



**THE FINANCIAL SUPERVISORY AUTHORITY
THE BOARD**

REGULATION

**ON THE LICENSING OF THE BROKERAGE/ INTERMEDIARY COMPANIES,
THE BROKER AND THE INVESTMENT ADVISOR**

Adopted upon Board's decision No. 165, date 23 Dec 2008

CHAPTER I

General

Article 1

Purpose of the Regulation

This regulation determines:

- the documentation, which accompanies the application and the criteria for licensing activities in the securities trading and investment advising;
- the content and the procedure of dealing with the licensing application ;
- the procedure of enacting the charter of a company, which shall be established to carry out securities trading and advising activity, as well as, modifications of these rules;
- the documentation to approve the management board members and the top managers of the brokerage and intermediary company.

Article 2

Terminology

The terms, as used in this regulation, shall have the meaning described hereunder:

- a) **Brokerage Company** has the same meaning as the term brokerage company in Law No. 9879, date 21 Feb 2008 "On Securities". The brokerage company carries out securities trading activity, purchase, selling of securities upon the client's (broker) order, as well as, purchase, and selling of securities on the behalf or, to its account (dealer).
- b) **Intermediary company** means the brokerage company, which carries out only advising activities on investment in securities.
- c) **Broker** has the same meaning as stock exchange broker.

- d) **Capital stock identity** means data on the broker and the origin or the source of the capital.
- e) **Authority** means the Financial Supervisory Authority.
- f) **Applicant** means the company or the individual that applies to the authority to acquire a license.

Article 3 **Securities trading activity**

Securities trading activity shall include:

- a) purchasing and selling of securities upon the client's order and through receiving and execution of orders (broker).
- b) purchasing and selling of securities on the behalf or to its account (dealer).
- c) occasional advising of clients in terms of purchasing and selling of securities as a part of its activity.

Article 4 **Advising Activity**

Advising Activity shall include permanent counseling with profit making purposes or the offer to provide such a service. This activity shall include the following services:

- a) advising on securities and their trading, public offer, getting control of the voting rights at the general assembly of the company, portfolios setting up, as well as, other operations similar to them.
- b) organization of purchasing, selling or exchanging of securities through Brokerage Company.
- c) studying, preparing, supervision and implementation of an investment plan in securities.
- ç) preparation of documentation as required by the law on securities and the relevant legalization.

Article 5 **Requirements concerning the documentation for licensing application**

- a) All declarations and copies of documents required under this regulation shall be in the original language. In the case when the original language of document is not Albanian, the notarized translation in Albanian and the relevant certification from the relevant institutions, as set forth in the effective legislation, shall be attached to this document.
- b) Documentation shall not be older than three months preceding the filing of the application, except for the financial reports.
- c) The license applicant shall be responsible for the authenticity and accuracy of the documentation delivered to the Authority.
- d) If deemed necessary, the Authority may ask for additional documents or information in relation to the applicant.
- e) The Authority shall enjoy the right of checking the authenticity of the delivered documentation.

CHAPTER II LICENSING REQUIREMENTS

PART I Adoption of the draft charter

Article 6 Requirements to adopt the draft charter

- a) The draft charter of a company, which is not a bank and the scope of whose activity incorporates carrying out of the transactions operation with securities, shall be delivered to the Authority prior to delivering it to the National Registration Center.
- b) The draft shall be accompanied by an official application to acquire the Authority approval.
- c) The name of the company shall represent the activity to be carried out and the scope shall stipulate the activity/activities defined in article 42 of Law No. 9879, date 21 Feb 2008 "On Securities".
- d) In cases when a bank applies to carry out an activity, which is linked with securities transactions, the article of the charter defining the scope of work of the company shall stipulate the activity, for which the license is requested.

Article 7 Reviewing of the application to adopt the draft charter

- a) The Authority, within 30 days after the deliverance of the complete documentation, shall review the accepted draft, the compliance of the charter content with the activity for which an application for licensing is requested and it shall therefore make a decision to adopt it or, recommend modifications to the data included in the draft.
- b) The decision shall be forwarded to the applicant within 5 working days and it shall be part of the practice, which is delivered to the National Registration Center.
- c) Adoption of the draft charter shall not condition in any way the Authority to make later decisions with regard to licensing the same entity as a brokerage company.

PART II The licensing application for the brokerage/intermediary company

Article 8 Application form

- a) The application of the brokerage company to operate in the capacity of a broker or investment adviser shall be made based on the application form attached to this regulation.
- b) The application form, as notarized, shall be signed and sealed by the founders of the company and the top manager.

Article 9
Documentation to accompany the application form

I. a) Documentation about the applying company:

1. a notarized copy of the founding charter and statutes;
2. extract of the registration in the National Registration Center, a document to be obtained by the Authority;
3. organization structure of the brokerage company;
4. a document, which confirms the payment of the initial capital according to Article 44 of the law on securities, a document, which shall be closed up in one of the second level banks operating in the territory of the Republic of Albania, until the granting of the license;
5. management Board decision on the type of activity to be carried out by the company;
6. a document, which confirms that the brokerage/intermediary company has hired a broker and/or an investment advisor;
7. a description on the infrastructure and software to be used by the brokerage company in the course of securities trading;
8. data about the name, the address and the number in the commercial register of the company, for which the applicant for a brokerage company is a substantial shareholder/partner or exercises control over it;
9. if the company has exercised another activity prior to the application to operate as a brokerage or intermediary company, then, apart from the aforementioned documents, it shall also submit the following information:
 - copy of the most recent balance sheet and financial statement, profit and losses, a copy which shall be certified by the accounting officers of the company, including every document as required by law;
 - extract from the National Registration Center confirming that this entity has not been subject to bankruptcy proceedings;
10. certificate issued by the relevant authorities confirming payment of taxes;
11. a document confirming payment of duties to the Authority;

b) When the applying company is a bank, apart from the aforementioned documents, it shall submit also the following documents:

- license to carry out the bank activity issued by the Bank of Albania along with the attached annex, which shall include also the activity for which the application is made.
- decision of the management board to carry out the activity in the area of securities and/or advising.

II. Documentation on the identity of the shareholding capital:

a) every shareholder of the applying company shall declare that s/he has no other shares or interests in other brokerage companies.

b) when the shareholder is a legal person, the applying company shall submit the following documentation:

1. the extract of its registration in the National Registration Center;
2. financial reports for the two recent years,
3. a document to certify that this person has paid or not taxes and other charges to the state;

4. a declaration on the origin of the capital to demonstrate that the capital does not consist of public loans, bank loans or advance payments from entities and third parties.
- c) when the shareholder is an individual, s/he shall provide the following documentation:
1. documents, which confirm the financial condition (document concerning the possession of tangible and intangible properties, certificates of banks accounts, debt certificates, etc.);
 2. a declaration on the origin of the capital to demonstrate that the capital does not consist of public loans, bank loans or advance payments from entities and third parties.
- III. Documentation on the activity to be carried out and its organization:*
- a) a copy of the template contract with the client;
 - b) internal rules to regulate the following:
 - i) relations with the client;
 - ii) measures to distinguish and identify clients' assets;
 - iii) safeguarding of data confidentiality;
 - iv) exercising of internal control to ensure compliance of the broker's/investment advisor's activity with the effective laws and regulations;
 - v) dealing with clients' complaints and of the measures taken regarding these complaints;
 - vi) the manner of acquiring and maintaining of sufficient financial resources to meet responsibilities and promises in the area of securities trading and investment advising in addition to measures to cope with the risk of losing them;
 - vii) keeping of appropriate records.

Part III

Application for broker's and investments advisor's license

Article 10 Application form

- a) Application to acquire a license to operate, as a broker or investments advisor shall be made based on the application form attached to this regulation.
- b) The application shall be signed at the notary's presence by the natural person who is submitting a license application.
- c) The application form shall be signed and sealed by persons authorized to represent the company where the applicant is employed and will perform transactions with the securities. In doing so, the company shall authentically confirm in this application the employment data.

Article 11

Documentation

a) Documentation to accompany the application form shall be the following:

1. the application about the type of the activity that will be carried out and the company that it represents signed by the applicant;
2. identification document;
3. the document, which determines and regulates the relations between the company and the applicant;
4. the document, which certifies that this person has not been convicted for any activity which may constitute a reason to refuse the license;
5. the document, which confirms the temporary or permanent address of the Albanian national, as well as, the certificate of residence in the territory of the Republic of Albania in the case of a foreign person;
6. a notarized copy of the university education diploma;
7. a CV along with the relevant certificates, which indicate the relevant qualification and experience;
8. positive references on the reputation;
9. the document, which certifies that the broker/advisor has passed the test of professional knowledge if the Authority has decided its effectuation;
10. a document which confirms payment of the relevant fees to the Authority;
11. a document which certifies the completion of a professional training in the area of operating with securities;

b) When submitting a licensing application as an investment advisor, the applicant, apart from the aforementioned documents, accompany the application form shall be followed also from a document which certifies the fulfillment of one of the following conditions:

- completion of a postgraduate training in the area of financial investments or, in the area of financial analysis for a period not shorter than 1 (one) year;
- professional experience inside or outside the country for a period not less than 3 (three) years in the area of providing advice in relation with securities.

Article 12

Reliability requirements for the advisor and the broker

The investment advisor and the broker:

- a) shall not be a person subject to any conviction for economic crimes committed inside the territory of the Republic of Albania and outside it including fraud and counterfeiting;
- b) shall not be an administrator, manager or controller of the companies against which the bankruptcy proceedings have started or, which have gone bankrupt;
- c) shall not be simultaneously a staff member and a member of the supervisory board or of the board of management in another brokerage or intermediary company;
- ç) shall be resident in the Republic of Albania or, shall have a valid permit of residence issued by the competent bodies;
- d) shall have a sufficiently sound financial condition to meet his responsibilities;
- dh) shall enjoy a good reputation.

Part IV
Adoption of management bodies

Article 13
Submission of the application

- a) The application to obtain the approval of the Authority for the candidate members of the management board and the top managers of the brokerage company shall be presented by the supervisory board of the company.
- b) In the case of a bank, the application to obtain an approval from the Authority regarding the candidature for the manager's position in connection with transactions with securities performed in a bank, shall be presented by the management board of the bank.

Article 14
Requirements for the members of the management bodies of the brokerage company

The member of management bodies of the brokerage/intermediary company:

- a) shall not be a person subject to any punishment for economic crimes committed inside the territory of the Republic of Albania and outside it including cheating and fraudulence;
- b) shall not be an administrator, manager or controller of the companies, against which the bankruptcy procedures have started or, which have gone bankrupt;
- c) shall not be simultaneously a staff member and a member of the supervisory board or of the board of management in another brokerage company;
- d) shall be resident in the Republic of Albania or, shall have a valid permit of residence issued by the competent bodies;
- e) shall have a sufficiently sound financial condition to meet the responsibilities;
- f) at least, one of the members of the board of management bodies must know Albanian language in the case when all the candidates for members of the management board shall be foreign citizens;
- g) shall have a good reputation.

Article 15
Documentation

Documentation to go with the application regarding the candidacy for member of the management bodies shall include the following:

- 1. identification document;
- 2. a CV along with the relevant certificates, which indicate the relevant qualification and experience, particularly in the area of transactions with securities;
- 3. a notarized copy of the diploma;
- 4. the document, which confirms the temporary or permanent address of the Albanian national or, the certificate of residence in the territory of the Republic of Albania in the case of a foreign person;
- 5. the employment contract with the brokerage company;
- 6. certificate of proficiency of Albanian language of at least one of the members of the management board when it is consisted by foreign citizens;

7. the document issued by the relevant state body, which certifies that this person has not been subject to any conviction that will constitute a reason for refusing the license;
8. data on the possession of property in other companies by specifying the names, the addresses and the size of the capital;
9. certificate on deferred financial duties;
10. reference about his reputation;
11. declaration on the fulfillment of the requirements set forth in Article 14, letters a), b) and c), of this regulation.

CHAPTER III LICENSING PROCEDURE

Article 16 Licensing Test

- a) The applicant applying for a broker's or investment advisor's license may, depending on the judgment of the Licensing and Monitoring Department, become subject to a professional test organized by the Authority.
- b) The professional test shall be repeated every three years. In case, the broker or the investment advisor fails to succeed in the professional test, the Authority shall make a decision to revoke the license.

Article 17 License delivery

- a) The Authority shall make a decision on the application and inform the applicant about it within 60 days after the date of the registration of the application..
- b) The applicant shall, within 30 days after submitting the application, complete all documentation as required by this regulation.
- c) The Licensing and Monitoring Department shall inform the Chairperson of the Authority Board 20 days prior to the deadline termination about the completion of the final deadline of reviewing the application.
- d) The Authority may decide to approve or refuse the application or, it may ask the fulfillment of a number of specific conditions before granting the license ,by setting also deadlines. If the applicant who has submitted the application fails to eliminate the shortcomings specified in the notice sent by the Authority within the time period decided by the latter, then it shall be deemed that the applicant has given up the application.
- e) The Authority shall specify the type of transactions, for which the license is issued, in its decision of issuing the license to carry out transactions with securities.

Article 18
License characteristics

- a) The form and the content of the license shall be adopted by the Authority's Board. It shall contain the following necessary elements:
 - 1. the legal basis for issuing the license;
 - 2. the name and address of the licensed person;
 - 3. the type of activity to be carried out. The license shall be issued for the following types of activities:
 - a. trading;
 - b. advising;
 - c. broker;
 - d. investment advisor;
 - 4. type of securities to be traded according to the license. The license shall be issued for one or several securities;
 - 5. specifically the stock exchange or the regulated territory and the territory, within which the activity specified in the license shall be carried out;
 - 6. the signature of the board's chairperson;
 - 7. the Authority's seal;
- b) The license shall be issued for an indefinite term;
- c) The license shall be drafted in two copies in Albanian language. One copy of it shall be delivered to the licensee and one copy shall be placed in the archive of the Authority.
- d) The license is not transferable.
- e) The license shall be always displayed in the places where the licensee carries out the activity described in the license or whenever such a thing shall be requested. This request shall be deemed unfulfilled when the license is not displayed in a visible way.
- f) The licensee shall inform the Authority in writing about the commencement, suspension, recommencement of the activity, for which he has been licensed, as well as, for every proposed change or, about the occurrence of any event, which may significantly affect his activity or any change on the data on which the license has been issued.

CHAPTER IV
PAYMENTS

Article 19
Payments to the Authority

- a) The company shall pay the amount of 5,000 Albanian Leks to the Authority when submitting all the relevant documents for license application.
- b) The individual shall pay the amount of 500 Albanian Leks to the Authority when submitting all the relevant documents for license application

- c) To acquire the brokerage/intermediary company license, the company shall pay to the Authority the amount of 60,000 Albanian Leks.
- d) To acquire the broker's and an investment advisor's license, the individual shall pay to the Authority the amount of 30,000 Albanian Leks.
- e) To carry out the activity as a brokerage/intermediary company, the company, within the first quarter of the following year, shall pay to the Authority an amount of 0.1 – 0.2% of the overall volume of the transactions carried out in a stock exchange or in a regulated market.
- f) To exercise its brokerage/intermediary activity, the company, within the first quarter of the following year, shall pay to Authority the amount of 100,000 Albanian Leks when carrying out transactions with government short-term and long-term securities in the retail market.
- g) To exercise its activity as an intermediary company, the company must pay to the Authority a yearly commission of 50,000 Albanian Lek.
- h) The payment of the obligatory fees towards the Authority are part of the requirements for a valid license.

CHAPTER IV COMING INTO EFFECT

Article 20 Coming into effect

This regulation shall come into effect as of the date of its adoption.

CHAIRPERSON

Elisabeta GJONI