

# **CROATIA**

## **ACT ON CROATIAN FINANCIAL SERVICES SUPERVISORY AGENCY**

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# ACT ON CROATIAN FINANCIAL SERVICES SUPERVISORY AGENCY

## Chapter I

### General Provisions

#### Article 1

This Act regulates:

- the legal position of the Croatian Agency for Supervision of Financial Services (hereinafter: “the Agency”)
- its internal structure and organisation
- conditions for the appointment, period of office and discharge of the President and members of the Board of the Agency
- decision making
- the duty for the preservation of confidentiality and liability,
- conditions for the appointment, period of office and the functions of the Council of the Agency
- the objectives, scope of activities and competence of the Agency and
- its financing and reporting.

#### Article 2

The terms in this Act have the following meanings:

- 1) **the Agency** means the Croatian Agency for Supervision of Financial Services,
- 2) **the supervised entities** all the legal and natural entities that deal with the provision of financial services, financial market advising, sales, brokerage activities or asset management for users of financial services,
- 3) **the supervisory body** the Croatian Agency for Supervision of Financial Services the **scope of activities** and competence of which includes supervision of the financial market, supervised entities and the financial services they provide,
- 4) **the Council** is the advisory body of the Agency,
- 5) **financial services** all the services provided by the supervised entities
- 6) **the financial market** established places or computer networks meant for trading financial instruments,
- 7) the **Croatian Securities Exchange Commission** is the legal entity that concerns itself with matters of supervision of stock exchanges and regulated public markets operations, authorised companies and issuers of securities, investment management companies and privatisation investment funds, investment and privatisation investment funds, the Croatian Defenders of the Homeland War and Members of their Families Fund, brokerage companies, brokers and investment advisors, institutional investors and the Central Depository Agency,
- 8) **Agency for Supervision of Pension Funds and Insurance** is the legal entity that concerns itself with supervision of the operation so the pensions companies, the pensions funds, the pensions insurance companies and the Central Insured Persons Register,
- 9) the **Directorate for Supervision of Insurance Companies** is the legal entity that carries out supervision of the operations of insurance companies, insurance representatives and insurance agents.

## CHAPTER II

### THE CROATIAN AGENCY FOR SUPERVISION OF FINANCIAL SERVICES

## Legal position

### Article 3

- (1) The Agency shall be an independent legal person with public authorities within its scope of activities and competence prescribed by this and other acts, and is responsible to the Croatian Parliament.
- (2) The headquarters of the Agency is in Zagreb.
- (3) The internal structure and operations of the Agency are regulated by the Statutes, which is the fundamental constitutive act of the Agency. The Statutes shall be adopted by the Agency and confirmed by the Croatian Parliament.
- (4) The by-laws laying down the internal organisational structure, the conditions for employment and the work of employees in accordance with the Labour Act, shall be adopted by the Agency.

### The internal structure and organisation of the Agency

### Article 4

- (1) The Agency shall have a Board consisting of five members, one of whom is the President.
- (2) The President and members of the Board shall be appointed and discharged by the Croatian Parliament at the recommendation of the Government of the Republic of Croatia.
- (3) The President of the Board of the Agency shall represent the Agency and manage its activities.
- (4) The President of the Board of the Agency shall appoint a deputy-from among the other members.

### Conditions for appointment, duration of office and discharge of the President and members of the Board of the Agency

### Article 5

- (1) To be appointed the President or a member of the Board of the Agency, a person must be a citizen of the Republic of Croatia, have a degree-level education, appropriate professional knowledge and work experience in the area of finance, accountancy, business management, actuarial science or law, making the person capable and worthy to be a member.
- (2) The President and the members of the Board of the Agency shall be appointed for a period of 6 (six) years from the day of appointment and are eligible for reappointment.
- (3) The President and members of the Board shall carry out their duties in the Agency on a professional basis.
- (4) The President and members of the Board of the Agency are bound to behave in a manner not diminishing their personal reputation or the reputation of the Agency and not to impugn their independence in the performance of their office or the independence of the Agency.
- (5) Any form of influence on the Agency's activities that might impugn its legally prescribed independence is forbidden.

### Article 6

- (1) While performing their offices, the President and members of the Board of the Agency are entitled to remuneration and other material rights in accordance with the by-laws of the Agency.
- (2) The President and members of the Board of the Agency are entitled to publish professional and scientific papers and to participate in activities of professional or scientific meetings.
- (3) The President and members of the Board of the Agency during their period of office and the employees in the administrative and professional services of the Agency must not accept any compensation, position or employment or provide services with respect to:
  - supervised entities and
  - persons who are deemed to be connected with these entities by the laws that govern such connections.

(4) Persons as defined in Paragraph 3 of this Article must not have shares or ownership shares in insurance companies, legal entities performing brokerage activities in insurance, investment fund management companies, pension fund management companies, pension insurance companies, brokerage companies and authorised companies, legal entities performing leasing and factoring operations and entities linked with them.

(5) The President and members of the Board of the Agency cannot be persons who are members of the Croatian Parliament, who perform some other duty to which they have been appointed by the Parliament or the Government of the Republic of Croatia, cannot be a member of the Government of the Republic of Croatia and cannot be a person who performs some office in bodies of local and regional self-government and in the bodies of political parties and union organisations.

(6) In order to prevent the conflict of interest of the President and members of the Board of the Agency and employs with respect to supervised entities and entities connected with them, the Agency will adopt a special Code of Conduct.

(7) The information that the President and members of the Board of the Agency and employees come into possession of during the performance of their duties and work must not be used in any way for the acquisition of material gain.

(8) Persons as defined in Paragraph 3 of this Article must not in a period of one year of the cessation of the performance of their office or employment in the Agency accept any memberships in the management boards or Supervisory Board of supervised entities or entities connected with them.

(9) The President and members of the Board of the Agency have the right to remuneration equivalent to the last salary paid in the month before their discharge until they are re-employed, but at the most for one year from the day of the cessation of the performance of their office.

## **Article 7**

(1) The Croatian Parliament may discharge the President and members of the Board of the Agency before the end of their period of office at the recommendation of the Government of the Republic of Croatia in the following cases:

- if the person himself or herself requests to be discharged,
- if after the appointment any of the circumstances described in Article 6 Paragraphs 3, 4, and 5 should occur,
- if the person should permanently lose the ability to perform the office,
- if the person is sentenced with legal effect to a term of imprisonment,
- if the person is in breach of the obligation to preserve confidentiality in the performance of his or her office and
- if the person performs a duty or activities which are incompatible with the office of a member of the Board of the Agency or if by unconscientious or improper work the person causes the Agency major damage or major damage to the Agency and operations of the Agency.

(2) The Agency is obliged to inform the Government of the Republic of Croatia of any reason for the discharge of the President or a member of the Board of the Agency before the ending of the period of office.

(3) Before a decision is made to discharge the President or a member of the Board of the Agency, such persons must be allowed to make a statement on the reasons for their discharge.

(4) In cases referred under Paragraph 1 of this Article, except in the case of permanently losing the ability to perform the office, the provision of Article 6 Paragraph 9 of this Act, shall not be applied.

## **Decision making**

### **Article 8**

(1) All decisions from the scope of activities and competence of the Agency shall be made by the Board at sessions with a majority of at least three votes with the proviso that a member of the Board or the President may not abstain from voting.

(2) Three members of the Board of the Agency shall constitute a quorum necessary for the making of decisions and yet at every session of the Board of the Agency the President must be present, or in the absence of the President, the deputy President must be present.

(3) Before entering into force the by-laws of the Agency will be published in the Official Gazette of the Republic of Croatia. All individual acts of the Agency that determine the someone's rights or obligations must be published after they become final in the Official Gazette of the Republic of Croatia.

(4) If the Agency considers that the publication of some individual act would not essentially affect the interests of financial services users such an instrument need not be published or only the pronouncement of it may be published.

### The duty to preserve confidentiality

#### Article 9

(1) The President and members of the Board of the Agency and its employees are bound to preserve the confidentiality of documents and data that they learn of in the performance of their duties and activities, the communication of which to an unauthorised person would harm the reputation and interests of the Agency.

(2) The duty to preserve confidentiality endures even after the cessation of membership in the Board or of employment in the Agency.

### Liability

#### Article 10

The President and members of the Board of the Agency and employees in the Agency are not liable for damage that arises during the performance of their duties in the context of their competence and the laws that they enforce, unless it is proven that they performed or omitted to perform a certain action from which harmful consequences arose either deliberately or with gross negligence.

## CHAPTER III

### The Council of the Agency

#### Conditions for appointment and period of office

#### Article 11

(1) The Agency shall have a Council.

(2) The Council shall be an advisory body of the Agency and shall consist of nine members, three of whom shall be appointed by the Government of the Republic of Croatia and the other five shall be appointed by the representatives of associations of supervised entities at the Croatian Chamber of Commerce, while the President of the Board of the Agency shall be a member ex officio.

(3) A member of the Council must have degree level qualifications, and a reputation of an expert in the area of finance, accountancy, management, actuarial science or law.

(4) The period of office of members of the Council is four years and members are eligible for re-election to the Council. If some member of the Council ceases to perform the duty before the end of the period of office, another person shall be elected to that member's place under the same conditions until the end of the period of office of the member instead of whom the person is appointed.

(5) The material rights of Council members shall be determined by the Statutes and the other by-laws of the Agency.

(6) Bodies as defined in Paragraph 2 of this Article shall discharge a member of the Council of the Agency before the end of the period of office:

- if he requests to be discharged himself, and
- in the event a person is sentenced with legal effect to a term of imprisonment.

The President of the Board of the Agency shall be discharged of the membership in Council in the event of the occurrence of any of the circumstances as defined in Article 7 of this Act.

## The function of the Council of the Agency

### **Article 12**

The Council of the Agency gives its opinions and professional and scientific advice for the sake of the development of the supervisory practice.

## CHAPTER IV

### THE OBJECTIVES, PRINCIPLES, SCOPE OF ACTIVITIES AND COMPETENCE OF THE AGENCY

#### Objectives

### **Article 13**

The fundamental objectives of the Agency are:

- promotion and preservation of the stability of the financial system and
- supervision of legality of the supervised entities operations.

#### Principles

### **Article 14**

(1) In the achievement of its objectives as defined in Article 13 of this Act the Agency shall be governed by the principles of:

- transparency,
- the confidence among participants of the financial markets and
- reporting to consumers.

(2) The Agency shall acquaint the public with the role and manner of functioning of the financial system, including the development of awareness of the benefits and risks that are connected with various types of investments and financial activities.

(3) The Agency shall provide a rapid and economical approach to all kinds of information that might be useful to financial services users, investors and the rest of the public.

(4) The Agency shall concern itself with matters as defined in Paragraph 2 and 3 of this Article with attention to the amount of the costs of regulation of the supervised entities.

#### Scope of activities and competence

### **Article 15**

In the performance of its public authorities, the Agency is authorised to:

1) adopt regulations on enforcement of this Act, the Securities Market Act, the Investment Funds Act, the Privatisation Investment Funds Act, the Act on the Takeover of Joint- Stock Companies, the Act on the Fund of Croatian Defenders from the Homeland War and Members of their Families, the Retired persons' Fund Act, the Act on Compulsory and Voluntary pension Funds, the Act on Pension Insurance Companies and Payment of Pension Annuities on the Basis of Individual Capitalised Savings, the Insurance Act, the Insurance Brokerage and Representation Act and other acts when it is authorised by law.

2) exercise supervision over the operations of:

- stock exchanges and regulated public markets, authorised securities companies and issuers,
- companies for the management of investment, privatisation investment and pension funds, investment funds, privatisation investment funds, pension funds, Fund of the Croatian Defenders of the Homeland War and Members of their Families, and the Retired Persons' Fund,

- brokerage companies, brokers and investment advisers,
  - institutional investors,
  - the Central Depository Agency
  - insurance companies, pension insurance companies, insurance brokers and representatives;
  - legal entities performing the operations of leasing and factoring, unless the banks perform them within the scope of their registered activities,
- all in compliance with this Act and the by-laws regulating the subject matter.
- 3) order measures for the obviating of unlawfulness and irregularity that have been established.
  - 4) issue and to withdraw:
    - permissions, authorisations and consents when it is authorised to do this by the Securities Market Act, the Investment Funds Act, the Privatisation Investment Funds Act, the Act on the Fund of Croatian Defenders of the Homeland War and Members of their Families, the Retired persons' Fund Act and the Act on the Takeover of Joint- Stock Companies,
    - licenses, authorisations, approvals and consents when authorised pursuant to the Act on Compulsory and Voluntary pension Funds, the Act on Pension Insurance Companies and Payment of Pension Annuities on the Basis of Individual Capitalised Savings and
    - approval and consents when authorised to do so pursuant to Insurance Act, the Insurance Brokerage and Representation Act, the Regulations on conditions to obtain authorisation for performing actuarial activities and the Regulations on the conditions for obtaining authorisation for performing representation and brokerage activities.
  - 5) encourage, organise and supervise measures for the effective functioning of the financial markets.
  - 6) keep books and registers in accordance with this Act and the acts mentioned in Paragraph 1 of this Article.
  - 7) launch initiatives for the adoption of laws and other regulations and to inform the public of the principles according to which the financial market operates.
  - 8) adopt by-laws in order to prescribe the conditions, manner and procedures for performing unified supervision within its scope and authority.
  - 9) To give opinions on the enforcement of this Act and the separate acts as defined in Paragraph 1 of this Article at the request of parties in a procedure or parties having the proved legal interest in the procedure.
  - 10) undertake other measures and perform other activities in compliance with the legal authorities
  - 11) report to other supervisory, administrative and judicial bodies on all issues that directly or indirectly impinge on their scope of activities and competence, as occasioned by proceedings that are being handled in front of these bodies and that are connected with procedures from the scope of activities and competence of the Agency.

## **Article 16**

- (1) The Agency and the Croatian National Bank (hereinafter: CNB) must at mutual request supply each other with all data and information about supervised entities from their scope of activities and competence, which are necessary in the procedure of exercising supervision and in a procedure related to the issuance of authorisations.
- (2) The supervisory bodies as defined in Paragraph 1 of this Article must mutually inform each other on irregularities that they learn of during the exercise of supervision, if these findings are important for the activities of the other supervisory body.
- (3) Exchange of data and information in compliance with this Article shall not be considered breach of confidentiality, while the Agency the CNB are bound to keep the confidentiality of data and information and can use them only for the purposes for which they were supplied.
- (4) The extent of exchange of information and the coordination of procedures and activities at supervision and regulation of financial institutions and groups shall be determined by a mutual agreement on collaboration between the Agency and the CNB.

### **Article 17**

In the execution of the statutorily defined objectives and tasks, the Agency shall collaborate with the Government of the Republic of Croatia and other bodies of government and in the framework of its competence shall take measures to improve this collaboration.

### **Article 18**

(1) The Agency may be a member of international organisations competent for the area of the supervision of financial institutions and markets.

(2) The Agency shall collaborate and exchange information arising from the supervision of the operations of supervised entities as defined in Article 14 Paragraph 2 with similar foreign institutions that exercise supervision of financial institutions and markets.

### **Article 19**

(1) At procedures undertaken by the Agency within its competence, the provisions of the General Administrative Procedure Act will be applied, unless otherwise prescribed by law.

(2) The acts of the Agency are final and an administrative action can be filed against them.

## **CHAPTER V**

### **FINANCING AND REPORTING**

#### **Financing**

### **Article 20**

(1) The Agency shall be financed:

- by the state budget funds,
- from fees from the assets and revenue of supervised entities and
- from fees for services from the scope of activities of the Agency provided.

(2) The Agency is obliged to prepare for each calendar year a plan of revenue and expenditure and submit it to the Ministry of finance.

(3) For the financing of the Agency as defined in Paragraph 2 subparagraph 2 of this Article, the highest charge may amount 0,8 o/oo (the thousandth part) with the proviso that the Agency shall by special Regulations for each year determine the calculation and amount of the fee, and the manner and execution of the collection of the *fee*.

(4) Administrative fees collected by the Agency shall be paid in favor of the state budget of the Republic of Croatia.

(5) Grants or donations received by the Agency from bodies or funds of the European Union for the advancement of its professional or technical level of activity do not form part of the annual plan of revenue and expenditure of the Agency.

(6) In the event that the fee collected in the total revenue of the Agency exceeds expenditure, the surplus of funds shall constitute the revenue of the subsequent calendar year.

(7) In the event that collected fee in the total revenue is not sufficient to cover expenditure, the shortage of funds shall be made up from the planned revenue of the state budget.

#### **Reporting**

### **Article 21**

The Agency is obliged once a year, for the preceding calendar year, to submit to the Government of the Republic of Croatia and to the Croatian Parliament, a report on its activities and on the state of affairs of financial institutions and markets that fall within its scope of activities and competence.



## CHAPTER VI

### PENALTY PROVISIONS

#### **Article 22**

(1) Offences as prescribed by the Securities Market Act (Official Gazette no. 84/02), the Investment Funds Act (Official Gazette, no. 107/95, 12/96 and 114/01), the Privatisation Investment Funds Act (Official Gazette no. 109/97 and 114/01), Act on the Takeover of Joint- Stock Companies (Official Gazette, no. 84/02 109/02), Act on Compulsory and Voluntary pension Funds (Official Gazette no. 49/99, 63/00, 103/03 and 117/04), the Act on Pension Insurance Companies and Payment of Pension Annuities on the Basis of Individual Capitalised Savings (Official Gazette no. 106./99 and 63/00), the Insurance Act (Official Gazette no. 9/04, 20/97, 47/97 revised wording, 116/99 and 11/02) and the Insurance Brokerage and Representation Act (Official Gazette, no 27/99) fall under the statute of limitations as follows:

- for the filing of an offence proceeding [for an indictment], within a period of 3 years from the day the offence was committed,

- for the execution of sanctions that have been imposed, in a period of 2 years from the day the ruling becomes legally valid.

(2) The application of the statute of limitations is interrupted by every action by a competent body but ensue in every case when twice the time from the time provided for in Paragraph 1 of this Article has elapsed.

## CHAPTER VII

### TRANSITIONAL AND FINAL PROVISIONS

#### **Article 23**

In the Securities Market Act (Official Gazette no. 84/02), the Investment Funds Act (Official Gazette, no. 107/95, 12/96 and 114/01), the Privatisation Investment Funds Act (Official Gazette no. 109/97 and 114/01), Act on the Takeover of Joint- Stock Companies (Official Gazette, no. 84/02, 87/02 and 120/01), the Act on the Fund of Croatian Defenders of the Homeland War and Members of their Families (Official Gazette no. 163/03 and 112/04), the Retired persons' Fund Act (Official Gazette no. 93/05), the Act on Compulsory and Voluntary pension Funds (Official Gazette, no. 49/99, 63/00, 103/03 and 117/04), , the Act on Pension Insurance Companies and Payment of Pension Annuities on the Basis of Individual Capitalised Savings (Official Gazette, no. 106/99 and 63/00), the Insurance Act (Official Gazette no. 9/94, 20/97, 46/97 revised wording, 116/99 and 11/02), the Insurance Brokerage and Representation Act (Official Gazette no. 27/99) , in other acts and in all by-law regulations, the names of the Croatian Securities Exchange Commission, the Agency for Supervision of Pension Funds and Insurance and the Directorate for Supervision of Insurance Companies are replaced in the appropriate gender, number and case with the name of the Croatian Agency for Supervision of Financial Services.

#### **Article 24**

(1) The Government of the Republic of Croatia will, at latest within 15 days from the enforcement of this Act, recommend to the Croatian Parliament the appointment of the President and members of the Board of the Agency.

(2) Bodies authorised for appointment as defined in Article 11 Paragraph 2 of this Act shall in a period of 90 days from the day this Act comes into force appoint the members of the Council of the Agency.

(3) The Agency shall in a period of 60 days from the day of the application of this Act adopt its Statutes and submit them to the Croatian Parliament for confirmation.

(4) Until the Statutes of the Agency come into force, the Agency shall apply the provisions of the Statutes of the Croatian Securities Exchange Commission, except in any part that is in contravention to this Act.

(5) The Agency is bound, in a period of six months from the Statute's coming into force, to adopt the acts prescribed by this Act.

(6) Until the acts defined in the previous Paragraph are adapted, the Agency will settle issues that are important for its work by Decisions.

## **Article 25**

On the day this Act will be applied, the following shall cease to be valid:

- 1) Provisions of Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 17 of the Securities Market Act (Official Gazette no 84/02);
- 2) The provisions of Articles 91, 92, 92a, 95, 96, 97, 98, 99, 100, 101, 102 and 103 of the Act on Compulsory and Voluntary pension Funds (Official Gazette no. 49/99, 63/00, 103/03 and 117/04);
- 3) The provisions of Articles 92 and 94 Paragraph 5 of the Act on Pension Insurance Companies and Payment of Pension Annuities on the Basis of Individual Capitalised Savings (Official Gazette, no 106/99 and 63/00);
- 4) The provisions of Articles 56, 57, 58, 59 and 60 of the Insurance Act (Official Gazette no. 9/94, 20/97, 46/97 revised wording, 116/99 and 11/02);
- 5) The provisions of Article 5 Paragraph 2, Article 7 Paragraph 3, Article 17 Paragraph 2, Article 21 Paragraph 2, Article 27 Paragraph 1 and Article 29 of the Insurance Brokerage and Representation Act (Official Gazette no. 27/99).

## **Article 26**

(1) The period of office of the President and members of the Board of the Agency shall start on the day this Act will be applied.

(2) The periods of office and members of the Croatian Securities Exchange Commission, the director, deputy director, assistant directors and members of the Council of the Agency for Supervision of Pension Funds and Insurance and the directors and members of the Board of Management of the Directorate for Supervision of Insurance Companies shall cease on the day this Act will be applied.

## **Article 27**

On the day this Act will be applied:

- 1) The Agency shall start working.
- 2) The Croatian Securities Exchange Commission, the Agency for Supervision of Pension Funds and Insurance and the Directorate for Supervision of Insurance Companies shall cease working.
- 3) All by-law regulations, except the Statutes as defined in Article 24 Paragraph 4 of this Act that govern the internal structure and organisation, the internal organisational form and the systematisation of jobs, the salaries and other material rights, the work and other rights of the Croatian Securities Exchange Commission, the Agency for Supervision of Pension Funds and Insurance and the Directorate for Supervision of Insurance Companies shall cease to be valid.
- 4) Employees of the Croatian Securities Exchange Commission, the Agency for Supervision of Pension Funds and Insurance and the Directorate for Supervision of Insurance Companies shall be taken on by the Agency with the application of the provision of Article 136 of the Labour Act (Official Gazette no. 137/04 revised wording) until the adoption of acts laying down the internal organisational form, employment conditions and work of employees of the Agency.
- 5) The Agency shall take into its possession the property and use of the office premises and equipment, all other real and moveable property and also all other rights of the Croatian Securities Exchange Commission, the Agency for Supervision of Pension Funds and Insurance and the Directorate for Supervision of Insurance Companies shall be transferred to it.
- 6) The Agency shall take over the monetary resources and accounts of the Croatian Securities Exchange Commission, the Agency for Supervision of Pension Funds and Insurance and the Directorate for Supervision of Insurance Companies.
- 8) The Agency shall become competent for all procedures and cases in the work of the scope of activities and competence of the Croatian Securities Exchange Commission, the Agency for

Supervision of Pension Funds and Insurance and the Directorate for Supervision of Insurance Companies.

### **Article 28**

This Act shall enter into force on the day of its publication in the Official Gazette of the Republic of Croatia and shall be applied from 1 January 2006.