

LAW

No. 54/2014

AMENDING LAW NO. 9572 OF 3 JULY 2006 "ON THE FINANCIAL SUPERVISORY AUTHORITY"

Pursuant to Articles 78 and 83 (1) of the Constitution, upon the Council of Ministers' proposal

THE PARLIAMENT OF THE REPUBLIC OF ALBANIA HAS DECIDED:

In Law No. 9572 of 3 July 2006 "On the Financial Supervisory Authority" the following amendments are made:

Article 1

The following amendments are made to Article 3:

1. The first paragraph is changed into the following:

"The Authority shall be a public legal person residing in Tirana. The Authority shall be independent in the exercise of its powers as laid down in this Law or the legislation in force, with no intervention being made in its activity that might affect its independence."

2. The following paragraph is inserted after the first paragraph:

"The Authority shall have the right to issuing such acts as regulations, rules, guidelines, manuals or methodologies that shall be adopted by the Board of the Authority pursuant to the powers laid down in this Law or in the relevant legislation in force, in order to ensure fulfilment the regulatory and supervisory functions and organisation and functioning of the Authority."

Article 2

Article 4 is changed into the following:

"Article 4

Authority Board

The decision-making body of the Authority shall be the Board, which shall be composed of five members, who shall include the Chairperson, the Executive General Director, one Executive Deputy Director and two other members."

Article 3

The following amendments are made to Article 5:

1. Paragraph 2 is changed into the following:

"2. Have completed the full cycle of university studies in one of the following areas: economics, law or some other area related to actuarial science."

2. In the first subparagraph of paragraph 3 the phrase "at least 3 years of professional experience" is replaced with the phrase "at least 7 years of professional experience, of which at least five years".

3. Paragraph 7 is changed into the following:

"7. Comply with the legal requirements and provisions on conflict of interest."

4. The following paragraph is inserted after Paragraph 7:

"Authority Board members may not be persons who:

(a) in the previous three years have been partners, shareholders or members of governing bodies in supervised entities;

(b) have family relations to the persons referred to in Point (a) of this subparagraph;

(c) in the previous three years have been part-time or full-time employees in supervised entities."

5. The first paragraph after Paragraph 7 is changed into the following:

"The Executive General Director and the Executive Deputy Director of the Authority may not exercise other remunerated activities, except for teaching, research and scholarly activities or participation in local or international organizations related to the activity of the Authority."

6. In the first sentence of the second subparagraph after Paragraph 7 the phrase "The four other members" is replaced with the phrase "The Chairperson and two other members".

Article 4

Article 6 is changed into the following:

'Article 6

Appointment of Board members

Board members shall be appointed by the Parliament.

The Chairperson shall be appointed by the Parliament with the proposal of the Parliamentary Committee on Economy and Finance, after a selection procedure has been carried out.

The Board member who is to hold the position of the Executive General Director shall be appointed by the Parliament with the proposal of the Council of Ministers, after a selection procedure has been carried out.

The Board member who is to hold the position of the Executive Deputy Director shall be appointed by the Parliament with the proposal of the Minister of Finance, after a selection procedure has been carried out.

The other two members shall be appointed by the Parliament with the proposals of the Parliamentary Committee on Legal Affairs, Public Administration and Human Rights and the Supervisory Board of the Bank of Albania, respectively, after a selection procedure has been carried out.

The candidate nominated by the Supervisory Board of the Bank of Albania may not be a member of that Supervisory Board.”

Article 5

The following amendments are made to Article 7:

1. The first paragraph is changed into the following:

“The mandate of each Board member shall be five years. In the instances where their mandate has expired, each member shall continue to exercise their duties until the appointment of the new members, but no longer than three months in any case. Three months before the expiry of the mandate of each Board member, the Authority shall notify the Parliament in writing, which shall start the procedure for the appointment of the new members.”

2. The second sentence in the second paragraph is repealed.

3. In the second paragraph the phrase “for a period of up to two years” is replaced with the phrase “for a period of up to three years”.

4. The fourth paragraph is changed into the following:

“Individuals who were appointed to the positions of Executive General Director and Executive Deputy Director and whose term in office has ended shall, while being unemployed, be entitled to one year of remuneration at the amount of the salary that they received while holding their positions. If they are employed and the salary they receive is lower than the one referred to in this Paragraph, they shall be compensated up to the level of the salary they received in the last month in office, within one year of handing over their duties. Any payments made for the Executive General Director and the Executive Deputy Director in accordance with the provisions of this paragraph shall be covered by the Authority and be allocated under the Authority budget. This right shall not be given to individuals reappointed as Board members and individuals that have been discharged from their duties in accordance with the provisions of Article 8.”

Article 6

Article 9 is changed into the following:

“Article 9

Organizational structure, salaries and other treatments of the Authority

The Board shall specify the organisational structure of the Authority, the number of employees, salaries, bonuses and financial treatment of the non-executive members of the Board, Executive General Director, Executive Deputy Director and staff. Financial treatment shall include the coverage of expenses incurred in the discharge of one’s duties, vocational training fees, life and health insurance and other similar expenses. When specifying the amount of salaries, bonuses and financial or nonfinancial treatment of the administration, the Board shall use as a basis a clear methodology taking into account market conditions, the experience of other authorities carrying out financial regulatory activity in Albania, and the needs of the institution itself.

The Authority may establish an occupational pension plan for its employees.

Any provisions laid down in Law No. 9584 of 17 July 2006 "On Salaries, Bonus Payments and Structures in Independent Constitutional Institutions and Other Independent Institutions Specifically Established by Laws" and any other provisions in other laws and regulations in force that conflict with this Article shall not apply to the Authority."

Article 7

The following amendments are made to Article 10:

1. The second paragraph is changed into the following:

"The meetings of the Board shall be chaired by the Chairperson, and, if the Chairperson is not present, by one of non-executive members who is oldest in terms of age.

2. In the third and fourth paragraphs, the phrase "four members" is replaced with "three members".

3. The sixth paragraph is changed into the following:

"For each meeting, minutes shall be kept, and shall be signed by all the members attending the meeting. The decisions taken in a meeting shall be signed by the Chairperson and the Executive General Director."

Article 8

In Articles 13(1) and (2)(c) and 32, first paragraph, the phrase "by-law" is replaced with "Authority's act".

Article 9

Article 14 is changed into the following:

"Article 14

Board powers

The Board shall independently exercise the power to:

1. Adopt licensing, regulatory and supervisory policies in order to encourage the development of financial markets under Authority supervision in accordance with the provisions of this Law and the legislation in force.
2. Adopt rules, regulations, decisions and guidelines on supervising and regulating institutions and persons carrying out activities in the financial markets that are supervised by the Authority, and guidance on the interpretation and implementation of laws in compliance with the provisions of this Law and the legislation in force.
3. Approve all the reports that the Authority submits to the Parliament of the Republic of Albania.
4. Approve, refuse, suspend or revoke licences or authorisations to carry out activity in the supervised financial markets, and the respective rules in accordance with the provisions laid down in this Law and the legislation in force.
5. Approve auditors or audit firms of the supervised entities.
6. Adopt accounting standards and financial reporting forms compulsory to be applied by the supervised entities.

7. Adopt the code of conduct, rules of procedure of the Board and the rules on the organisation and functioning of the Authority, which are issued under this Law.

8. Adopt the strategies, policies and regulations on the general management of the Authority, policy for investing in bank deposits or securities issued by the Government of the Republic of Albania, and specify the methods and procedures of using financial means for purposes of carrying out the activity of the Authority.

9. Adopt regulations on the establishment, investment and use of the Authority's reserve fund.

10. Adopt the organisational structure of the Authority and the number of staff and their job description and functional decisions.

11. Approve salaries, bonuses and financial treatment of the non-executive members of the Board, Executive General Director, Executive Deputy Director and staff.

12. Adopt the human resource policy and the recruitment rules.

13. Adopt the rules on the specification of the elements included in the calculation and the levels of the fees to be charged to supervised entities and the procedures for their collection and reconciliation.

14. Approve the Authority budget, types of expenses and allocations and uses of the reserve fund.

15. Approve the financial statements of the Authority.

16. Appoint the head of the internal audit unit, and approve the auditor or audit firm of the Authority.

17. Decide to purchase advisory services from relevant experts.

18. Approve the signing of memoranda of understanding, and information exchange agreements with other authorities in the country and abroad.

19. Approve the annual activity report of the Authority for the previous year, which shall be submitted to the Parliament in April, together with the audited financial statements.

20. Approve the supervision report, which presents the situation and prospects of the supervised markets and which is published in July.

21. Decide on the supervision measures and sanctions imposed on supervised entities.

22. Exercise any other powers granted by the Authority in accordance with the provisions of this Law and the legislation in force.

Any taken decisions may be appealed against in courts.

Board decisions shall be grounded and published in the way specified by the Board for the publication of official announcements.

Board decisions of an individual character shall be communicated to the concerned entities immediately.”.

Article 10

Article 15 is changed into the following:

“Article 15

Board Chairperson’s powers

The Chairperson of the Board shall have the power to:

1. Convene and chair the Board meetings.
2. Present the agenda.
3. Order the establishment of inspection committees, the scope of work, and the deadlines for reviewing cases.
4. Submit a proposal to the Board to establish advisory committees, in order to develop policies for the progress of the work of the Authority.
5. Exercise other powers granted to the Chairperson by Board decisions.”

Article 11

Article 16 is changed into the following:

“Article 16

Executive General Director’s powers

The Executive General Director shall organise and manage the Activity of the Authority and of the administration of the Authority.

The Executive General Director shall have the power to:

1. Represent the Authority.
2. Organise, manage and inspect the activity of the administration.
3. Report to the Board on the implementation of the adopted decisions.
4. Propose to the Chairperson of the Board any issues to be included in the Board meeting agenda, which are necessary in the context of exercising Authority functions and its good performance.
5. Issue orders and instructions in the context of fulfilling his executive powers.
6. Hire and fire Authority staff.
7. Exchange data with the Bank of Albania, other government institutions and agencies, local authorities and administrations, nongovernmental organisations operating activities in relation to the financial markets supervised by the Authority, and supervised entities.
8. Cooperate with the Bank of Albania for the inspection of banks acting as depositaries for the entities supervised by the Authority.
9. Ask the Bank of Albania to carry out inspections with specified scope in banks, in accordance with the legislation in force, and make available the inspection outcome.
10. Fulfil other tasks and responsibilities, in accordance with the internal rules of the Authority.

When the Executive General Director is absent, or when he or she cannot, due to extraordinary circumstances, delegate the performance of duties or is incapable of acting, the Executive Deputy Director shall manage the Authority in order to ensure its normal daily activity.”.

Article 12

In the first sentence of the first paragraph of Article 17 the phrase “The four members of the Board, who do not have managerial functions” are replaced with “The three members of the Board not performing any executive functions”.

Article 13

The following amendments are made to Article 18:

1. Wherever a reference to the powers of the “Board Chairperson” is made, it is changed into the powers of the “Executive General Director”.
2. The last paragraph is changed into the following:

“Authority Board members and the other officers in its administration shall not be held individually liable for damages caused to supervised persons by their actions or omissions in the course of exercising their powers and tasks pursuant to this Law or the legislation in force, except when such actions or omissions have been deliberate and intentional. The Authority shall compensate the Board members and other administration officers for any legal costs incurred in the defence against any legal action taken against them resulting from the performance of their functions or tasks pursuant to this Law and the legislation in force.

Article 14

After Article 18, Article 18/1 is inserted with the following content:

“Article 18/1

Cooperation and information sharing

1. The Authority can conclude agreements or memoranda of understanding with other domestic or foreign supervisory authorities, supervisory authorities in the financial sector, agencies or institutions of prevention of money laundering and financing of terrorism, or other legally recognised institutions, in order to cooperate, exchange information or carry out joint inspections.
2. The Authority shall conduct investigations on behalf of and for other domestic or foreign supervisory authorities, in the financial sector, agencies or institutions of prevention of money laundering and financing of terrorism, or other legally recognised institutions, upon their request.
3. The Authority shall exchange the following with domestic or foreign authorities and institutions, in its relevant areas of activity:
 - (a) information on supervised entities;
 - (b) information on licensing;
 - (c) information in relation to the prevention of money laundering and financing of terrorism;
 - (ç) information in relation to fraud committed in the course of carrying out activity in the supervised areas;

(d) financial data;

(dh) information on the natural persons holding positions of responsibility in those entities.

4. Any information the Authority receives and any information provided to other supervisory authorities shall be treated as confidential and used only for the purposes specified in the law or regulations.

5. The Authority shall be responsible for collecting and processing information on the facts and circumstances in relation to its compliance with statutory supervisory tasks and responsibilities.”

Article 15

The first paragraph in Article 19 is changed into the following:

“The inspection shall be carried out by Authority officers, in accordance with the specifications laid down in the order signed by the Executive General Director or, in his absence and his authorisation, by the Executive Deputy Director. The inspection shall take place with or without prior notification.”.

Article 16

The following amendments are made to Article 20:

1. At the end of the first paragraph, the word “Chairperson” is replaced with the words “Executive General Director”.

2. The second paragraph is changed into the following:

“Employment relations of the Authority staff shall be governed by the provisions of the Labour Code and the Authority’s acts.”.

Article 17

Article 21 is repealed.

Article 18

At the end of the first paragraph of Article 23, the word “Chairperson” is replaced with the words “Executive General Director”.

Article 19

Article 26 is changed into the following:

“Article 26

Funding and budget

The Authority shall be an independent institution and shall be funded by its own resources.

The revenues of the Authority shall be generated from:

(a) fees collected pursuant to this Law and the legislation in force;

(b) fines imposed pursuant to this Law and the legislation in force, including penalties on late payment of fees, as specified in Article 27 of this Law;

(c) leasing of premises owned by the Authority;

(ç) investment in bank deposits or Republic of Albania Government securities;

(d) other sources and activities allowed by this Law or the legislation in force.

The revenues of the Authority shall be used to:

(a) cover the expenses made by the Authority to perform its responsibilities laid down in this Law or the legislation in force;

(b) make investments or implement projects to perform its responsibilities laid down in this Law or the legislation in force;

(c) to establish and maintain the reserve fund. For the purposes of this Law, the “reserve fund” shall mean the fund to which the positive difference between revenues and expenditures of the current year is allocated and which is used to cover a negative difference between revenues and expenditures in the current year. The allocations to the reserve fund shall be made until that fund reaches the average six-month level of the Authority budget for the past three years.”.

Article 20

Article 27 is changed into the following:

“Article 27

Setting fees for the supervised entities

The Authority shall collect the following from the supervised entities:

1. Fees for licence application, granting and renewal, approvals and authorisations, in accordance with the provisions of this Law, the legislation in force or Authority regulations.
2. Fees for the supervision of the supervised entities that are licensed by the Authority.
3. Fees for specific projects from which supervised entities benefit. The revenues from those fees shall be used only to finance and maintain those projects.

The fees for the supervision of supervised entities shall be set at 1.5 percent of:

(a) the volume of gross written premiums from the non-life insurance and reinsurance activity;

(b) the volume of gross written premiums, less the item-lines of annual savings, from the life assurance and reinsurance activity;

(c) total amount of assets of voluntary pension funds and collective investment undertakings;

(ç) total volume of annual transactions carried out on stock exchanges or on regulated markets;

(d) indicators selected as a basis in this Law, the legislation in force or Authority regulations in the case of the rest of supervised entities that are not referred to in Points (a) to (ç) of this Paragraph.

The final reconciliation of the payable supervision fees shall be made within one month from submission to the Authority of the audited financial statements of the supervised entities or from submission of final annual financial statements in the case of entities that are not subject to the statutory audit obligation.

The fees paid by supervised entities shall be calculated as deductible expenses for tax purposes when they meet the conditions laid down in Article 20 of Law No. 8438 of 28 December 1998 “On

Income Tax”, as amended. When the reserve fund is at the level specified in Article 26(c) of this Law, any excess amount remaining from the annual revenues of the Authority shall be recognised and recorded as amounts paid in advance from supervised entities for the following period, distributing it proportionately according to their contributions.”.

Article 21

In the last paragraph of Article 29 the words “Board Chairperson” are replaced with “Executive General Director”.

Article 22

The first sentence of the last paragraph in Article 31 is changed into the following:

“The notice of the taken decision shall be signed by the Executive General Director.”.

Article 23

In this Law the phrase “supplementary pension” is replaced with the phrase “voluntary pension”, and the phrase “non-banking financial markets” is replaced with the phrase “supervised financial markets”.

Article 24

Transitional provision

The Chairperson of the Board, the Deputy Chairpersons and the other members who have been appointed prior to entry into force of this Law shall continue to be in office until the appointment of the new Board.

Within two months from entry into force of this Law, the Parliament shall approve the new members of the Board.

The new organisational structure and the regulations with the job descriptions and separation of functions shall be adopted within one month from the configuration of the new Board.

The new members of the Financial Supervisory Authority Board who have been appointed pursuant to the provisions of this Law shall be in office for the following terms, as an exception only in their first mandate:

- (a) Chairperson – four years;
- (b) Executive General Director – five years;
- (c) Executive Deputy Director – four years;
- (ç) other members – three years.

Article 25

This Law shall enter into force 15 days after its publication in the Official Gazette.

THE SPEAKER

Ilir Meta

Adopted on 29 May 2014

