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## **Banking and Payments Authority of Kosovo**

Pursuant to the provisions of UNMIK Regulation No. 2001/35 date of 22 December 2001, On Pensions in Kosovo,

For the purpose of execution of Section 22 of the UNMIK Regulation No.2001/35,

Governing Board of the Banking and Payment Authority of Kosovo, at the meeting held on July 25, 2002 adopts the following:

### **Rule 2 on Amending Rule on the Licensing of Supplementary Individual Pensions dated May 2, 2002**

#### **Section 1 Scope and Purpose of this Rule**

##### **1.1 Scope of Rule**

This Rule applies to all applicants seeking a Supplementary Individual Pensions (in this Rule, referred as “Pension Provider”) license from the Banking and Payments Authority of Kosovo (the “BPK”). Where applicable, this Rule likewise applies to licensees as herein defined.

A key requirement for the establishment of sound and sustainable pensions program is the prudential administration and management of pension assets. In this regard, shareholders, directors, managers and employees of entities involved in the administration and operation of pension schemes, investment and management of pension assets and who are charged with fiduciary duties therefore must all be “fit and proper” to exercise their functions and discharge their responsibilities. In the case of Pension Providers the determination of “fit and proper” is measured by standards set by the BPK for banks, insurance companies and financial institutions.

Accordingly, in the event that the BPK discovers or subsequently discovers that any data or information provided in connection with the application for a license under this Rule is deliberately falsified, the licensee, its directors, officers, managers and employees, where applicable, will be subject to sanctions and other remedies as may be available to the BPK. A pending application is

immediately rejected in this case. Where a license was granted on the basis of falsified information, the license may be immediately withdrawn.

This Rule defines the conditions and procedures for granting a license for a Pension Provider, the grounds for denying a license, as well as the reasons for and procedures in the suspension and revocation of a license.

## **1.2 Purpose of this Rule**

To establish requirements, conditions and procedures for the licensing of Pension Providers in accordance with Section 13 of the UNMIK Regulation No. 2001/35 (the "Pensions Regulation").

## **Section 2 General Provisions**

### **2.1 Definition of Terms**

All terms used in this Rule are as defined and stated in the Pensions Regulation or as further defined in this Rule.

"Licensee" is the entity licensed by the BPK under this Rule including, where applicable, its shareholders, directors, officers, managers and employees.

"Main shareholder" means a shareholder or beneficial owner of 10% or more equity shares of the licensee.

### **2.2 Conditions of the License**

- a. Supplementary Individual Pensions can only be provided by insurance companies, banks or financial institutions that are duly licensed as such by the BPK and established and acting in accordance with regulations applicable to their insurance, banking or financial institution licenses and in accordance with the Pensions Regulations and these Rules.
- b. Provision for Supplementary Individual Pensions can only be undertaken with a license issued in accordance with the present Rule.
- c. There can be no advertising or marketing of pension products to potential participants by insurance companies, banks, or financial institutions unless the Pension Provider has an enforced license issued under this Rule.

- d. A license issued under this Rule is for an indefinite term, subject to the continuing validity of the Pension Provider's license as an insurance company, bank or financial institution.
- e. The application/license fee is not refundable if the license is refused. An application fee shall be paid again for each subsequent licensing application in the event that issuance of a license of a prior application was previously refused.
- f. Section 3, sub-section 3.1, paragraph c, of this Rule prescribes the amount of the license fee which is based on the number of participants. The incremental fee shall be paid to the BPK as the number of participants increase. However, there shall be no refund in the event that such number decreases. The maximum lifetime license fee is 2,500 Euro.
- g. A Pension Provider may serve as the Custodian or Asset Manager of Supplementary Individual Pensions assets it offers if it meets the requirements set forth for Custodians or Asset Managers in the Pensions Regulation and these Rules and provided that such activity is included as authorized business activity in its license as insurance company, bank or financial institution. However, without prior written approval of the BPK, a Custodian may not be the Asset Manager of the pension assets under its custody nor may an Asset Manager be the Custodian of pension assets under its management.
- h. Only insurance companies, as Pension Provider, can provide Defined Benefit Pensions.

### **Section 3**

#### **Obtaining Approval for a Pension Provider License**

##### **3.1 Requirements and for all Applicants**

- a. **Other information.** BPK reserves the right at all times to demand additional or supplementary information other than those requested herein.
- b. **Language.** All applications must be submitted in Albanian/Serbian or English.
- c. **Application/license fee.** An applicant for a Pension Provider license must submit a non-refundable fee according to the following schedule:

<u>License Fee</u> In Euro	<u>Number of Participants</u>
750	1 to less than 200
1,500	201 to less than 500
2,000	501 to less than 1,000
2,500	more than 1,000

d. **Documents providing the following data and information:**

1. A formal completed application in the format provided by the BPK.
2. Attested copy of the founding document (charter or articles of incorporation or equivalent documents).
3. Attested copy of the Pension Rules.
4. Copy of its license and registration as an insurance company, bank or financial institution.
5. A description of the categories of pensions it will offer and market and a copy of individual pension contract(s) or equivalent document(s) evidencing the individual's participation.
6. Full, detailed Curriculum Vitae (CVs) of directors of the Applicant.
7. A statement or statements signed by each director of the Applicant acknowledging their responsibilities as fiduciaries and to fulfill the requirements set out in the Pension Regulations and these Rules.
8. Latest audited financial statement of the Applicant certified by an independent auditor.
9. Balance Sheet and Statement of Operations, as of the end of the month immediately preceding the date of the application and certified correct by the chief financial officer of the Applicant.
10. Conclusions of an independent actuary confirming the existence of a valuation and certifying that the required contributions are adequate to pay pensions, in the case of a Defined Benefit Pension program.

11. A document providing information about affiliated entities of the Applicant, its main shareholders, directors, and where applicable, officers and managers.
12. A copy of the proposed asset management and/or custodial agreements if the Applicant is not licensed as Asset Manager or Custodian of pension assets or if it has entered or proposes to enter into such contracts with other entities.
13. Copies of sample communications, advertisements, brochures, and other marketing and servicing materials used or intended to be used with prospective participants, including the application form for participation.
14. A copy of the receipt of the payment of the application/license fee.
15. The name and contact details of the audit firm for the Applicant.
16. List of banks and their addresses with which the Applicant has banking arrangements and a brief description of such arrangements.

### **3.2 Processing of the Application**

- a. **Submission.** The application and documents submitted in support of the application are deemed “submitted” at the time they are received by the BPK.
- b. **Filing.** The application is considered and registered as “filed” when all the requirements prescribed under Sub-sections 3.1 of this Section have been “submitted”, complete in form and substance, to the BPK.
- c. **Actions by the BPK.** The BPK reviews the application during a period of 45 days from the time it is “filed”. Within 90 days from the time the application is “filed”, BPK shall issue the license or refuse to issue a license. Refusal to issue a license is based solely on conditions indicated in this Rule.

## **Section 4 Refusal to Issue a License**

**4.1 Grounds for Refusal of License.** The BPK may refuse to issue a license on any of the following grounds:

- a. The existence of any of the grounds described under Section 22.4 of the Pensions Regulation.
- b. The application is not in compliance with the requirements of the Pensions Regulation or applicable BPK Rules.
- c. It appears likely that the operation and organization of the applicant would not comply with the Pensions Regulation or applicable BPK Rules.
- d. Any of the documents submitted by the applicant contains provisions or omits to contain provisions that threaten the interest of the Participants or Beneficiaries, or of failing to adequately protect their interests.
- e. It appears likely that the activities of the Applicant would not be conducted or concluded in accordance with sound and prudent practices
- f. Non-conformity of the documents submitted with the requirements of applicable regulations and rules of the BPK.
- g. Insufficiency or unreliability of the information contained in the application or in the submitted documents.

**4.2 Notification.** If an application for a license is refused, the BPK shall notify the board of directors of the Applicant in writing specifying the grounds for the refusal.

**4.3 Appeal.** The refusal to issue a license may be appealed by the Applicant in a court of competent jurisdiction in accordance with applicable laws and regulations.

## **Section 5**

### **Reasons for and Procedures in the Suspension of a License**

**5.1 Grounds for Suspension of License.** Consistent with the provisions of Section 24 of the Pensions Regulation, The BPK may suspend a license on the following grounds:

- a. Violation of the requirements of the Pensions Regulation and of other applicable regulations and rules established by the BPK for Pension Providers.
- b. Failure to comply with its Pension Rules.
- c. Failure to conclude asset management and/or custodial agreements if the Applicant is not authorized to carry out the business of asset management or custodianship.
- d. Failure to comply with the instructions of the BPK with respect to the elimination of any breach or violation of requirements within the time prescribed by the BPK, including failure to meet the time limitations for the rectification or correction of any such breach or violation.
- e. Evidence of deliberately untrue or deceptive representations in the documents submitted to the BPK in support of the Application.
- f. Failure to comply within the time limits for providing required reports to the BPK.
- g. Non-compliance with the requests of the BPK for information when it is reviewing the activities of the licensee.
- h. The suspension of the licensee's license as an insurance company, bank or financial institution.

**5.2 Notification.** In the event that BPK receives information about the activities of the licensee indicating grounds for the suspension of a license, the BPK shall serve appropriate notification, containing the following:

- a. Description of the violation constituting the grounds for the suspension of the license.
- b. Necessary means to rectify or correct the breach or violation.
- c. Indication of time periods, within which the breach or violation must be rectified or corrected and the appropriate documentation that must be provided to the BPK concerning the rectification or correction.
- d. List of activities that are prohibited during the suspension and until the license is restored in good standing.

- e. Within two business days after the BPK reaches a decision concerning the suspension of a license, it shall inform the licensee of this decision in writing with notice served to the Custodian and Asset Manager, if applicable.
- 5.3 Appeal.** The licensee, in accordance with applicable laws and regulations, may appeal the suspension in a court of competent jurisdiction.
- 5.4 Restoration of Suspended License.** The BPK shall restore a suspended license after the licensee transmits to it an accounting of activities that rectified the breach and/or removed the violation and only when the BPK is satisfied, after a corresponding investigation, that the information provided in said accounting is verified correct and the breach or violation no longer exist.

## **Section 6**

### **Reasons for and Procedures in the Revocation of a License**

- 6.1 Grounds for Revocation of License.** The BPK may revoke a license on any of the following grounds:
- a. Repeated or gross violation by the licensee, its Asset Manager(s) or Custodian of the requirements of applicable regulations and rules.
  - b. Repeated violations of the time limits, prescribed by the BPK for the rectification or correction of breaches or violations in the activities of the licensee, which were the basis for the suspension of a license.
  - c. Repeated violations of the time limits established by the BPK for reporting on the activities of the licensee.
  - d. Failure by the licensee for the course of one year to perform its undertaken function of providing pensions.
  - e. Liquidation or termination of the licensee.
  - f. Recognition of the bankruptcy of the licensee.
  - g. For other reasons set forth in applicable rules or directives issued by the BPK consistent with the Pensions Regulations or applicable laws.
- 6.2 Notification.** The BPK, upon reaching its decision, shall immediately notify the licensee in writing that its license is revoked and cancelled. The



notification shall indicate the grounds for the revocation and a prohibition to carry out any activity for which the license was granted. The notification shall also be served to the Custodian and the Asset Manager. The revocation takes effect according to the time frame and manner prescribed by Section 24 of the Pensions Regulation.

- 6.3 Transfer of Records and Documents.** In the event that its license is revoked, the Pension Provider is obligated to transmit all records and documents pertaining to the pension assets within the time frame and following procedures set forth in its Pension Rules unless the BPK, in the interest of the participants and beneficiaries, orders an earlier time or a different manner to effect such transmittal.
- 6.4 Appeal.** The Pension Provider, in accordance with applicable laws and regulations, may appeal the revocation in a court of competent jurisdiction.

## **Section 7 Entry into Force**

This Rule shall enter into force on July 25, 2002.

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Managing Director