert. This decision is enforceable against third parties under the conditions provided for in Article 51.

The Articles of Association may limit the powers granted to the board of directors. These limitations, as well as the distribution of tasks which the directors may determine, are not enforceable against third parties even if they have been published.

## **Article 29**

The board of directors of a Pension Financing Organization shall consist of at least two people, either natural or legal persons, who act in concert. Their mandate may not exceed six years, but is renewable.

[Sponsoring undertakings and their members or representatives must constitute a majority of the board of directors of the Pension Financing Organization.]

*Paragraph inserted by Article 7 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

## **Article 30**

In exceptional circumstances, duly justified by the urgency of the matter and by the interest of the company, the board of directors may make decisions – provided the Articles of Association permits it – by unanimous consent of the directors, expressed in writing, by fax or by electronic mail.

The aforesaid procedure may not be used, however, with respect to establishing annual financial statements, using company funds or for any other purpose ruled out by the Articles of Association.

*Subsection 3 – Other operational bodies*

## **Article 31**

The Articles of Association may authorize the board of directors to delegate the implementation of the Pension Financing Organization's general policy to other operational bodies.

The conditions for appointing members of these bodies, their discharge, their remuneration, the length of their assignment and the functioning of these operational bodies are determined by the Articles of Association, or in the absence of a clause governing such matters, by the board of directors.

The Articles of Association or a decision by the board of directors may limit the management powers that may be delegated in application of paragraph 1. These limitations, as well as the distribution of tasks that the members of the other operational bodies may determine, are not enforceable against third parties, even if they have been published.

The establishment of other operational bodies may not hinder the exercise of adequate supervision of the Pension Financing Organization by the CBFA.

### **Article 32**

Each of the other operational bodies shall consist of at least two people, either natural or legal persons, who act in concert, with the exception of the body charged with the day-to-day management of the Pension Financing Organization.

### **Article 33**

The members of the other operational bodies may also be members of the board of directors provided that they jointly represent a minority on the board, or in the event of parity, provided that the chair of the board of directors is not a member of any other operational body and that he or she holds a casting vote on the board of directors.

## Section IV – Social committees

### **Article 34**

For the implementation of the relevant provisions of the social and labour legislation applicable to the operation of pension schemes managed by a Pension Financing Organization, one or more social committees may be established within the Pension Financing Organization. These committees are not bodies of the Pension Financing Organization.

The composition, competencies and functioning of these committees are governed by the Articles of Association, by an agreement between the Pension Financing Organization and the sponsoring undertaking or by another document.

Where a social committee has decision-making power in one or several areas or situations relating to the functioning of the Pension Financing Organization, the Articles of Association determine how this decision-making power is to be organized and what kind of conflict resolution process is to be followed.

The establishment and functioning of these social committees may not hinder the exercise of adequate supervision of the Pension Financing Organization by the CBFA.

## Section V – Nullity, dissolution and winding-up

### **Article 35**

§ 1. A Pension Financing Organization cannot be declared null except in the following cases:

- 1° if the Articles of Association do not contain the information referred to in Article 46, paragraph 1, 1° and 2°;
- 2° if one of the purposes for which it has been established is contrary to law or public order.

Without prejudice to Articles 50 and 51, the declaration of nullity takes effect from the date it is issued.

The decision declaring the nullity of the Pension Financing Organization leads to the winding-up of the latter in accordance with Article 38. Without prejudice to the consequences of the Pension Financing Organization being wound up, a declaration of its nullity does not affect the validity of its commitments nor of commitments made to it.

§ 2. Notwithstanding any clause to the contrary, the members of the institution are jointly liable vis-à-vis all interested parties for compensation for the damage resulting immediately and directly from the nullity of the Pension Financing Organization declared in accordance with § 1 above.

### **Article 36**

The court of first instance of the district where the Pension Financing Organization has its registered office may, at the request of a member, an interested party or the Public Prosecutor's Office, order the dissolution of a Pension Financing Organization that:

- 1° no longer has any commitment in respect of any member or beneficiary;
- 2° is not capable of fulfilling its commitments;
- 3° uses its assets or income for a purpose other than those for which it was established;
- 4° is in serious contravention of its Articles of Association, of the law or of public order;
- 5° does not have at least one ordinary member after the period stipulated in [Article 14, § 4, paragraph 2].

*Article 36, 5°, amended by Article 88, 1° of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

The court may annul a disputed action even if it rejects the request for dissolution.

[In the case provided for in paragraph 1, 5°, such a request may also be made by an extraordinary member of the board of directors of the Pension Financing Organization under the conditions laid down in Article 14, § 4, paragraph 3].

*Paragraph 3 inserted by Article 88, 2° of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

### **Article 37**

Before ruling on a request for the annulment or judicial dissolution of a Pension Financing Organization, the President of the court shall seek the opinion of the CBFA. The clerk shall transmit this request without delay and shall inform the Crown Prosecutor.

The request to the CBFA shall be made in writing, accompanied by the documents necessary for its information.

The CBFA shall issue its opinion within fifteen days of receiving the request.

In the case of legal proceedings involving a Pension Financing Organization where prior coordination with foreign authorities is required, the CBFA may take longer to issue its opinion, but in no case may the total period exceed thirty days. Where the CBFA deems it necessary to make use of such an exceptional period, it shall notify the judicial authority responsible for ruling on the case. The period available to the CBFA for issuing its opinion shall serve to suspend the deadline by which the judicial authority must make its ruling. If the CBFA does not reply by the established deadline, the court may issue its ruling.

The CBFA shall issue its opinion in writing and submit it by any means whatsoever to the clerk, who shall pass it on to the President of the court and the Crown Prosecutor. The opinion is to be entered into the dossier.

### **Article 38**

One or several liquidators shall be appointed in accordance with the Articles of Association and with the approval of the CBFA or, in case of judicial dissolution, by the court of first instance.

Without prejudice to other applicable legal provisions, the King may determine the powers and obligations of the liquidator, especially as regards the discharge of liabilities arising from the pension schemes managed by the Pension Financing Organization.

### **Article 39**

A ruling that declares either the nullity or the dissolution of a Pension Financing Organization or the annulment of one of its acts may be appealed.

The same is true for a ruling on a decision of the liquidator(s).

#### **Article 40**

Winding-up shall be conducted by one or several liquidators, who perform their functions either in application of the Articles of Association or pursuant to a resolution by the General Meeting, or, in the absence of either of these, pursuant to a court order that may be sought by any interested party or by the Public Prosecutor's Office.

#### **Article 41**

Each separate fund of a Pension Financing Organization shall be wound up separately and shall not entail the winding-up of any other separate fund. Only the winding-up of the last separate fund shall result in the winding-up of the Pension Financing Organization.

In the event of dissolution, winding-up or reorganization of separate funds, the provisions of this Section shall apply to the separate fund or funds.

#### **Article 42**

§ 1. Notwithstanding any other provision in law or in the Articles of Association, in the event of a winding-up, whether voluntary or compulsory, of a separate fund, the claims of creditors on the covering assets shall be ranked in the following order, with all creditors of the same category being treated equally:

- 1° by way of derogation from Article 94, paragraph 1, the liquidator or, if applicable, the receiver, up to the amount of his or her remuneration, that of his or her staff and the winding-up costs insofar as the latter benefited the separate fund to which the covering assets are allocated;
- 2° by way of derogation from Article 94, paragraph 1, creditors who hold rights or privileges in respect of these covering assets, having acquired them in good faith and through formalities completed before the assets in question were set aside as covering assets, up to the amount of these rights and privileges;
- 3° members and beneficiaries of the pension scheme that comes under the separate fund to which covering assets have been allocated, up to the amount of the claims which they can assert in respect of this pension scheme;
- 4° members and beneficiaries of the pension schemes that come under every other separate fund being wound up simultaneously, up to the amount of the balance remaining after winding up the separate fund referred to in this paragraph and *pro rata* with the deficits of the other separate funds;

5° other creditors, up to the amount of their claim on the separate fund being wound up.

§ 2. Where the covered assets are insufficient fully to satisfy the members and beneficiaries of pension schemes coming under a separate fund in accordance with § 1 above, the said members and beneficiaries retain, for the rest, a general privileged claim on all the movable and immovable property of the Pension Financing Organization. This claim may be exercised only when the Pension Financing Organization is completely wound up. The aforesaid priority is general and is overridden by all other general and special privileges.

### **Article 43**

After having settled the liabilities, the liquidators shall determine the use to which the assets are to be put.

Without prejudice to other legal provisions, this use shall be the one provided for under the Articles of Association or, in the absence of any provision therein regarding this matter, the use determined by the General Meeting, to be convened by the liquidators. In the absence of any provision in the Articles of Association or any decision by the General Meeting, the liquidators shall use the assets in a way that agrees as closely as possible with the purpose for which the Pension Financing Organization was established.

Members, creditors and the Public Prosecutor's Office may appeal to the court against the decision of the liquidators.

### **Article 44**

Creditors must lodge their appeal within five years counting from the publication of the decision regarding the use of the assets.

### **Article 45**

Any decision by the court, the General Meeting or the liquidators regarding the dissolution or nullity of a Pension Financing Organization, the conditions of the winding-up, the appointment and the discharge of the liquidators, the conclusion of winding-up proceedings as well as the use of the assets shall be recorded, in accordance with Article 49, within the month it was issued.

Official documents regarding the appointment and the discharge of the liquidators shall bear their surname, given names and place of residence, or in the case of legal persons, the legal name, legal form and registered office.

On all official documents, invoices, announcements, publications and other documents issued by a Pension Financing Organization that has been the subject of a dissolution order, the words "in liquidation" are to be added to the information required to be mentioned under Article 12.

Any person who contributes, on behalf of such a Pension Financing Organization, to a document as referred to in the previous paragraph which fails to include the information required therein may be held personally liable for all or part of the commitments made in the said document by the Pension Financing Organization.

## Section VI – Publication procedures

### **Article 46**

Without prejudice to the other provisions of this Chapter, the Articles of Association of a Pension Financing Organization shall mention at least:

- 1° the legal name and the address of the registered office of the Pension Financing Organization;
- 2° a precise description of the company's object;
- 3° if applicable, a description of the separate funds;
- 4° the conditions and procedures for admission and departure of members;
- 5° the competence of the General Meeting, the manner in which it is to be convened as well as the form in which its resolutions shall be communicated to members and third parties;
- 6° the mechanism for appointing, discharging and removing its directors, the scope of their powers and the manner in which these are exercised;
- 7° if applicable, the manner of designating persons authorized to represent the Pension Financing Organization in application of Article 28, paragraph 3, the scope of their powers when they are acting jointly, severally or in concert, and the manner in which these powers are to be exercised.

The Articles of Association shall be set down in a certified or private legal document. In the case of the latter, notwithstanding the requirement stipulated in Article 1325 of the Civil Code, two originals are sufficient.

### **Article 47**

Official documents regarding the appointment or discharge of members of operational bodies, auditors and persons authorized to represent a Pension Financing Organization shall bear the members' surname, given names and place of residence or, in the case of legal persons, their legal name, legal form, VAT number and registered office, as well as the scope of their powers and the manner in which these are to be exercised, acting jointly, severally or in concert.

### **Article 48**

The directors of a Pension Financing Organization shall file the following documents with the National Bank of Belgium each year:

- 1° annual financial statements;
- 2° a document containing the surnames and given names of the currently serving directors and auditor(s);
- 3° the report of the auditor(s).

The King shall determine the time as well as the manner and conditions for filing the documents referred to in paragraph 1, as well as the sum and the mode of payment of the publication costs. The documents will be accepted only if the provisions in application of this paragraph are followed.

Within fifteen working days of the acceptance of the documents filed, they will be entered into a collection maintained by the National Bank of Belgium on a medium and according to conditions determined by the King. The National Bank of Belgium shall submit the text of this entry, for inclusion in the dossier of the Pension Financing Organization, to the clerk's office of the commercial court where the dossier referred to in Article 49 is kept.

The National Bank of Belgium shall issue a copy, in the form determined by the King, to those who request one, including in writing, either of the totality of the documents filed in application of paragraph 1, or of those documents submitted in application of paragraph 1 that pertain to certain specifically named Pension Financing Organizations, and for the years specified. The King shall determine the sum to be paid to the National Bank of Belgium for obtaining the copies referred to in this paragraph.

Court clerks shall, at no cost and without delay, be able to obtain from the National Bank of Belgium a copy of the totality of the documents referred to in paragraph 1, in the form determined by the King.

The National Bank of Belgium is competent to establish and publish, in the manner determined by the King, general and anonymous statistics regarding all or part of the information contained in the documents submitted to it in application of paragraph 1.

#### **Article 49**

A dossier shall be kept at the clerk's office of the commercial court for each Pension Financing Organization having its registered office within its district.

This dossier shall contain:

- 1° the Articles of Association of the Pension Financing Organization;
- 2° the official documents regarding the appointment or discharge of the [directors] and of the persons authorized to represent the Pension Financing Organization;

*Paragraph 2, 2° amended by Article 89 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

- 3° a copy of the register of members;
- 4° decisions regarding the nullity or the dissolution of the Pension Financing Organization, its winding-up and the appointment or discharge of the liquidators, as referred to in Article 45, paragraph 1; court decisions do not have to be entered into the dossier unless they are immediately enforceable at law;
- 5° the annual financial statements of the Pension Financing Organization, drawn up in accordance with Article 81;
- 6° amendments to the official texts, documents and decisions referred to in 1°, 2°, 4° and 5°;
- 7° the consolidated text of the Articles of Association subsequent to any amendments.

Where changes in the composition of the Pension Financing Organization are made, an updated list of members shall be submitted within a month of the anniversary of the filing of the Articles of Association.

The King shall determine the manner in which the dossier is to be constituted as well as the fee to be charged for this purpose to the Pension Financing Organization; this fee may not exceed the actual cost. He may provide for the documents referred to in paragraph 2 to be filed and reproduced, in the form that He shall determine. Under the conditions stipulated by the King, the copies have the same validity as the originals and may be used in their stead. The King may also allow electronic processing of such data in the dossier as He shall specify. He may authorize the linking of data files. In that case, He shall define the manner in which this is to be done.

Anyone may consult, free of charge, the documents that have been submitted concerning a specific Pension Financing Organization and may, upon written or oral request, obtain a full or partial copy without any cost apart from the clerk's fees. These copies shall be certified true copies, unless the person requesting them should forego this formality.

## **Article 50**

The official texts, documents and decisions referred to in Article 49, paragraph 2, 1°, 2° and 4°, as well as their amendments, shall be published, at the expense of the parties concerned, in the form of an extract in the annexes to the Belgian Official Gazette (*Moniteur belge/Belgisch Staatsblad*).

The extract shall contain:

- 1° with respect to the Articles of Association or any amendments thereto, the information referred to in Article 46, paragraph 1;

- 2° with respect to the official documents regarding the appointment or discharge of the directors and of the persons authorized to represent the Pension Financing Organization, the information referred to in Article 47;
- 3° with respect to court decisions and decisions of the General Meeting or of the liquidators regarding the nullity, dissolution or winding-up of the Pension Financing Organization, the author, the date and the operative provisions of the decision;
- 4° with respect to the official documents and decisions regarding the appointment and discharge of liquidators, the information referred to in Article 45, paragraph 2.

The King shall indicate which officials are to receive the official texts, documents or decisions and shall determine the form and the conditions in which they are to be filed and published. Publication shall take place within thirty days of the filing, on pain of damages payable by the officials responsible for the omission or delay.

### **Article 51**

The official texts, documents and decisions which must be filed in accordance with this Chapter shall be enforceable against third parties only as of the date when they are filed or, if their publication is also required under the terms of this Chapter, as of the date of their publication in the annexes to the Belgian Official Gazette, unless the Pension Financing Organization demonstrates that the said third parties had prior knowledge of them. Third parties may nonetheless refer to official texts, documents and decisions that have not yet been filed or published. With respect to transactions that took place before the thirty-first day following publication, such official texts, documents and decisions shall not be enforceable against third parties who can demonstrate that they could not have known of them.

In the event of a contradiction between the text that has been filed and the one published in the annexes to the Belgian Official Gazette, the latter is not enforceable against third parties. The said third parties may, however, refer to the latter text unless the institution is able to demonstrate that they knew of the text that was filed.

## **Chapter III – Authorization and extension of authorization**

### **Article 52**

An institution for occupational retirement provision may not carry out an activity referred to in Article 2, 2°, unless it has obtained prior authorization from the CBFA.

### **Article 53**

Applications for authorization shall be accompanied by the following information and documents:

- 1° the Articles of Association and, where applicable, the deed of incorporation of the institution for occupational retirement provision, indicating, where applicable, the date of their publication in the annexes to the Belgian Official Gazette (*Moniteur belge/Belgisch Staatsblad*);
- 2° information concerning the identity of the members of the operational bodies and advisers referred to in Article 24, namely:
  - a) in the case of natural persons, the surname, given names, residence, date and place of birth, and national register number or any other official national reference number or passport number;
  - b) in the case of legal persons, the legal name, legal form, address of the registered office, identification number in commercial, legal person or VAT registries, as well as the identification information referred to under a) concerning their permanent representatives.
- 3° information concerning the professional qualifications and experience of the persons referred to in 2°, as well as, in the case of members of operational bodies, information regarding their professional reputation;
- 4° the scope of the powers of the members of the operational bodies and the manner in which these are exercised;
- 5° the description of the management structure, administrative and accounting procedures and internal control mechanisms, as referred to in Article 77;
- 6° the name of the sponsoring undertakings on behalf of which the institution manages the pension schemes;
- 7° the main characteristics of the pension schemes managed by the institution;
- 8° the financing plan referred to in Article 86;
- 9° proof that the institution for occupational retirement provision possesses the solvency margin referred to in Articles 87 and 88, where such a margin is required to be established;
- 10° the statement of investment policy principles referred to in Article 95;
- 11° other information and documents requested by the CBFA in view of assessing the application for authorization.

The CBFA shall determine the form of the application for authorization and the conditions which the application must fulfil.

#### **Article 54**

If the applicant organization was, pursuant to the provisions of Title V, temporarily exempt from authorization and was managing pension schemes before making its application, it shall also attach the following documents to the application:

- 1° a detailed register of technical provisions and corresponding investments at the time the application is submitted;
- 2° a register of the claimable benefits that have not yet been settled;
- 3° its annual financial statements for the previous three completed financial years or, if unavailable, those of the sponsoring undertaking.

If the organization was carrying out another activity before submitting the application, the CBFA may ask for any information regarding its financial situation and any of its operations in view of assessing the application for authorization.

### **Article 55**

Authorization is granted separately for:

- 1° the activities referred to in Article 74, § 1, 1° as regards pension benefits authorized in Belgium and foreign pension schemes other than those referred to in 2°;
- 2° the activities referred to in Article 74, § 1, 2° as regards pension benefits authorized in Belgium and similar activities carried out abroad.

An institution for occupational retirement provision that is authorized to carry out only one of the activities referred to in paragraph 1 and that wishes to add the other activity shall submit to the CBFA an application to extend its authorization. This application shall be accompanied by a dossier constituted in accordance with Articles 53 and 54.

### **Article 56**

The CBFA shall immediately acknowledge receipt of the application for authorization or extension.

It shall issue its decision regarding the application within three months of the submission of a complete application dossier, and at the latest within nine months of receiving the application.

### **Article 57**

Authorization or extension can be granted only to an institution for occupational retirement provision that has fulfilled the conditions and rules stipulated in or pursuant to the Law.

### **Article 58**

The institution for occupational retirement provision shall be informed by registered letter of the decision to grant or to refuse authorization or extension.

#### **Article 59**

[The CBFA shall draw up a list of institutions for occupational retirement provision. The list shall indicate for which of the two activities referred to in Article 55, paragraph 1, the institution has authorization, as well as, where applicable, the Member States other than Belgium in which each institution engages in cross-border activity. This list and any changes made to it shall be published on the CBFA's website.]

*Article replaced by Article 90 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

#### **Article 60**

Authorized institutions for occupational retirement provision shall include the following text on all documents which they bring to the attention of the members and beneficiaries:

“Institution for occupational retirement provision authorized on ...”

followed by the identification number issued by the CBFA.

#### **Article 61**

An authorized institution for occupational retirement provision may renounce its authorization. The renunciation shall be submitted to the CBFA, which shall make note of it and determine the date when it takes effect. [...]

*Paragraph amended by Article 91 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

Renunciation of the authorization means that no activities may be carried out other than the management of pension schemes on behalf of those who were members or beneficiaries of these schemes at the time of the renunciation.

An institution for occupational retirement provision that has renounced its authorization remains subject to the provisions of this Law and its implementing regulations and to supervision by the CBFA until all its commitments have been met.

The CBFA shall inform the competent authorities of the Member States in which an institution for occupational retirement provision engages in cross-border activities that the institution has renounced its authorization.

### **Chapter IV – Cross-border activity and activity in a State not belonging to the European Economic Area**

Section I – Measures that apply both to cross-border activity and to activity in a State not belonging to the European Economic Area

**Article 62**

An institution for occupational retirement provision that has been authorized in Belgium may engage in cross-border activity or activity in a State not belonging to the European Economic Area, under the conditions stipulated in this Chapter.

**Article 63**

An institution may not engage in any cross-border activity or any activity in a State not belonging to the European Economic Area if the technical provisions for all pension schemes under its management are not fully covered.

For the application of the first paragraph, the institution may not invoke the prerogatives of the transitional measures contained in Articles 157 to 173 of this Law.

Section II – Cross-border activity

**Article 64**

An institution for occupational retirement provision authorized in Belgium which proposes to engage in cross-border activity shall notify the CBFA of this intention.

This notification shall be accompanied by a dossier containing the following information:

- 1° the name of the host Member State;
- 2° the name of the sponsoring undertaking;
- 3° the main characteristics of the pension scheme to be managed on behalf of the sponsoring undertaking;
- 4° any information requested by the CBFA in view of assessing the notification.

The dossier referred to in paragraph 2 shall be drawn up in the legally mandated language. However, the CBFA may, with the consent of the competent authorities of the host Member State, require that all or part of the dossier be translated into the language of that Member State or into a language agreed upon by the CBFA and the competent authorities in question.

The notification may be submitted at the same time as the authorization application referred to in Article 53. However, the CBFA may not take any decision regarding the notification before the decision to grant authorization has been published in accordance with Article 59.

## **Article 65**

The CBFA may oppose the implementation of the proposal submitted by the institution if it finds that the institution's administrative structures or financial situation, or the competence or professional experience of the members of its operational bodies, are not compatible with the activity it proposes to carry out in the host Member State.

The institution shall be notified of the CBFA's opposition by registered letter, at the latest three months after the CBFA received the complete dossier containing all the information referred to in Article 64, paragraph 2.

## **Article 66**

If the CBFA has no objection to the institution's proposal, it shall, within three months of receiving the dossier referred to in Article 64, paragraph 2, forward it to the competent authorities of the host Member State and inform the institution that this has been done.

## **Article 67**

The CBFA shall [immediately upon receipt] forward to the institution the information that it has received from the competent authorities of the host Member State concerning the provisions that apply to institutions for occupational retirement provision which carry out activity in that Member State, with respect to:

*First sentence amended by Article 92 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

- 1° the social and labour legislation relevant to the management of the pension scheme on behalf of the sponsoring undertaking;
- 2° the information requirements;
- 3° the rules governing the investment of covering assets.

## **Article 68**

As soon as the institution has received the information referred to in Article 67 or, if it has not received such information, [two months after the date when the CBFA received the dossier referred to in Article 66], the institution may begin its activity in the host Member State, in compliance with the provisions listed in Article 67.

*Article amended by Article 93 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

## **Article 69**

The provisions of this section shall apply whenever an institution makes any change to the information referred to in Article 64, paragraph 2.

### Section III – Activity in a State not belonging to the European Economic Area

#### **Article 70**

An institution for occupational retirement provision authorized in Belgium which proposes to carry out activity in a State not belonging to the European Economic Area shall notify the CBFA of this intention.

This notification shall be accompanied by a dossier containing the following information:

- 1° the name of the State in which the activity is to be carried out;
- 2° the name of the sponsoring undertaking;
- 3° the main characteristics of the pension scheme to be managed on behalf of the sponsoring undertaking;
- 4° any information requested by the CBFA in view of assessing the request.

The dossier referred to in paragraph 2 shall be drawn up in the legally mandated language. However, the CBFA may, with the consent of the competent authorities of the State in which the activity is to be carried out, require that all or part of the dossier be translated into the language of that State or into a language agreed upon by the CBFA and the competent authorities in question.

The notification may be submitted at the same time as the authorization application referred to in Article 53. However, the CBFA may not take any decision regarding the notification before the decision to grant authorization has been published in accordance with Article 59.

#### **Article 71**

The CBFA may oppose the implementation of the proposal submitted by the institution if it finds that the institution's administrative structures or financial situation, or the competence or professional experience of the members of its operational bodies, are not compatible with the proposed activity in the State in which it proposes to carry it out.

The CBFA may also oppose the implementation of the institution's proposal if the legislation or conditions in the State in which the proposed activity would be carried out do not permit the CBFA to exercise an appropriate supervision of the institution for occupational retirement provision.

The CBFA shall notify the institution of its opposition by registered letter, at the latest three months after the CBFA has received the complete dossier containing all the information referred to in Article 70, paragraph 2.

#### **Article 72**

The institution may begin its activity in the country in question as soon as it has been informed by the CBFA that the latter has no objection to its proposal and, at the latest, by the end of the period referred to in Article 71, paragraph 3.

#### **Article 73**

The provisions of this section shall apply whenever an institution makes any change to the information referred to in Article 70, paragraph 3.

### **Chapter V – Carrying out the activity**

#### **Section I – Pension benefits authorized in Belgium**

#### **Article 74**

§ 1. The following pension benefits are authorized in Belgium:

- 1° fringe benefits, on an individual or a collective basis, in the form of retirement, death, disability or incapacity for work benefits for employees and managers of one or several companies;
- 2° fringe benefits:
  - a) relating to retirement, death, disability and incapacity for work for self-employed persons, as referred to in Title II, Chapter I, Section 4, of the Programme Law (I) of 24 December 2002;
  - b) relating to retirement, death, disability and incapacity for work benefits for non self-employed persons, as referred to in Article 54 of the Law on compulsory insurance for medical care and benefits, consolidated on 14 July 1994;
- 3° benefits arising from the solidarity schemes referred to in Article 46 of the Programme Law (I) of 24 December 2002;
- 4° benefits arising from the solidarity commitments referred to in Articles 10 and 11 of the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits.

§ 2. The provisions of Chapter V, Sections III to VI; Chapter VII, Sections II and III; Chapter VIII and Chapter IX shall not apply to the pension benefits referred to in § 1, 3° and 4°.

§ 3. For the purposes of this Article, company managers are understood to mean the persons referred to in Article 32, paragraph 1, 1° and 2° of the Income Tax Code of 1992.

#### **Article 75**

By way of derogation from Article 74, the present law does not apply to:

1° individual pension commitments granted by an undertaking to the persons, referred to in [Article 3, § 1, paragraph 4] of Royal Decree No. 38 of 27 July 1967 on the arrangements regarding the social status of self-employed persons, who have not established a separate legal person for the purpose;

*Paragraph 1, 1° amended by Article 94 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

2° individual pension commitments that existed before 16 November 2003.

#### **Article 76**

An institution for occupational retirement provision may not manage death, disability or incapacity for work benefits, or solidarity schemes or commitments as referred to in Article 74, § 1, 3° and 4°, except as an activity ancillary to the management of retirement benefits.

### Section II – Management structure and organisation

#### **Article 77**

Institutions for occupational retirement provision shall have a management structure, administrative and accounting procedures and an internal control that are appropriate to the activities they carry out.

The structure, organisation and internal control must allow the institution to carry out its planned operations and, in particular, to implement the financing plan referred to in Article 86. Under no circumstances may they impede the exercise of an adequate supervision of the institution.

Institutions shall inform the CBFA within a month of any important change in the conditions governing the conducting of their business, including those concerning the elements referred to in paragraph 1.

#### **Article 78**

An institution for occupational retirement provision may entrust one or more of its activities for own account to a third party, either by a mandate or by a business contract.

The institution is responsible for the choice and for the supervision of external service providers whose services it draws upon. In particular, it shall ensure that the latter possess the necessary professional qualifications and experience.

Use of external service providers in no way diminishes the responsibility of the institution or of its operational bodies.

### **Article 79**

Institutions for occupational retirement provision shall stipulate, in their Articles of Association or in an agreement entered into with the sponsoring undertaking(s), such rules of management and operation as will permit a clear definition of the rights and obligations of the sponsoring undertaking(s).

The King shall establish the modes of application of this Article.

### **Article 80**

§ 1. Institutions for occupational retirement provision shall establish separate funds for:

- 1° the activities referred to in Article 55, paragraph 1, 1°;
- 2° the activities referred to in Article 55, paragraph 1, 2°;
- 3° the activities subject to at least one of the corrective measures in Chapter VIII of this title, where the CBFA requires that a separate fund be established;
- 4° the activities to be determined by the King in a Royal Decree, enacted after deliberation in the Council of Ministers.

Institutions shall establish a separate fund for the activities referred to in Article 55, paragraph 1, 1°, and for each sponsoring undertaking where some of these activities are covered by the transitional provisions in Title V.

§ 2. An institution may establish one or more separate funds for one or more pension schemes, including:

- 1° for cross-border activities, in particular where the legislation of the host Member State imposes different investment rules from those that apply to the other activities of the institution;
- 2° for activities carried out in a State outside the European Economic Area.

§ 3. Where several separate funds are established, every commitment or operation shall, with regard to the counterparty, be assigned unambiguously to one or more

separate funds. Article 26, paragraphs 2 and 3, shall apply to infringements of this provision.

### **Article 81**

§ 1. Each institution for occupational retirement provision shall draw up annual financial statements and an annual report covering:

- 1° its entire business;
- 2° each separate fund referred to in Article 80;

The financial year shall correspond to the calendar year.

§ 2. The King shall determine the rules for drawing up the annual financial statements, for valuing the various balance sheet captions and for presenting the institution's annual report.

He may also determine the rules that apply to the presentation of the annual financial statements and the annual report where the institution manages several pension schemes. Moreover, he may lay down the conditions under which one or several pension schemes must be the subject of separate annual financial statements and a separate annual report. However, the activities referred to in Article 55, paragraph 1, 2°, may always be the subject of one and the same set of financial statements and annual report.

### **Article 82**

Each institution for occupational retirement provision shall submit its annual financial statements and annual report to the CBFA at the latest by 30 June of each year.

### **Article 83**

Each institution for occupational retirement provision shall keep all documents relating to the retirement schemes which it manages at its registered offices or at any other site for which prior authorization has been granted by the CBFA.

Without prejudice to other legal provisions, the CBFA may determine, by means of a regulation, the period of time during which the aforementioned documents must be retained.

### **Article 84**

Institutions for occupational retirement provision may not take out loans or act as guarantors for third parties. They may, however, take out loans solely for purposes of liquidity and on a temporary basis.

The CBFA may stipulate additional conditions which these loans must fulfil.

### **Article 85**

Institutions for occupational retirement provision may not make loans of any kind whatsoever to members of its operational bodies or of its staff, except under the conditions permitted by the CBFA.

### Section III – Financing plan

#### **Article 86**

Each institution for occupational retirement provision shall establish a financing plan with, where applicable, the consent of each sponsoring undertaking, which in turn shall commit itself to complying with the aforementioned plan.

This plan shall determine, in a detailed manner and for each pension scheme, the manner of calculating the regular contributions that each sponsoring undertaking shall make to the institution, in view, namely, of:

- 1° ensuring adequate financing of the pension scheme, given the nature of the commitments made and the risks incurred;
- 2° establishing its share of the required solvency margin;
- 3° covering all costs of whatever sort, including, where applicable, acquisition costs.

The financing plan as well as its amendments shall be submitted to the CBFA in the month in which they are adopted.

The CBFA may require any amendment in view of protecting the interests of the members and beneficiaries of a pension scheme and of ensuring its adequate and regular financing.

### Section IV – Solvency margin

#### **Article 87**

Institutions for occupational retirement provision which contract obligations of result shall establish an adequate solvency margin in respect of their entire business.

The King shall determine:

- 1° the manner of calculating the solvency margin;
- 2° the absolute minimum this must maintain;
- 3° the level that must be attained relative to the commitments of the institution;

4° the elements to be taken into consideration when determining the composition of the solvency margin and the absolute minimum.

### **Article 88**

Institutions for occupational retirement provision which manage pension schemes offering the benefits referred to in Article 55, paragraph 1, 1°, and which contract obligations of means, shall establish a solvency margin that is adequate in respect of their entire business relating to risks of death, disability and incapacity to work.

Institutions for occupational retirement provision which manage pension schemes referred to in Article 55, paragraph 1, 2°, and which contract obligations of means, shall establish a solvency margin that is adequate in respect of their entire business.

Institutions that jointly manage pension schemes offering the benefits referred to in Article 55, paragraph 1, 1° and 2°, shall apply the provisions of paragraphs 1 and 2 respectively to each of these activities.

The King shall determine the manner of calculating the solvency margin, the level that must be attained relative to the commitments of the institution for occupational retirement provision, and the elements to be taken into consideration when determining the composition of the solvency margin.

## Section V – Technical provisions

### **Article 89**

Institutions for occupational retirement provision shall, at least once a year, under the heading of *technical provisions*, calculate and account for their obligations both with regard to honouring the pension schemes they manage and in application of the legal and regulatory provisions relating to these schemes.

Technical provisions relate both to current commitments and to commitments that have lapsed but have not yet been fully settled, regardless of the country where the institution for occupational retirement provision carries out its activities.

The amount of technical provisions shall be calculated by means of a sufficiently prudent actuarial assessment, which takes into account all commitments undertaken by the institution with regard to the benefits and payments in respect of the pension schemes it manages, including where the scheme covers biometric risks or provides either a return on investments or a given level of benefits.

This amount should be sufficient both to ensure that benefits already in payment to beneficiaries can continue to be paid, and to reflect the commitments that arise from members' accrued pension rights. The economic and actuarial hypotheses used for assessing the commitments shall also be chosen prudently, taking into account, where applicable, an adequate margin for adverse deviation.

The King shall define the rules for calculating minimum technical provisions.

## Section VI – Covering assets

### Article 90

The technical provisions referred to in Article 89 relating to the pension schemes being managed and the obligations arising from legal or regulatory provisions in this regard, as well as technical liabilities as determined by the King, shall be covered at all times by sufficient and appropriate assets belonging to the institution for occupational retirement provision and allocated to guaranteeing the above-mentioned obligations by means of a separate fund.

These assets shall be designated hereafter by the term *covering assets*.

### Article 91

§ 1. Covering assets shall be invested in accordance with the prudent person principle and, in particular, according to the following rules:

- 1° the assets shall be invested in the best interests of members and beneficiaries. In the case of a potential conflict of interest, the institution, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interests of members and beneficiaries;
- 2° the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- 3° the assets shall be invested predominantly in regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to a prudent level;
- 4° investments in derivative instruments shall be permitted insofar as they contribute to reducing investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the institution's assets. The institution shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;
- 5° the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole.

Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the institution to excessive risk concentration;

- 6° investments in the sponsoring undertaking shall be no more than 5% of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investments in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10% of the portfolio.

When the institution is sponsored by a number of undertakings, investments in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

§ 2. In accordance with § 1, the King may determine the nature of the covering assets, the rules for their localization and their valuation as well as, where applicable, the limits and conditions for their allocation.

He may exempt institutions from the requirements referred to in § 1, 5° and 6° as regards investments in government bonds.

### **Article 92**

Institutions for occupational retirement provision shall deposit those covering assets which are eligible for deposit either with the National Bank of Belgium or with another credit institution or investment firm which is governed by the law of a Member State and whose authorization allows it to carry out the activities of a depository.

### **Article 93**

Institutions for occupational retirement provision shall keep a permanent register of the covering assets of each separate fund.

The total amount of the covering assets included in the permanent register must at all times be at least equal to the amount of the technical provisions.

Where the covering assets included in the permanent register are unavailable to cover an institution's commitments because they are encumbered with a right *in rem*, this will be recorded in the permanent register, and the amount not available shall not be taken into account when calculating the total referred to in paragraph 2.

Without prejudice to the application of Article 97, the institution shall inform the CBFA of the status of the permanent register for each separate fund, in accordance with the form, content, medium, frequency and deadlines which the latter shall determine.

### **Article 94**

By way of derogation from Articles 7 and 8 of the Mortgage Law of 16 December 1851, the totality of covering assets for the technical provisions referred to in Article 90 and recorded in the permanent register prescribed by Article 93 shall, for each separate fund, be reserved by way of priority for fulfilling commitments to members or beneficiaries of the pension schemes that come under that fund.

For the institutions for occupational retirement provision referred to in Article 119, the covering assets referred to in the first paragraph correspond to the covering assets recorded in the permanent register maintained by the CBFA on the basis of the documents submitted to it by these institutions and duly recorded for this purpose.

## **Chapter VI – Statement of investment policy principles and information to be provided to the members and beneficiaries**

### **Article 95**

Institutions for occupational retirement provision shall draw up a written statement of the principles underlying their investment policy. It shall review this at least every three years as well as immediately after any significant change in investment policy.

This statement shall contain, at least, the investment risk measurement methods, the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities.

Institutions shall submit to the CBFA within a month any change to the statement of investment policy principles.

The CBFA may lay down in a regulation more specific rules concerning the form and content of this statement.

### **Article 96**

Members and beneficiaries and/or, where applicable, their representatives shall receive:

- 1° on request, the annual financial statements and the annual reports referred to in Article 81 and, where an institution is responsible for more than one scheme, those relating to their particular pension scheme;
- 2° within a reasonable time, any relevant information regarding changes to the pension-scheme rules.

The statement of investment policy principles referred to in Article 95 shall be made available on request to members and beneficiaries and/or, where applicable, to their representatives.

Each member shall also receive, on request, detailed and substantial information on:

- 1° the target level of the pension benefits, where applicable;
- 2° the level of benefits in case of cessation of employment;
- 3° where the member bears the investment risk, the range of investment options, if applicable, and the actual investment portfolio, as well as information on risk exposure and costs related to these investments;

- 4° the arrangements relating to the transfer of pension rights to another institution for occupational retirement provision in the event of termination of the employment relationship.

Members shall receive each year brief particulars of the situation of the institution as well as the current level of financing of their accrued individual entitlements.

Each beneficiary shall receive, on retirement or when other benefits become due, the appropriate information on the benefits which are due and the corresponding payment options.

## **Chapter VII – Exercising supervision**

### **Section I – Supervision exercised by the CBFA**

#### **Article 97**

The CBFA shall determine, by means of a regulation, the nature, content, frequency, deadline and medium for the documents which institutions must regularly submit in order to allow the CBFA to carry out its supervisory task.

Furthermore, on simple request by the CBFA, every institution for occupational retirement provision, the members of its operational bodies and the persons responsible for its internal control, as well as the external advisers whose services the institution may use, are obliged to provide the CBFA with all information on all matters relating to the institution in question, and to forward to the CBFA all pertinent documents.

#### **Article 98**

Institutions for occupational retirement provision shall submit to the CBFA at least three weeks before the Annual General Meeting the draft [...] amendments to the Articles of Association, as well as the decisions that are to be proposed during that meeting and that may have bearing upon the rights of the members or beneficiaries.

*Paragraph 1 amended by Article 95, 1°, of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

[Institutions for occupational retirement provision shall submit to the CBFA its draft annual financial statements at the latest on the date which the latter shall set.]

*Paragraph 2 inserted by Article 95, 2°, of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

The CBFA may require that any remarks it shall make concerning these drafts be brought to the attention of the General Meeting.

These remarks, and the responses to them, must appear in the minutes of the Annual General Meeting.

Each institution shall submit to the CBFA within a month of their approval by the General Meeting [...], amendments to the Articles of Association as well as decisions that may have bearing on the rights of the members or beneficiaries.

*Paragraph 5 amended by Article 95, 3° of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

#### **Article 99**

Institutions for occupational retirement provision shall submit to the CBFA any changes to the information referred to in Article 53, paragraph 1, 2° to 4°.

#### **Article 100**

The CBFA may supervise relationships between an institution for occupational retirement provision and other institutions or undertakings, including the sponsoring undertakings, where the following conditions occur:

- 1° an institution for occupational retirement provision has transferred functions to those other undertakings or institutions;
- 2° these relationships influence the financial situation of the institution for occupational retirement provision or being in a material way relevant for effective supervision.

This supervision may have no other purpose than to oversee the financial situation, the management structure and the administrative and accounting organization of the institution for occupational retirement provision being supervised, or to check whether the latter fulfils its commitments to the members and beneficiaries of the pension schemes.

#### **Article 101**

The CBFA may carry out on-site inspections at the premises of the institution for occupational retirement provision and, where applicable, at those of the undertakings and institutions referred to in Article 100, in order to check whether activities are carried out in accordance with the provisions stipulated in or pursuant to this Law, as well as with the provisions of social and labour legislation and laws concerning the information to be provided to members and beneficiaries, the supervision of which falls within the competence of the CBFA. To this end, the CBFA may take note and obtain copies, without going on site, of any information held by the aforementioned undertakings and institutions.

The CBFA may delegate these tasks to members of its staff or to experts mandated for the purpose and paid by the CBFA; these persons shall report back to the CBFA.

#### **Article 102**

No civil, criminal or disciplinary action may be taken against nor any professional sanction imposed upon persons who have submitted in good faith to the CBFA facts or documents connected with the latter's supervisory task.

## Section II – Accredited statutory auditors and accredited audit firms

### **Article 103**

Institutions for occupational retirement provision shall entrust one or more statutory auditors with the task of auditing their financial situation and annual financial statements and with checking that the transactions to be shown in the annual financial statements are in compliance with the law and the Articles of Association.

The functions of an auditor as referred to in the first paragraph shall be entrusted to one or more auditors or audit firms belonging to the Institute of Company Auditors (Institut des réviseurs d'entreprises/Instituut van de bedrijfsrevisoren) and accredited by the CBFA in accordance with Article 105.

Such auditors and audit firms shall bear the titles, respectively, of accredited auditor and accredited audit firm.

The mandate of accredited auditors and accredited audit firms is granted for three years. It is renewable.

Institutions for occupational retirement provision may appoint substitute accredited auditors who exercise the functions of the accredited auditors in the event of the long-term incapacity of their accredited auditor. The provisions of this Article and of Article 104 shall apply to these substitutes.

[The provisions of Book IV, Title VII of the Code on Companies concerning auditors are applicable to accredited auditors and accredited audit firms designated by the institutions for occupational retirement provision. For the purpose of this Law, the words *associates*, *code*, *company* and *commercial court* used in the Code on Companies are to be understood to mean *members*, *Law*, *institution for occupational retirement provision* and *court of first instance*.]

*Paragraph 6 inserted by Article 96 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

### **Article 104**

Accredited audit firms shall perform the functions of an accredited statutory auditor referred to in Article 103 through an accredited statutory auditor appointed by them in accordance with [Article 6 of the Law of 22 July 1953 creating an Institute of Company Auditors and organizing the public supervision of the profession of company auditor].

*First paragraph amended by Article 103, § 3 of the Royal Decree of 21 April 2007 – Belgian Official Gazette, 27 April 2007*

The provisions of this Law and of its implementing decrees with regard to the appointment, functions, duties and prohibitions applicable to accredited statutory auditors, and with regard to the sanctions, other than penal sanctions, applicable to auditors, shall apply to both the accredited audit firms and to the accredited statutory auditors representing them.

An accredited audit firm may appoint a substitute representative from among its partners who meet the appointment conditions.

#### **Article 105**

The CBFA shall, with the approval of the Ministry for the Economy, determine the regulations concerning the accreditation of statutory auditors and of audit firms referred to in this section.

The Institute of Company Auditors shall inform the CBFA if any disciplinary procedure is launched against an accredited statutory auditor or an accredited audit firm for any omission in the performance of its functions within an institution for occupational retirement provision, as well as of any disciplinary measure taken against an accredited auditor or accredited audit firm, and the reason for this measure.

#### **Article 106**

The appointment of accredited statutory auditors and of substitute accredited statutory auditors to institutions for occupational retirement provision is subject to the prior approval of the CBFA. This approval shall be applied for by the management body of the institution that proposes to make the appointment. Where an accredited audit firm is appointed, the approval shall apply to both the firm and its representative.

A renewal of the mandate shall also be subject to approval.

#### **Article 107**

The CBFA may at any time withdraw the authorization given, in accordance with Article 105, to an accredited statutory auditor, a substitute accredited statutory auditor, an accredited audit firm or a representative or substitute representative, detailing the reasons based on their status or the performance of their functions as an accredited auditor or an accredited audit firm as provided for in or pursuant to this Law.

If an accredited statutory auditor resigns, the CBFA and the institution for occupational retirement provision shall be informed in advance of the resignation and the reasons therefor.

The accreditation Regulation sets out the procedure to be followed.

In the absence of a substitute accredited statutory auditor or a substitute representative of an accredited audit firm, the institution for occupational retirement provision or the

accredited audit firm shall, in compliance with Article 105, provide a replacement for this person within two months.

### **Article 108**

Accredited statutory auditors shall collaborate in the task of supervision exercised by the CBFA, under their own personal and exclusive responsibility and in accordance with this section, with the rules of their profession and with the instructions of the CBFA. To this end, they shall:

- 1° ensure that an institution for occupational retirement provision has adopted adequate measures for their administrative and accounting organization and internal control systems, in view of complying with the laws, decrees and regulations governing the legal status of the institution for occupational retirement provision;
- 2° certify the technical provisions;
- 3° confirm to the CBFA that the periodic reports or any special reports drawn up at its request concerning the organization, activities and financial structure of the institution for occupational retirement provision, are complete, correct and drawn up according to the applicable rules;
- 4° report periodically to the CBFA or, at its request, submit special reports on the organization, activities and financial structure of the institution for occupational retirement provision;
- 5° take the initiative to report to the CBFA, within the context of their functions at the institution for occupational retirement provision or of an audit of the sponsoring undertaking over which the institution for occupational retirement provision has *de facto* or *de jure* control, as soon as they become aware of:
  - a) any decision, fact or development that has, or may have, a significant influence on the financial situation of the institution for occupational retirement provision, its administrative or accounting organization or its internal control systems;
  - b) any decision or fact that may constitute a violation of laws, decrees or regulations concerning the legal status of institutions for occupational retirement provision, of the Articles of Association or of this Law and its implementing decrees and regulations;
  - c) any other decision or fact that might lead to a refusal to certify the accounts or to reservations regarding their certification.

No civil, criminal or disciplinary action may be taken against nor any professional sanction imposed upon accredited statutory auditors who have submitted in good faith such information as referred to in the first paragraph.

Accredited statutory auditors shall forward to the management of the institution for occupational retirement provision all reports submitted to the CBFA in accordance with paragraph 1, 4°. These reports shall be subject to the obligation of professional secrecy referred to in Article 74 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services. The accredited auditors shall provide the CBFA with a copy of all communications addressed to the institution's management that are relevant to the CBFA's supervisory task.

### Section III – Appointment of actuaries

#### **Article 109**

Institutions for occupational retirement provision shall appoint one or more specialists in actuarial sciences, who are to provide them with advice on the financing plan, reinsurance and the amount of the technical provisions.

The King shall determine, on the proposal of the CBFA, the conditions that these actuaries must fulfil as regards both their appointment and the performance of their functions.

This Article shall not apply to institutions for occupational retirement provision whose pension schemes do not cover biometric risks or which provide neither a return on investments nor a given level of benefits.

### Chapter VIII – Corrective measures

#### Section I – General provisions

#### **Article 110**

The CBFA may, at any time, take any measure intended to safeguard the interests of members and beneficiaries. To this end, it may take one or more of the measures, among others, referred to in this Chapter.

#### **Article 111**

Where provisions of this Chapter are applied to an institution for occupational retirement provision, the CBFA may extend the request for information or documents as referred to in Article 97, as well as the on-site inspection referred to in Article 101:

- 1° to the sponsoring undertaking;
- 2° to any person, undertaking or institution established in Belgium with which the institution has entered into an agreement for management, reinsurance or into any other agreement that may involve the transfer of its management.

This extension, which must be made by a reasoned decision, may have no other purpose than to oversee the financial situation of the institution for occupational retirement provision being supervised, or to verify that the latter fulfils its commitments to the members and beneficiaries of the pension schemes.

#### **Article 112**

Where the competent authorities of another Member State in which an institution for occupational retirement provision governed by Belgian law engages in cross-border activity inform the CBFA that this institution for occupational retirement provision has violated the relevant requirements of the host Member State's social or labour legislation with regard to retirement pensions, the CBFA shall as quickly as possible take the most appropriate measures, namely from among those stipulated in this Chapter and in Chapter IX, so that the institution for occupational retirement provision in question puts an end to the aforesaid irregular situation. The CBFA shall inform the aforementioned authorities of the measures taken.

### Section II – Preventive measures

#### **Article 113**

The CBFA may require that the institution for occupational retirement provision submit to it a consolidation plan for approval within a time period that it shall determine and, if necessary, the CBFA may impose such a plan in order to prevent a potential inadequacy of the solvency margin, the technical provisions or the covering assets, or where the rights of members or beneficiaries are at risk on account of the deterioration of the institution's financial situation.

#### **Article 114**

The consolidation plan must be based on a study of the institution's assets and liabilities that attests to the fact that the plan will permit its financial situation to be restored.

The auditor referred to in Article 103 and, where applicable, the actuary referred to in Article 109 shall attest to the CBFA that the hypotheses on which the study mentioned in the previous paragraph is based are reasonably justified as regards the financial analysis and the actuarial technique respectively.

#### **Article 115**

Within the context of the consolidation plan, the CBFA may require a solvency margin that is higher than the one calculated in application of Articles 87 and 88.

The level of this additional requirement shall be determined on the basis of the consolidation plan referred to in Article 113.

The CBFA may lower the valuation of the elements making up the available solvency margin, namely if the market value of these elements has changed significantly since the end of the previous financial year.

The CBFA may decrease the influence of reinsurance on the required solvency margin where the content or quality of reinsurance contracts has undergone significant change since the previous financial year or where these contracts provide for little or no transfer of risks.

### Section III – Recovery plan

#### **Article 116**

The CBFA requires institutions for occupational retirement provision to submit a recovery plan for its approval within the time period it shall stipulate where:

- 1° an institution no longer fulfils the requirements regarding the establishment of a solvency margin as defined by or pursuant to Articles 87 and 88;
- 2° the institution no longer fulfils the requirements regarding the covering of technical provisions by covering assets or the rules of investment of the latter funds, in compliance with the provisions imposed by or pursuant to Articles 90 and 91;
- 3° the totality of the institution's realizable assets is insufficient to cover the totality of its commitments, including establishment of the solvency margin.

The King may clarify the conditions under which this Article shall apply.

#### **Article 117**

Where an institution for occupational retirement provision does not submit a recovery plan by the deadline referred to in Article 116, the CBFA shall impose such a plan.

In situations where, among others, the situation of an institution has seriously deteriorated or where the solvency margin no longer reaches the minimum level determined in application of Article 87, the CBFA may require that the institution implement the recovery plan by a deadline to be set by the CBFA.

#### **Article 118**

The recovery plan may entail a modification of the financing plan referred to in Article 86.

The CBFA may also prescribe that within a specified period no redemption, loan or advance may be made without its explicit permission, which shall be granted on a case by case basis.

Finally, the CBFA may require that the institution transfer all or part of its activities to another institution for occupational retirement provision or to an insurance company.

#### Section IV – Restriction and prohibition of the free disposal of assets

##### **Article 119**

Wherever the CBFA formally intervenes in accordance with this Chapter, it may restrict or prohibit the free disposal of the assets of the institution for occupational retirement provision.

In the event of a limitation or prohibition against the free disposal of assets, the CBFA may impose one or several of the measures provided for in Article 120.

##### **Article 120**

§ 1. The CBFA may, with respect to covering assets in the form of securities and immovables, require that:

- 1° an institution for occupational retirement provision submit a statement to the CBFA regarding the allocation of the securities and immovables;
- 2° that all withdrawals or reductions be subject to prior authorization by the CBFA.

§ 2. The CBFA may subject immovables to a statutory mortgage for the benefit of all members and beneficiaries of the pension schemes.

The CBFA requires registration under the conditions stipulated in Articles 82 to 87 of the Mortgage Law of 16 December 1851.

Registration may be done at any time and must be done in cases where Article 116 applies.

Registration may be cancelled or reduced with the consent of the CBFA under the conditions stipulated in Articles 92 to 95 of the aforementioned law of 16 December 1851.

The charges and fees for registration, cancellation or reduction incurred by the CBFA will be payable by the institution in question.

Moreover, the CBFA may, by registered letter addressed to the registrar of mortgages, oppose the cancellation or reduction of the mortgage granted by a third party for the benefit of the institution for occupational retirement provision.

§ 3. With regard to securities eligible for deposit, the CBFA may:

- 1° in the case of covering assets deposited in Belgium in a safe custody account, order the depositary institution to block the account;

2° in the case of other assets eligible for deposit, order the institution for occupational retirement provision to deposit them immediately into a special blocked account for each separate fund with the National Bank of Belgium or with a credit institution or investment firm, governed by the law of a Member State, which is authorized to offer depository services.

Moreover, the following rules shall apply:

- 1° depository institutions may not return the deposited securities except upon presentation of an authorization from the CBFA;
- 2° deposit receipts must mention the allocation of the assets deposited as well as the prohibition against disposing of them without the authorization of the CBFA;
- 3° depository institutions and institutions for occupational retirement provision shall be jointly liable for any damage resulting from a failure to comply with the obligations referred to under 1° and 2° of this paragraph;
- 4° the CBFA shall inform depository institutions of the obligations imposed upon them pursuant to this paragraph.

§ 4. As regards covering assets located on the territory of a Member State other than Belgium, the CBFA may request the competent authorities of that Member State to take the measures necessary to restrict or prohibit disposing of them freely. The CBFA shall specify which assets are subject to these measures.

§ 5. The King may establish rules concerning the measures to which the custody of securities not eligible for deposit may be subjected.

### **Article 121**

Movable covering assets that are the subject of the provisions of this section shall be exempt from seizure other than for the benefit of creditors who hold rights or privileges acquired in good faith through formalities completed before the aforesaid values were allocated.

## Section V – Bankruptcy or dissolution of a sponsoring undertaking

### **Article 122**

In the event of the bankruptcy or dissolution of a sponsoring undertaking, unless a third party takes over its pension obligations, the pension scheme of this sponsoring undertaking shall be terminated.

The vested reserves of members other than pensioners shall be entered in individual accounts whose value does not vary except in relation to the [net return on the assets] of the institution. These reserves shall, where applicable, be increased in accordance with the applicable social or labour legislation.

*Paragraph 2 amended by Article 97 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

The invested capital of pensions in payment shall be paid out to pensioners, calculated in accordance with the discounting rules provided for in the pension scheme.

If, at the time in question, the total reserves referred to in paragraph 2 and the capital referred to in paragraph 3 are not fully covered by the assets, then the reserves and capital shall be reduced proportionately. Paragraphs 2 and 3 shall apply to the resulting amounts.

The provisions of this Article shall not apply to sponsoring undertakings involved in the activities referred to in Article 55, paragraph 1, 2°.

## Section VI – Other measures

### **Article 123**

The CBFA shall set a deadline by which an institution for occupational retirement provision must remedy the situation, where it establishes that:

- 1° the institution is not operating in accordance with the provisions of this Law and its implementing decrees and regulations;
- 2° its management policy or its financial situation is likely to prevent it from honouring its commitments or does not offer sufficient guarantees of its solvency, liquidity or profitability;
- 3° its management structures, administrative or accounting organization or internal control systems present serious deficiencies;
- 4° the number of members of the institution for occupational retirement provision or of its operational bodies no longer meets the minimum required by law.

If the institution for occupational retirement provision has not remedied the situation by the deadline referred to in paragraph 1, the CBFA may take one or more of the following measures:

- 1° appoint a special inspector;
- 2° prohibit or limit certain transactions;
- 3° require the institution to entrust all or part of its activities to an external service provider;
- 4° transfer all or part of the institution's activities to another institution for occupational retirement provision or to an insurance company that accepts this transfer;

- 5° require that members of the operational bodies be replaced and, if this is not done within the time stipulated, to replace the operational bodies with one or several temporary managers;
- 6° require that certain activities, which the CBFA shall designate, be the object of a separate fund within the meaning of Article 80;
- 7° withdraw authorization.

#### **Article 124**

The special inspector's general or special authorization shall be required in writing for all acts and decisions by all decision-making bodies of the institution and by all persons with managerial responsibilities. The CBFA may, however, limit the activities for which this authorization is required.

The special inspector may submit to the institution's operational bodies for deliberation any proposal he deems useful. Remuneration for the services of the special inspector shall be set by the CBFA and borne by the institution for occupational retirement provision in question.

Members of operational bodies or persons with managerial responsibilities who take actions or decisions without having obtained the requisite authorization from the special inspector shall be jointly liable for any resulting damage suffered by the institution for occupational retirement provision, its members or its beneficiaries.

Once the CBFA has published in the Belgian Official Gazette the appointment of a special inspector and has specified the actions and decisions that shall be subject to his authorization, all actions or decisions taken without such authorization, if the latter was required, shall be deemed null unless the special inspector ratifies it. Under the same conditions, any decision of the General Meeting taken without having obtained the requisite authorization from the special inspector shall be deemed null, unless the special auditor ratifies it.

The CBFA may appoint a substitute inspector.

#### **Article 125**

Members of the operational bodies of the institution for occupational retirement provision who take actions or decisions in violation of the prohibition or the limitation referred to in Article 123, paragraph 2, 2° or of the outsourcing referred to in Article 123, paragraph 2, 3°, shall be jointly liable for any resulting damage suffered by the institution, its members or its beneficiaries.

Once the CBFA has published the prohibition or the limitation in the Belgian Official Gazette, all actions and decisions as referred to in paragraph 1 shall be null and void.

#### **Article 126**

Articles 34, 36, 37, 38 and 39, § 1, 4° of the aforementioned Law of 28 April 2003 shall not apply to the transfers referred to in Article 123, paragraph 2, 3°.

These transfers shall be enforceable against members, beneficiaries and other third parties by the publication in the Belgian Official Gazette of the CBFA's decision imposing the transfer.

#### **Article 127**

The appointment of a temporary manager or managers shall be published in the Belgian Official Gazette.

These temporary managers shall exercise, alone or in concert, as the case may be, the powers of the persons whom they replace.

Remuneration for the services of the temporary manager(s) shall be set by the CBFA and borne by the institution for occupational retirement provision.

The CBFA may at any time recall and replace the temporary manager(s), either on its own initiative or at the request of the institution for occupational retirement provision, where the latter can demonstrate that management by the person(s) in question no longer offers sufficient guarantees.

#### **Article 128**

The decisions of the CBFA referred to in Articles 123 to 127 shall take effect with respect to an institution for occupational retirement provision on the date when the institution is notified of them by registered letter and, with respect to third parties, on the date the decisions are published in accordance with the aforementioned Articles.

#### **Article 129**

The Court of First Instance shall, at the request of any interested party, issue the declarations of nullity provided for in Articles 124, paragraph 4 and 125, paragraph 2.

Any legal proceedings seeking a declaration of nullity shall be directed against the institution for occupational retirement provision. If there are serious grounds for doing so, the party seeking such a declaration may apply in summary proceedings for a temporary injunction to suspend the disputed actions or decisions. The injunction or declaration of nullity is enforceable against all parties. Where the suspended action or decision has been published, the injunction or declaration of nullity shall be published in extract in like manner.

Where the declaration of nullity is likely to have an adverse effect on the rights acquired in good faith by the members, beneficiaries or third parties in respect of the institution for occupational retirement provision, the court may declare the nullity to have no effect on these rights, provided the right of the petitioner to claim damages and interests where these are due.

Applications for a declaration of nullity may not be introduced after the end of a six-month period beginning from the date on which the disputed actions or decisions become enforceable against the applicant, or on which the latter becomes aware of them.

## **Chapter IX – Withdrawal of authorization**

### **Article 130**

[§ 1.] The CBFA may withdraw authorization where an institution for occupational retirement provision:

*§ 1 amended by Article 98, 2° of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

- 1° fails to make use of the authorization within a twelve-month period, or has ceased its activities during a period of over six months or no longer fulfils the conditions for authorization;
- 2° has seriously failed to fulfil the obligations imposed on it by this Law or its implementing decrees, in particular as regards establishing the technical provisions referred to in Articles 89 and 90 and covering them by adequate and sufficient covering assets;
- 3° has been unable to implement, within the period stipulated, the provisions called for by the consolidation plan referred to in Article 113 or by the recovery plan referred to in Article 116.

[Any decision to revoke the authorization shall be notified to the institution for occupational retirement provisions.]

*§ 1, second paragraph inserted by Article 98, 2°, of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

[...]

[...]

[...]

*Second, third and fourth paragraphs abrogated by Article 98, 1° of the Law of 6 May – Belgian Official Gazette, 19 May 2009*

[§ 2. The authorization expires as of right the event of the dissolution of an institution for occupational retirement provision.]

*§ 2 inserted by Article 98, 3° the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

[§ 3. Without prejudice to Article 59, the CBFA may, if it deems that the protection of the rights of members and beneficiaries demands it, publish in any way it sees fit and at the cost of the institution for occupational retirement provision in question, a notice of the withdrawal or of the expiry as of right of its authorization. Such a notice shall mention the date when the withdrawal or expiry by law comes into effect.]

*§ 3 inserted by Article 98, 4°, of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

### **Article 131**

The withdrawal of authorization entails the winding-up of the institution for occupational retirement provision.

The CBFA may impose any provision necessary for safeguarding the rights of members and beneficiaries. In particular, it may require that the rights and obligations arising from the pension schemes under management be transferred, as well as the covering assets allocated to guaranteeing these obligations.

An institution whose authorization has been withdrawn remains subject to the provisions of the present law and its implementing regulations, and to the control of the CBFA, until all its commitments have been met.

### **Article 132**

The CBFA may inform the competent authorities of a State in which an institution for occupational retirement provision carries out activities that the institution's authorization has been withdrawn.

The CBFA may impose, where appropriate in collaboration with the aforementioned competent authorities, any measure likely to safeguard the rights of members and beneficiaries.

## **Chapter X – Transfer**

### **Article 133**

§ 1. An institution for occupational retirement provision may transfer all or part of its rights and obligations arising from the activity referred to in Article 74, § 1, 1° to another institution for occupational retirement provision or to an insurance company, provided this is done in accordance with the rules laid down in Articles 34 to 38 of the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits.

§ 2. An institution for occupational retirement provision may transfer all or part of the rights and obligations arising from the activities referred to in Article 74, § 1, 2°, to another institution for occupational retirement provision or to an insurance company provided it has the prior consent of the CBFA.

This transfer is enforceable against members, beneficiaries and other third parties provided the CBFA's consent has been published in the Belgian Official Gazette.

§ 3. An institution for occupational retirement provision may transfer all or part of its rights and obligations arising from the activities it carries out abroad, either to another institution for occupational retirement provision or to an authorised life insurance company, provided it has the prior consent of the CBFA, and unless there be any provisions to the contrary in the legislation that applies to these pension schemes.

## **Chapter XI – Public administration and public bodies**

### **Section I – General provisions**

#### **Article 134**

For the purposes of this Chapter, the following definitions shall apply:

- 1° *public administration*: a public entity or a legal person under public law that is not subject to the Law of 17 July 1975 on company accounting;
- 2° *public body*: a legal person under public law that is subject to the Law of 17 July 1975 on company accounting.

#### **Article 135**

For the application of this Chapter, pension schemes shall be understood to mean:

- 1° pension schemes that provide the benefits referred to in Article 74;
- 2° pension schemes that provide benefits in the area of statutory pensions.

The pension schemes referred to in paragraph 1, 2° may not be managed by an institution for occupational retirement provision that does not hold authorization in Belgium. The assets and liabilities that correspond to this activity shall be ring-fenced and shall be managed and organised separately from the other activities of the institution for occupational retirement provision, without any possibility of transfer.

### **Section II – Public administrations**

#### **Article 136**

§ 1. The provisions of this Law shall not apply to pension schemes managed by public administrations or by legal persons they may establish for this purpose, other than institutions for occupational retirement provision.

Public administrations and the institutions established by them may not engage in any cross-border activity.

The institutions and internal or external departments of the administrations referred to in this paragraph may not use the names “institution for occupational retirement provision”, “provident institution”, “pension fund” or “caisse de pension/pensioenkas”, on pain of the sanctions referred to in Article 151, paragraph 2.

§ 2. Public administrations shall nonetheless be permitted to entrust the management of their pension schemes to an institution for occupational retirement provision that, if necessary, they may establish for this purpose. Such institutions shall be subject to the provisions of this Law.

### Section III – Public bodies

#### **Article 137**

The provisions of this Law shall apply to public bodies and to institutions for occupational retirement provision to which the former entrust the management of their pension schemes.

Public bodies shall be permitted to establish an institution for occupational retirement provision in order to comply with the provisions of this Law.

#### **Article 138**

By way of derogation from Article 137, the provisions of this Law shall not apply to pension schemes established by public bodies for the purpose of statutory pensions, insofar as the State, a region, a community, a province or a municipality bears the costs of the benefits granted or explicitly guarantees the fulfilment of the commitments of these pension schemes.

Public bodies shall inform the members and beneficiaries of the application of the previous paragraph.

The institutions and internal or external services of the public bodies referred to in this Article may not use the names “institution for occupational retirement provision”, “pension fund” or “caisse de pension/pensioenkas”, on pain of the sanctions provided for in Article 151, paragraph 2.

These bodies and institutions may not engage in any cross-border activity.

#### **Article 139**

This Article shall apply to public bodies that:

- as regards statutory pensions, offers its own pension scheme to all or some of their personnel;

- have not taken out a group insurance contract with an insurance company as referred to in Article 2, § 1 of the Law of 9 July 1975 on the supervision of insurance companies;
- have not entrusted the management of their pension scheme to an institution for occupational retirement provision authorized in application of Title II;
- have not received an exemption as referred to in Article 138.

The public bodies referred to in paragraph 1 which have their own statutory pension schemes for their staff shall become members automatically and irrevocably, depending on their category, either of the new members' scheme of the national Office referred to in Article 1*bis*, d) of the Law of 6 August 1993 on the pensions of appointed staff members of local authorities, or to the pension scheme established by the Law of 28 April 1958 on the pensions of staff members of certain public service companies and their dependents.

This Article shall not apply to public bodies that depend on a municipality, a region or a community commission, nor to public bodies that, in respect of some of their personnel, belong either to the common pension scheme of the local authorities referred to in the aforementioned Article 1*bis*, c) of the Law of 6 August 1993, or to the new members' scheme of the national Office referred to in Article 1*bis*, d) of that Law.

### ***Title III – Institutions for occupational retirement provision of a Member State other than Belgium***

#### **Chapter I – General provisions**

##### **Article 140**

This Title shall apply to institutions for occupational retirement provision whose registered office or, in the absence of a registered office, its administrative office, is established in another Member State and which manages pension schemes subject to Belgian law in the area of social and labour legislation relevant to occupational pension schemes.

##### **Article 141**

The institutions for occupational retirement provision referred to in this Title may carry out in Belgium only the activities referred to in Article 74 and the activities arising therefrom.

These activities must comply with the provisions of this Title, as well as with the provisions of Belgian social and labour legislation relevant to the occupational pension schemes which they manage, including the provisions arising from collective labour agreements.

## Chapter II – Admission

### Article 142

An institution for occupational retirement provision of a Member State other than Belgium may engage in cross-border activity in Belgium on condition that the competent authorities of its home Member State have previously submitted to the CBFA a dossier containing at least the following information:

- 1° the name of the sponsoring undertaking;
- 2° the main characteristics of the pension scheme to be managed for the sponsoring undertaking.

### Article 143

Within two months of receiving the information referred to in Article 142, the CBFA shall inform the competent authorities of the home Member State of the provisions in Belgian law that apply to the management of the pension scheme on behalf of the sponsoring undertaking, with regard to:

- 1° social and labour legislation;
- 2° information requirements;
- 3° where applicable, rules governing the investment of the institution's assets which relate to the activities carried out in Belgium.

As soon as the competent authorities in its home Member State have submitted to the CBFA the information referred to in the previous paragraph or, if they have failed to do so, by the expiry of the deadline provided for in paragraph 1, the institution for occupational retirement provision may begin its activities in Belgium.

[The CBFA shall draw up a list of institutions for occupational retirement provision in Member States other than Belgium that engage in cross-border activity in Belgium. This list and any subsequent changes made to it shall be published on the CBFA web site.]

*Paragraph 3 inserted by Article 99 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

### Article 144

The procedure referred to in this Chapter shall apply where the institution for occupational retirement provision makes changes to the information referred to in Article 142.

### Article 145

The CBFA shall notify the competent authorities of the home Member State of any significant change to the provisions referred to in Article 143, first paragraph.

### **Chapter III – Limitations on the investment of assets**

#### **Article 146**

Where these provisions apply to institutions for occupational retirement provision governed by Belgian law, the King may restrict the investment of assets of the institution for occupational retirement provision which relate to the activities carried out in Belgium as follows:

- 1° no more than 5% may be in shares or other securities assimilated to shares, bonds, debt securities or other money market or capital market instruments issued by the same undertaking;
- 2° no more than 10% may be in shares or other securities assimilated to shares, bonds, debt securities or other money market or capital market instruments issued by undertakings belonging to the same group.

In view of ensuring compliance with this obligation, the CBFA requests that the competent authorities of the home Member State take a decision regarding the ring-fencing of the assets and liabilities of the cross-border activity in Belgium carried out by institutions for occupational retirement provision.

### **Chapter IV – Corrective measures**

#### **Article 147**

If the CBFA observes any irregularities in the application of the rules referred to in Article 143, it shall immediately inform the competent authorities of the home Member State in order that the latter may take the necessary measures, in consultation with the CBFA, to ensure that the institution for occupational retirement provision in question puts an end to the irregularities observed.

#### **Article 148**

If, in spite of measures taken by the competent authorities of the home Member State, or in the event that no appropriate measures have been taken by the home Member State, the institution for occupational retirement provision continues to violate the applicable provisions of Belgian social or labour legislation, the CBFA shall, after having informed the competent authorities of the home Member State, warn the institution to remedy the situation that has been observed, by a deadline to be set by the CBFA.

If, by the expiry of this deadline, the situation has not been remedied, the CBFA may, after having informed the competent authorities of the home Member State and in order to prevent or sanction further irregularities, take the measures provided for in

Title IV of this Law, as well as those provided for in Articles 58<sup>quater</sup> and 62 of the aforementioned Programme Law of 24 December 2002 or in Articles 49<sup>quater</sup> and 54 of the aforementioned Law of 28 April 2003.

Where absolutely necessary, the CBFA may prohibit the institution for occupational retirement provision from providing its services to the sponsoring undertaking in Belgium.

The decision regarding prohibition referred to in the previous paragraph must be brought to the attention of the institution for occupational retirement provision in question by registered letter.

Without prejudice to Articles 74 to 77 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, the CBFA may also apply the provisions of this Article at the request of any Belgian authority entrusted with supervising the legal and regulatory provisions of Belgian social or labour law that apply to institutions for occupational retirement provision.

#### **[Article 148/1**

§ 1. Where the competent authorities of the home Member State have prohibited the free disposal of the assets of an institution for occupational retirement provision located on their territory, these authorities may ask that the prohibition have effect in respect of the assets held with a depositary or custodian established in Belgium.

§ 2. The home Member State should direct its request to the CBFA and indicate the assets to which these measures apply.

The CBFA shall notify the depositaries or custodians of such assets of the prohibition imposed by the competent authorities of the home Member States. The prohibition shall come into effect upon receipt of the notification.

§ 3. If the assets in question include real property, the latter is subject to a legal mortgage on behalf of all members and beneficiaries of the pension schemes managed by the institution for occupational retirement provision.

The provisions of Article 120, § 2, paragraphs 2, 4 and 5 shall apply.

If the assets in question include moveable property that can be held on deposit, the latter shall be subject to the provisions of Article 120, § 3.

The King may determine the rules governing the safeguards to which securities that cannot be held on deposit may be subjected.]

*Article inserted by Article 100 of the Law of 6 May 2009 – Belgian Official Gazette, 19 May 2009*

#### ***Title IV – Injunctions and sanctions***

## Chapter I – Administrative injunctions and sanctions

### Article 149

§ 1. Without prejudice to the other measures provided for in this Law, the CBFA may set a deadline by which an institution for occupational retirement provision must:

- 1° comply with the provisions determined by this Law and its implementing decrees;
- 2° make the required changes to its management structure, its administrative and accounting organization or its internal control.

The injunction referred to in paragraph 1, 2° shall not apply to the institutions for occupational retirement provision referred to in Title III of this Law.

§ 2 If an institution for occupational retirement provision does not abide by the injunctions referred to in § 1, the CBFA may, apart from the other measures provided for by the Law and its regulations, and provided it gives one month's notice, communicate these injunctions:

- 1° to the directors, managers, representatives and shareholders of the sponsoring undertaking;
- 2° to the supervisory committee referred to in Article 41 of the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits;
- 3° to the works council or, in its absence, the committee for prevention and protection at work or, in its absence, the trade union delegation of the sponsoring undertaking;
- 4° to the representatives of the members and beneficiaries of the pension scheme;
- 5° to the members and beneficiaries of the pension scheme.

The CBFA may, under the circumstances and conditions referred to in paragraph 1, publish these injunctions in the Belgian Official Gazette or in the press.

Where applicable, the CBFA may, under the circumstances and conditions referred to in Article 1, communicate the recovery plan referred to in Article 116 to the members and beneficiaries concerned by the pension scheme that is subject to this plan, as well as to their representatives.

The communication and publication costs shall be borne by the institution.

### Article 150

If an institution for occupational retirement provision remains in default after the expiry of the deadline specified in Article 149, the CBFA may impose a fine not exceeding EUR 1 875 000 per offence or not exceeding EUR 2 500 per day's delay.

Without prejudice to other provisions laid down by this Law or of other laws or regulations, the CBFA may, where it establishes an infringement of the provisions of this Law or of its implementing measures, impose an administrative fine that shall not be less than EUR 2 500 and not more than EUR 1 875 000 for the same offence.

The procedure for imposing the sanctions referred to in this Article is governed by Articles 70 to 73 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

The fines imposed in application of Article 36, §§ 1 or 2 shall be recovered in favour of the Treasury by the Land Registry, Public Records and Crown Lands Office.

## **Chapter II – Penal sanctions**

### **Article 151**

Without prejudice to the provisions of Title V of this Law, the directors, senior managers and representatives of an institution or undertaking that manages or seeks to manage a pension scheme outside an institution for occupational retirement provision that is authorized pursuant to Title II or admitted pursuant to Title III shall be subject to a prison sentence of between one month and five years and to a fine of between EUR 25 and 2 500, or to only one of these two penalties.

The same penalties shall apply to anyone who uses the name *institution for occupational retirement provision* without observing the conditions stipulated in Article 6.

### **Article 152**

Without prejudice to the provisions of Title V of this Law, the agents, brokers and intermediaries who were involved in entrusting the management of a pension scheme to an institution not authorised under Title II or not admitted under Title III of this Law shall be subject to a prison sentence of between one month and three years and to a fine of between EUR 25 and 2 500, or to only one of these two penalties.

### **Article 153**

Directors, senior managers and representatives who knowingly and voluntarily made inaccurate statements to the CBFA, to members of its staff or to those authorized to act on its behalf, or who refused to provide the information requested in application of this Law and its implementing decrees and regulations shall be subject to a prison sentence of between one month and three years and to a fine of between EUR 25 and 2 500, or to only one of these two penalties.

The same penalties shall apply to the directors, auditors, senior managers and representatives of undertakings and institutions which have not complied with the obligations imposed upon them by this Law or by its implementing decrees and regulations.

#### **Article 154**

All the provisions of Book I of the Penal Code, including Chapter VII and Article 85, shall apply to the infringements specified in this Law.

#### **Article 155**

All investigations conducted against the directors, senior managers, accredited auditors or appointed actuaries of institutions for occupational retirement provision arising from an infringement of this Law or of one of the legal texts referred to in Article 25, and all investigations conducted against any other natural or legal person arising from an infringement of this Law, shall be reported to the CBFA by the judicial or administrative authority hearing the case.

Any criminal action on grounds of the infringements referred to in the first paragraph shall be reported to the CBFA by the Public Prosecutor's Office.

#### **Article 156**

The CBFA is authorized to intervene at any stage of the proceedings before the criminal court to which an infringement punishable by this Law has been referred, without the CBFA being required to demonstrate the existence of any prejudice.

[...]

### **Chapter II – Implementing measures**

#### **Article 227**

The King may, upon the advice of the Minister responsible for Economic Affairs and by means of a decree enacted after deliberation in the Council of Ministers, make all or part of the provisions of Titles II to V of this Law, with the exception of Articles 87 and 88, and of its implementing decrees, applicable to the activities relating to occupational retirement pensions offered by Belgian insurance companies and by branches of insurance companies whose registered office is situated outside the European Economic Area, as referred to in Article 2, § 1 of the Law of 9 July 1975 on the supervision of insurance companies.

The assets and liabilities that correspond to these activities shall be ring-fenced and shall be managed and organised separately from the other activities of the insurance company, without any possibility of transfer.

The first paragraph of the Royal Decree determines which articles of the Law of 9 July 1975 shall not apply to the aforementioned activities.

## **Article 228**

§ 1. Upon the advice of the Minister responsible for Economic Affairs, the King shall issue the decrees necessary to implement Titles I to V, as well as Articles 227 and 231.

The King shall, in particular, determine:

- 1° the rules that institutions for occupational retirement provision shall follow with respect to profit-sharing for the benefit of members;
- 2° the obligations of institutions for occupational retirement provision regarding the maintenance and communication of their books, accounting documents and other documents, and regarding the information to be included in the prospectuses, circulars, posters and other written material intended for the public.

He may also provide for procedures equivalent to the registered letter for the notifications that must be made in accordance with the provisions of Titles 1 to V.

§ 2. The King may, in drawing up the decrees referred to in this Article, establish different rules depending on the nature and the risk of the activities of the institutions for occupational retirement provision concerned.

§ 3. The decrees referred to in this Article shall be enacted on prior consultation with the CBFA and after the latter has requested the advice of the Insurance Commission established by Article 41 of the Law of 9 July 1975 on the supervision of insurance companies.

The Insurance Commission may, with respect to the matters referred to in this Article, issue its opinion on its own initiative. It shall likewise provide an opinion on any question submitted to it by the Minister responsible for the prudential control of institutions for occupational retirement provision.

The Minister responsible for Economic Affairs may set deadlines by which the CBFA and the Insurance Commission must issue their opinions. Similarly, the CBFA may set a deadline by which the Insurance Commission must issue its opinion. If one of these deadlines is not respected, the opinion in question shall no longer be required.

## **Article 229**

The King shall, on the proposal of the Minister of Justice, issue the implementing decrees for Articles 49 and 50.

## **Article 230**

The King may, on the joint proposal of the Ministers responsible for Economic Affairs, for Pensions and for the Middle Classes, consolidate the provisions:

- 1° of this Law;
- 2° of Title II, Chapter I, Section IV of the Programme Law (I) of 24 December 2002;
- 3° of the Law of 28 April 2003 on supplementary pensions and on tax regulations applicable to such pensions and to certain additional social security benefits;

as well as the provisions that have explicitly or implicitly amended them up to the time of the consolidation.

To this end, He may, more particularly:

- 1° amend the order, numbering and, in general, the presentation of the provisions to be consolidated;
- 2° amend the references contained in the provisions to be consolidated, with a view to harmonizing them with the new numbering;
- 3° amend the wording of the provisions to be consolidated, with a view to their ensuring they agree with each other and to achieving a uniform terminology, without thereby affecting the principles they embody.

Consolidations shall bear the title determined by the King.

#### **Article 231**

The King may, on the proposal of the minister responsible for Economic Affairs and by a decree enacted after deliberation in the Council of Ministers, adapt the provisions of Titles I to V as well as Article 227 of this Law to the obligations pursuant to international agreements and treaties to which Belgium is a party.

#### **Article 232**

The King may, in laws and decrees other than those referred to in the other provisions of this Chapter, replace the words “Article 2, § 3, 4° of the Law of 9 July 1975 on the supervision of insurance companies” and the words “Article 2, § 3, 6° of the Law of 9 July 1975 on the supervision of insurance companies” by, respectively, the words “Article 2, 1° of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision”.

#### **Article 233**

The CBFA shall inform the European Commission of the major difficulties resulting from the implementation of 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.

### Chapter III – Entry into force and final provisions

#### Article 234

The King shall determine the date of entry into force of each of the provisions of this Law, with the exception of:

- 1° Articles 189, 199, 211, 2°, 213, 216, 2°, and 225, which take effect on 1 January 2004;
  - 2° Articles 1, 2, 6, 151, first paragraph, 181, 188, 191, 192, 200, 201, 1°, 203 to 206, 212, 214, 215, 223, 226 and 227 to 234, which enter into force on the date when this Law is published in the Belgian Official Gazette (*Belgisch Staatsblad/Moniteur belge*).
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