

**Decree-Law n<sup>o</sup> 6/99/M ( <sup>a</sup> )**  
**of 8 February**

Private Pension Funds, designed as autonomous assets for the purpose of payment of retirement and widow's pensions, were formerly regulated by Decree-Law no 44/88/M of 13 June which provided a minimal legal framework in order to create favourable conditions for their development.

The experience gained so far and the growing importance of such private social security schemes within the socio-economic context of the Territory justify that the current regime needs to be reviewed, particularly with regard to strengthening the guarantees to the beneficiaries and the conditions for the setting up and management of funds, including their supervision and control which is now attributed to the Monetary and Foreign Exchange Authority of Macau.

Hereby;

After hearing the Consultative Council;

By using the legislative authorisation conferred by Article 1 of Law no 9/98/M of 21 December and under the terms of Article 13, paragraph 3 of the Organic Statute of Macau, the Governor hereby decrees that the following shall be enforced as law in the Territory of Macau:

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( a ) *The Articles 9 and 43 have been amended by Article 1 of Law n<sup>o</sup> 10/2001 of 2 July and the period laid down in Article 47 paragraph 1 has been extended by Article 2 of the said law.*

## **CHAPTER I**

### **General provisions**

#### Article 1 **(Object)**

This law regulates the setting up, management and winding up of private pension plans and private pension funds.

#### Article 2 **(Pension plans)**

1. Pension plans are programmes that define the conditions for the formation of the right to pecuniary payments as a result of:
  - a) Early retirement;
  - b) Old age retirement;
  - c) Permanent incapacity for work; or
  - d) Death.
  
2. Pension plans may also define the conditions for the formation of the right to pecuniary payments as a result of:
  - a) Serious Illness;
  - b) Long-term unemployment; or
  - c) Final departure from the territory of Macau.

Article 3  
**(Pension funds)**

Pension funds are autonomous assets solely for the purpose of financing one or more pension plans.

Article 4  
**(Members of pension plans)**

For the purposes of this law, the following individuals and corporate entities shall be regarded as members of pension plans:

- a) Associates - corporate entities whose pension plans are financed by pension funds;
- b) Participants - individuals whose rights enshrined in the pension plans are defined according to personal and professional circumstances, regardless of whether or not they contribute to the respective financing;
- c) Contributors - individuals or corporate entities who contribute towards the financing of pension plans;
- d) Beneficiaries - individuals entitled to the pecuniary payments provided for in the pension plans, regardless of whether or not they have been participants.

Article 5  
**(Pension fund managers and deposit of assets)**

1. Pension funds shall be managed by insurers authorised to transact life insurance in the Territory of Macau, or by companies set up specifically to manage pension funds.
2. The provisions of Decree-Law n<sup>o</sup> 27/97/M of 30 June relating to life insurance companies shall apply to the constitution, establishment and operation of fund management companies.
3. The assets pertaining to a pension fund shall be deposited with one or more depositories according to the provisions of this law.

Article 6  
**(Supervision)**

1. The Monetary and Foreign Exchange Authority of Macau, hereinafter referred to as AMCM, is empowered to supervise the pension plans, including pension funds, the respective depositories and fund management companies.
2. In order to carry out its supervisory duties referred to above, AMCM shall issue the necessary regulatory norms and conduct inspections to verify their compliance.

CHAPTER II  
**Pension plans**

Article 7  
**(Types)**

1. Based on the type of guarantees provided, pension plans shall be classified as:
  - a) Defined benefit plans – wherein the pecuniary payments payable to the beneficiaries are predefined and the contributions to be made are calculated so as to guarantee the respective payments;
  - b) Defined contribution plans – wherein the contributions to be made are predefined and the pecuniary payments payable to the beneficiaries are determined according to such contributions;
  - c) Mixed plans – which have the features of the two plans mentioned above.
2. Based on the form of financing, pension plans shall be classified as:
  - a) Contributory plans – wherein participants make contributions;

- b) Non-contributory plans – wherein the financing is done exclusively by the associates.

Article 8  
**(Obligation to finance)**

The financial commitments of pension plans shall be financed obligatorily by means of a financial and actuarial capitalisation system, which provides equilibrium between contributions and guaranteed pecuniary payments, namely through pension funds set up under the terms of this Law.

Article 9 ( <sup>b</sup> )  
**(Acquired rights)**

1. Each participant in the pension plan is entitled to receive the payments made by the contributors to the pension plans, plus the product of the respective capitalisation less management charges, according to the terms set out in the respective pension plan.
2. The formation of the right stipulated in the previous paragraph shall be subject to verification of any one of the circumstances indicated in Article 2 or according to the circumstance referred to in the following paragraph.
3. When the working relationship between the associate and the participant ceases for reasons other than those mentioned in Article 2, such participant shall have the option either to receive the pecuniary payments referred to in paragraph 1 above or transfer the same to a new pension fund.

Article 10  
**(Method of paying benefits)**

Payment to beneficiaries of the pecuniary payments provided for in the pension plans shall be done in the form of a lump sum payment, unless another form has been expressly indicated in the respective pension plan .

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*(b) As amended by Article 1 of Law n° 10/2001 of 2 July.*

## Article 11

### **(Definition of the concepts which give rise to the right to receive the benefit)**

For the purposes of this law:

- a) Early retirement shall mean retirement prior to attaining sixty-five years of age;
- b) Old age retirement shall mean retirement wherein persons are entitled to old-age pensions under any social security schemes, namely the Social Security Fund or the Macau Pensions Fund;
- c) Permanent incapacity for work shall be considered as such:
  - i) Where persons are entitled to pensions for incapacity from any social security schemes, namely the Social Security Fund or the Macau Pensions Fund;
  - ii) Where persons are entitled to compensation for permanent incapacity as a result of an occupational accident or disease, pursuant to the terms defined under the employees' compensation regime;
  - iii) Where persons, not coming within the scope of the preceding two subparagraphs, suffer permanent incapacity as a result of acts of third parties which prevent them from earning more than a third of the remuneration corresponding to the normal professional activity;
- d) Serious illness shall be regarded as such where the illness, due to its characteristics and those of the individual himself, can place at risk the life of the patient or requires prolonged treatment, or results in a significant incapacity for work of not less than 60%;
- e) Long-term unemployment shall be regarded as such when workers, while being available for work, have been unemployed for over twelve months and are registered with the employment exchange of the Labour Department or with the Administration and Civil Service Department.

- f) Final departure from the territory of Macau shall be regarded as such where persons, within a period of three months from the date of application for pecuniary payments, leave the territory with no intention of returning to reside therein.

Article 12  
**(Proof)**

For the purposes of the situations contained in the preceding Article, the following documents shall constitute sufficient proof thereof:

- a) Certificate or authenticated declaration of the genuine identity of the pensioner, issued by the entity processing the pension;
- b) Judgement establishing the permanent incapacity under the terms of Article 11, paragraph c), subparagraph iii) or, in its absence, a certificate from a specialised entity specifically appointed by AMCM for this purpose;
- c) Medical certificate issued by the relevant health authority;
- d) Certificate of a worker's long-term unemployment status issued by the labour exchange where the said worker is registered;
- e) Proof of residence in the country or territory of destination, or an authenticated copy of the employment contract signed with an entity residing or headquartered therein, and a declaration under oath from the person leaving the Territory stating that the departure from the Territory is final and that he shall not avail of the right to payment, due to final departure, more than once.

CHAPTER III  
**Pension funds**

SECTION 1  
**Types, constitution, joining and leaving**

Article 13  
**(Types of funds and their respective constitution)**

1. Pension funds can be either closed or open funds.
2. A pension fund is regarded as closed when the respective plan concerns only one associate or, if there are several founder members, there exists a link in terms of business, association, profession or of a social nature between them and their consent is necessary for new associates to be included in the plan financed by the fund.
3. A pension fund is regarded as open when there is no requirement for any link between the various members of the respective plan, and joining such fund depends only on acceptance by the management company of the relevant fund.
4. Closed pension funds are established at the initiative of a company or groups of companies, associations, namely social or professional associations, or by agreement between employer and employee associations.
5. Open pension funds are established at the initiative of any entity authorised to manage pension funds, and their total net value is divided into units of participation represented by certificates.

Article 14  
**(Authorisation for constitution)**

1. AMCM is competent to authorise the constitution of pension funds.

2. Authorisation to constitute closed pension funds shall be granted based on the joint petition from the management companies and the founder members. The petition shall be submitted together with a draft of the deed of constitution, an actuarial valuation of the liabilities to be guaranteed by the fund, in the case of pension plans with defined benefits or mixed plans, and the respective financing plan.
3. Authorisation to constitute open pension funds shall be granted based on the petition from the management company duly accompanied by a draft of the management regulations.

#### Article 15

#### **(Deed of constitution of closed pension funds)**

1. Closed pension funds shall be constituted by way of written contract to be signed at the AMCM between the management companies and the founder members and the same shall be published in the Official Gazette, including any amendments thereto.
2. Pension plans to be financed by closed pension funds may provide a defined benefit, require a defined contribution or be mixed.
3. The written contract shall contain obligatorily the following information:
  - a) Name of the fund;
  - b) Name, share capital and head office of the management company or companies;
  - c) Name and address of founder members;
  - d) Indication of the persons who can be participants, contributors and beneficiaries of the fund;
  - e) Initial value of the fund's assets, with a detailed breakdown of such assets;

- f) Objective of the fund and the respective pension plan or plans to be guaranteed;
- g) Rules of management of the fund and representation of the founder members;
- h) In the case of funds that finance contributory plans, the form of representation of the participants, which cannot be delegated to the associate;
- i) Conditions for the transference of fund management to another management company and the deposit of securities and other assets of the fund to another depository;
- j) Rights of the participants when they are no longer covered by the fund and the rights of the participants and beneficiaries when the fund is liquidated or when any of the associates is wound up or withdraws from the fund, without prejudice to the provisions of Article 9;
- l) Conditions under which the management companies and the founder members reserve the right to modify the terms of the contract;
- m) Conditions for winding up the fund, without prejudice to the provisions regulating this matter in the present law.

Article 16  
**(Actuarial valuation of liabilities)**

The actuarial valuation of the liabilities that are to be guaranteed by the fund, in the case of defined benefit plans or mixed plans, and the respective financing plan shall contain the following information:

- a) Number of participants and beneficiaries covered;
- b) The basis and method of financing utilised;
- c) Any other information that AMCM deems necessary for a complete understanding of the financing plan of the respective pension plan.

Article 17  
**(Management contracts of closed pension funds)**

1. A management contract shall be entered into between the founder members and the management company or companies of a closed pension fund.
2. The management contract shall obligatorily contain the following information:
  - a) Name of the fund;
  - b) Name, share capital and address of the management company or companies;
  - c) Name and address of depositories;
  - d) Maximum remuneration of the management company or companies;
  - e) Maximum remuneration of depositories;
  - f) Investment policy of the fund;
  - g) A technical-actuarial and financial plan which serves as the basis for calculating the contributions to be made by contributors according to the benefits guaranteed and beneficiaries covered, in the case of defined benefit plans or mixed plans;
  - h) The hypotheses considered in calculating the annual contribution, taking into account the probable development of the different variables which may justify the modification of the said contribution;
  - i) Value of contributions and the respective frequency, where the benefit is not defined;
  - j) The conditions under which the contracting parties reserve the right to modify the management contract initially entered into;

- l) The establishment of a minimum guaranteed income and the duration of this guarantee, explaining how the investment policy will meet this objective, in case the management company or companies assume the risk of investment;
  - m) Penalties applicable in case the management of the fund is discontinued;
  - n) The rights, obligations and duties of the management company or companies in terms of legal and regulatory norms;
  - o) The method of communication and consolidation of information between the various management companies, where such companies exist;
  - p) Indication of the existence of any investment management contracts;
  - q) Conditions for arbitration and the relevant jurisdiction.
3. The management contract cannot cancel or alter any of the provisions of the deed of constitution.
  4. Where a closed pension fund is managed by more than one management company, the provisions contained in paragraph 2, sub-paragraphs d), e), l) and m) above may be included in the contract entered into individually between the founder members and each management company of the fund.
  5. A copy of the management contract and any subsequent amendments thereto shall be deposited with the AMCM.

#### Article 18

#### **(Management regulation of open pension funds)**

1. Open pension funds shall be considered as constituted on the date of approval by AMCM of the management regulation mention in Article 14 paragraph 3, which shall be subject to publication in the Official Gazette, including any subsequent alterations.

2. The management regulations shall contain the following information:
- a) Name of the fund;
  - b) Name, share capital and address of the management company or companies;
  - c) Name and address of depositories;
  - d) Unit value of participation on the date of commencement of the fund;
  - e) Method used for calculating the unit value of participation;
  - f) The days of the month fixed for calculating the unit value of participation;
  - g) Investment policy of the fund;
  - h) Maximum remuneration of the management company or companies;
  - i) Maximum and minimum limits of commission on subscription and redemption of fund units, detailing clearly the method of application;
  - j) Maximum remuneration of the management depository or depositories;
  - l) Conditions for the transference of fund management to other management company or companies and the deposit of securities and other assets of the fund to another depository;
  - m) The establishment of a minimum guaranteed income and the duration of this guarantee, explaining how the investment policy will meet this objective, in case the management company or companies assume the risk of investment;
  - n) The conditions under which the management company or companies reserve the right to modify the provisions of the management regulation;

- o) Conditions for winding up the fund;
  - p) Procedure for winding up the fund;
  - q) Rights, obligations and functions of the management company or companies under the terms of the legal and regulatory norms;
  - r) Indication of the existence of any investment management contracts;
  - s) Conditions for arbitration and the relevant jurisdiction.
3. Contracts for joining open pension funds shall include the fund management regulation.
  4. The value of each fund unit shall be determined by dividing the total net value of the fund by the number of fund units in circulation.
  5. The total net value of the fund is the value of the assets it holds, valued according to the legal provisions, including interest accrued but not received on bonds, less the amount of liabilities due and unpaid.

#### Article 19

#### **(Individual membership of open pension funds)**

1. Individual contributors may join an open pension fund by means of an initial subscription to the fund units.
2. In the case of individual membership of an open pension fund, the fund units shall be the property of the participants.
3. Pension plans, which are financed by means of individual membership of an open pension fund, can only be of a defined contribution type.
4. When the fund units are first purchased, the contributor and the management company shall sign a contract of individual membership to the pension fund, which shall compulsorily contain the following information:

- a) Name of the fund;
- b) The conditions under which pensions shall be due;
- c) The conditions for the transfer of the fund units of a participant to another pension fund, specifying the penalties as and where applicable;
- d) Indication of the amount of applicable charges;
- e) A declaration of acceptance of the fund management regulation.

#### Article 20

#### **(Collective membership of open pension funds)**

1. Associates may effect a collective membership to an open pension fund by means of an initial subscription to the fund units.
2. Pension plans, which are financed by means of collective membership of an open pension fund, can be one of the following types: defined contribution, defined benefit or mixed.
3. When the fund units are first purchased, every associate shall sign a contract of membership to the pension fund with the management company, which shall compulsorily contain the following information:
  - a) Name of the fund;
  - b) Name and address of the associates;
  - c) Indication of the persons who can be participants, contributors and beneficiaries of the fund;
  - d) The pension plan or plans to be financed;
  - e) The rights of participants when they are no longer covered by the fund, without prejudice to the provision of Article 9;

- f) The rights of the participants and of the beneficiaries when the respective collective membership to the fund terminates or any of the associates is wound up or withdraws from the fund, without prejudice to the provisions of the present law relating to non-payment of contribution by the associates;
  - g) Amount of contributions and their periodicity;
  - h) Number of fund units purchased;
  - i) The conditions under which the contracting parties reserve the right to modify the membership contract;
  - j) The conditions for the transfer of the fund units of an associate or a group of associates to another pension fund, specifying the penalties as and where applicable;
  - l) Indication of the amount of applicable charges;
  - m) A declaration of acceptance of the fund management regulation.
4. In the case of defined benefit or mixed plans, the membership contract shall contain, under the terms of Article 16, the actuarial valuation of the liabilities to be guaranteed and the respective financing plan.
  5. The plans mentioned in the preceding paragraph are subject to all the actuarial rules established in the present law.
  6. Whenever the information mentioned in the preceding paragraph 3, subparagraphs c) to f), i) and j) is contained in the management regulations, its inclusion in the membership contract may be dispensed with.

#### Article 21

#### **(Right to withdraw from an open pension fund)**

1. The contributor has a period of thirty days from the date of individual membership of an open pension fund to send a letter expressing withdrawal from the effects of the contract.

2. The notification of withdrawal shall have effect if it is sent by registered post with acknowledgement due to the address of the head office of the management company that signed the contract for individual membership of the pension fund.

#### Article 22

##### **(Effects of exercising the right of withdrawal)**

1. Exercising the right of withdrawal implies the cancellation of the individual membership contract, abolishing all obligations arising therefrom with effect from the date of signing of the said contract.
2. Upon cancellation of the membership contract, the fund units subscribed shall be returned and the corresponding value of such fund units at the time of cancellation shall be refunded, less the costs of deinvestment which the fund can prove to have actually incurred.
3. The exercise of the right of withdrawal shall not give rise to the payment of any indemnity between the parties to the contract.

#### Article 23

##### **(Amendments to the deed of constitution and to the management regulations)**

1. Any amendment to the deed of constitution or to the pension fund management regulations, including the transfer of pension fund management between management companies shall be subject to AMCM's approval.
2. The amendments referred to in the preceding paragraph shall not reduce the amounts of pecuniary payments already fixed, nor affect the acquired rights under the terms of Article 9.
3. Where the amendments to the deed of constitution affect the pension plan, the respective petition for authorisation shall include, in addition to the new text, the actuarial valuation of the new liabilities which shall be guaranteed by the pension fund and the respective financing plan, taking into account the provisions of Article 16.

Section II  
**Information and publicity**

Article 24  
**(Information to participants and beneficiaries)**

1. The management company shall compulsorily inform the participants of the pension plan contained in the deed of constitution or of the collective membership contract and of the respective amendments thereto, and the said management company shall bear the burden of proof in respect of compliance with this requirement.
2. In the case of contributory pension plans, failure to comply with the obligation referred to in the preceding paragraph shall result in the associate being liable to pay, on his own account, the participant's share of the contribution, without any loss of guarantees for the participant, until the obligation has been fulfilled.
3. In closed pension funds and in the case of collective membership of open pension funds, the management company shall provide, at the request of the participants, all the information necessary for a complete understanding of the contract.
4. In closed pension funds, which finance contributory plans, and in the case of individual membership of open pension funds, the contributors and the participants are entitled to receive from the management companies, at least once a year, information on the amount of contributions made by them or to their favour and in their name, and on the value of their shares in the total value of the fund.

Article 25  
**(Publicity)**

1. It is forbidden to advertise quantifying future returns based on estimates of the management company, unless there is a specific reference, which is graphically highlighted, explaining that it is merely an example.

2. Documents intended for the public, including the advertising materials for open pension funds, shall necessarily indicate that the value of the fund units held varies according to the developments in the value of the assets which constitute the fund, and shall also specify whether there is any guarantee of payment of a minimum return.

Section III  
**Duration, closure and liquidation of pension funds**

Article 26  
**(Duration)**

The duration period of pension funds shall be unlimited.

Article 27  
**(Closure)**

1. The liquidation of a management company shall not imply the closure of the fund or funds under its management, and such management company shall be substituted in accordance with the relevant provisions contained in the deed of constitution or in the management regulation.
2. It is not permissible to agree upon or declare the liquidation of a management company of a pension fund without first providing proof of transfer of management to another competent entity.
3. If the associates fail to pay the contributions to which they have committed themselves, the management company shall, without prejudice to the provisions of the following paragraphs, take the initiative to request the associates to set right the situation. However, if the situation is not set right and if, within a period of one year, an adequate plan to rectify the situation is not submitted to AMCM that is acceptable to this entity, winding up procedure of the fund shall follow.
4. The progress of the plan to rectify the situation, referred to in the preceding paragraph, shall be monitored by the management company,

which is obliged to send to AMCM a half-yearly report on the respective development. In case of non-compliance with the said rectification plan, immediate winding up of the fund shall follow.

5. In case the current pecuniary payments are not being duly financed, the management company shall propose to the AMCM the winding up of the fund if the associate does not deposit the necessary contributions within a maximum period of 180 days from the date of verification of the said situation.
6. In addition to the cases mentioned in the preceding paragraphs, pension funds shall also be wound up if there are no participants or beneficiaries or when the respective object of the fund, for whatever reason, becomes redundant.
7. The winding up of a pension fund shall be carried out by means of a winding-up agreement between the associates and the management company, after obtaining the necessary prior approval from AMCM, and such agreement shall be subject to publication in the Official Gazette.
8. In case of disagreement between the associates and the management company regarding the terms for the winding up of the fund, or in case there is any opposition to the said terms from any of the interested parties, the liquidation of the fund shall be carried out by AMCM. In this case, the provisions regulating the liquidation of insurance companies shall be applicable with necessary adaptations.

#### Article 28

#### **(Liquidation of the fund and withdrawal of the associate)**

1. In the case of liquidation of a closed pension fund or withdrawal of the respective associate, or the cessation of collective membership of an open pension fund, the respective fund assets shall be used, up to their financial limits, for:
  - a) Payments still outstanding as per the contracts or orders for the acquisition of assets for the fund;

- b) Pecuniary payments due to the beneficiaries of the fund;
  - c) Other expenses related to the fund as per the respective management contract;
  - d) Amounts of individual account of each participant, in case of open pension funds, which shall be applied according to the rules set out in the management regulation;
  - e) Amount of acquired rights of the participants existing on the date of winding up.
2. In case of financial insufficiency, the assets of the fund shall be used preferentially to settle the liabilities mentioned in the preceding subparagraphs and according to the respective order, having recourse to proportional distribution where deemed necessary.
  3. The final net positive balance, if any, ascertained during the liquidation process set out in the preceding paragraph 1 shall be used as agreed upon jointly by the management companies and associates after obtaining prior approval from AMCM.
  4. The unilateral revocation of the deed of constitution by the management company shall only be admissible in exceptional cases, namely when the pension plan is not being financed in accordance with established rules and where there is documentary proof that it is impossible to obtain the agreement of the associate.
  5. The unilateral revocation referred to in the preceding paragraph shall be subject to publication in the Official Gazette.
  6. The terms of liquidation of a pension fund, under the charge of the respective management company, shall have to be defined in the liquidation agreement or in the unilateral revocation mentioned in the preceding paragraph 4.

CHAPTER IV  
**RULES GOVERNING PENSION FUND ASSETS**

Article 29  
**(Income)**

The following shall constitute income of a pension fund:

- a) Contributions in cash, securities or real estate, made by contributors;
- b) Income from investments which form part of the fund's assets;
- c) Income from the sale and refund of investments of the fund's assets;
- c) Shares in the profits of the insurance contracts issued on behalf of the fund;
- d) The sums insured under insurance contracts entered into by the fund to guarantee the cover for death and permanent incapacity as provided for in the pension plan;
- e) Other income.

Article 30  
**(Expenses)**

The following shall constitute expenses of a pension fund:

- a) Payments made to the beneficiaries;
- b) Insurance premiums paid by the fund;
- c) Remuneration in respect of management and deposit;
- d) Amounts spent in purchasing investments for the fund;

- e) The excess of fund assets returned to associates under the terms provided for in the present law;
- f) Other expenses related to the fund as provided for in the respective management contract.

Article 31  
**(Autonomy of assets)**

1. Without prejudice to the provisions of the following paragraph, the assets of a pension fund shall only be utilised for the execution of pension plans in respect of their beneficiaries.
2. The only exceptions allowed to the rule stated in the preceding paragraph are related to the obligations arising directly from management or deposit expenses, and also those related to payment of insurance referred to in Article 29, sub-paragraph e).
3. The pension plans contained in the respective deed of constitution, management regulations or membership contract shall solely and exclusively be funded through the fund's assets or by its respective share in the total. The value of the said assets shall be the maximum amount available to the management company, without prejudice to the liability of associates, participants and contributors to pay their contributions and the eventual minimum income guaranteed by the management company.

Article 32  
**(Excess financing)**

1. If, during five consecutive years, the value of the pension fund corresponding to the financing of a defined benefit plan exceeds by more than 20% of the current value of total liabilities inherent to this plan, the respective contributions may be temporarily suspended or reduced.

2. The current value of the total liabilities inherent to the pension plan shall be calculated in accordance with specific rules laid down by way of notice of AMCM.
3. The suspension or temporary reduction of the contributions, referred to in the preceding paragraph 1, shall be effected according to the terms contained in the joint proposal of the associate(s) and the management company; however, the said proposal shall be subject to prior approval of AMCM.
4. No money shall be returned to the associate if the excess value of the fund has resulted from an alteration in the pension plan.

#### Article 33

#### **(Financial, technical and actuarial management)**

1. The assets, contributions and pension plans shall at all times be balanced in accordance with actuarial systems for capitalisation, which permit the establishment of equivalence between assets and expected income of the pension fund on the one hand and, on the other, future payments to beneficiaries and future charges for management and deposits.
2. Pension funds, which finance defined benefit plans, may effect insurance to cover the risks of death and permanent incapacity for work and insurance for lifetime income, where the same is included in the pension plans.
3. In the case of funds financing defined contribution plans, it is obligatory to have individual accounts for each participant.
4. The technical, actuarial and financial plan shall be reviewed at least once every three years.
5. It shall not be permissible for the fund to be financed by means of a system of distribution of cover capital.

6. An actuarial report on the situation of each fund shall be submitted annually to AMCM.
7. The management company shall effect payment of the instalments due only if the amount accumulated in the fund is equal to or more than the total current value of such instalments.
8. AMCM shall establish, by way of notice, the rules for financial, technical and actuarial management to be followed in the management of pension funds.

Article 34  
**(Actuary in charge)**

1. At the time of submission of the request for the constitution of the respective fund, the management company shall indicate the actuary responsible for each closed pension fund to be so constituted.
2. The actuary referred to in the preceding paragraph shall compulsorily have the following duties:
  - a) To draw up the document of actuarial valuation of the liabilities to be guaranteed by the fund and the respective financing plan, under the terms of Article 16, including the respective revisions as mentioned in paragraph 4 of the preceding Article;
  - b) To determine the level of financing by the pension fund;
  - c) To recommend the rate of contribution required for financing the pension fund;
  - d) To assess the current value of total liabilities for the purpose of determining the existence of excess financing under the terms of Article 32;
  - e) To draw up the annual actuarial report.

3. Whenever the management company intends to replace the actuary responsible for a pension fund, it shall inform AMCM at least thirty days prior to the date on which the new actuary will commence his duties.
4. The conditions to be met by the actuary responsible for a pension fund shall be defined by notice of AMCM.

Article 35  
**(Composition of assets)**

1. The nature of the assets that make up the patrimony of pension funds and their respective percentage limits, including the general principles of congruence and valuation of these assets, shall be established by notice of AMCM.
2. While constituting the patrimony of pension funds, management companies shall take into account the kind of liabilities they are required to finance, in order to guarantee the security, income and liquidity of the respective investments and ensure prudent diversification and distribution of such applications.
3. The valuation criteria for assets shall be defined by notice of AMCM.

**CHAPTER V**  
**MANAGEMENT AND DEPOSIT OF PENSION FUNDS**

Section I  
**Management**

Article 36  
**(Management companies)**

1. The management company shall engage in all acts on behalf of and for the common account of the associates, participants, contributors and beneficiaries and, as the administrator of the fund and its legal

representative, it can negotiate on any movable or immovable property, make bank deposits in the name of the fund and exercise all rights which are directly and indirectly related to the fund.

2. A management company may administer one or more pension funds.
3. Under the terms of the following paragraph and subject to authorisation of AMCM, closed pension funds may be administered by more than one management company so long as they are in excess of a determined amount and do not affect the rights of the participants and beneficiaries.
4. If the administration of a closed pension fund pertains to more than one management company, one of the companies shall be appointed by the associate to take responsibility for carrying out the consolidation of accounts and for appointing the actuary responsible for the fund.
5. Management companies shall not transfer, in whole or in part, to third parties the powers of pension fund management conferred by law, without prejudice to the possibility of using services of third parties.
6. Management companies may delegate the management of a part or of all the assets of a pension fund only to finance companies, credit institutions or insurance companies authorised to transact life business, provided the said companies are authorised to operate in the territory of Macau.
7. For the purposes of paragraph 1, immovable property shall include:
  - a) Rights over Immovable property;
  - b) Shares in the capital of companies which are involved in buying, selling, renting, administration and operation of immovable property and whose exclusive object includes one or more of the said activities;
  - c) Participating units in real estate investment funds;
  - d) Mortgaged loans on immovable property.

Article 37  
**(Duties of management companies)**

The management company shall be responsible for all acts and operations that are required or appropriate for the good administration and management of the pension fund, namely:

- a) To represent, regardless of any mandate, the associates, participants, contributors and beneficiaries of the fund in exercising all the rights arising from the respective shares;
- b) To select the assets constituting the fund in accordance with the respective investment policy;
- c) To receive the fixed contributions and to guarantee the payments due to beneficiaries;
- d) To maintain in good order its records and those of the fund;
- e) To register with the real estate registry, in the name of the fund, the immovable properties forming part of its assets.

Article 38  
**(Forbidden acts)**

The management company is specifically forbidden:

- a) To burden in any way the assets of the fund;
- b) To acquire its own shares;
- c) To provide credit, except where the management company is an insurer authorised to transact life insurance business in the territory of Macau, insofar as this does not affect investments in pension funds.

Article 39  
**(Liquidity)**

The management company shall at all times ensure that there is enough liquidity to make prompt pecuniary payments to beneficiaries according to the respective pension plan.

Article 40  
**(Solvency margin)**

1. The management company shall maintain an adequate solvency margin.
2. For the purposes of the preceding paragraph, the provisions of Article 68 of Decree-Law no. 27/97/M of 30<sup>th</sup> June shall be applicable with necessary adaptations.
3. The valuation criteria for assets corresponding to the solvency margin shall be fixed by notice of AMCM.

Article 41  
**(Determination of solvency margin)**

1. Without prejudice to the provision of the following paragraph 2, the amount of the solvency margin shall be determined as follows:
  - a) If the management company assumes the investment risk, the amount of solvency margin shall correspond to 4% of the value of the pension funds under management;
  - b) If the management company does not assume investment risk, the amount of solvency margin shall correspond to 1% of the value of the pension funds under management, provided the management contract is for a period of over five years and the amount utilised to cover the management expenses provided for in the said contract is also fixed for a period of over five years.

2. The amount of solvency margin shall in no case be less than 500,000.00 patacas.

#### Article 42

#### **(Insufficiency of solvency margin)**

1. In case the solvency margin is verified to be insufficient, even if circumstantial or temporary, the management company shall present to AMCM for approval and within the period laid down by the latter a short-term recovery plan to set right the equilibrium of its financial situation.
2. The recovery plan referred to in the preceding paragraph shall be based on an appropriate activity plan, which should include projected accounts.
3. In case AMCM considers the recovery plan to be inadequate, it may make modifications that shall be binding on the management company.

#### Section II

#### **Deposit**

#### Article 43 ( <sup>c</sup> )

#### **(Deposit)**

1. Securities and other documents representing the assets of the pension fund shall be held in custody with credit institutions under the supervision of the AMCM. However, where such securities or documents are located overseas, the same may be held in custody with institutions duly authorised and supervised by competent authorities of the country or territory where such institutions are domiciled, provided that such institutions hold a credit rating equal to or higher than the minimum credit rating established in the notice of the AMCM awarded by at least one of the specialised credit rating agencies.

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( <sup>c</sup> ) *As amended by Article 1 of Law n° 10/2001 of 2 July.*

2. For the purposes of this law, entities performing the functions as referred to in the preceding paragraph shall be called depositories.

Article 44  
**(Duties of depositories)**

1. The duties of the depositories of pension funds shall be:
  - a) To receive on deposit or enter in the register the securities and documents pertaining to the funds;
  - b) To maintain up-to-date chronological record of all the transactions carried out and to prepare every quarter a detailed inventory of the assets of the funds.
2. Depositories may also be entrusted to:
  - a) Buy and sell securities and to exercise the rights of subscription and option;
  - b) Collect the income derived from the assets of the funds and to collaborate with the management company to carry out operations on the same;
  - c) Pay beneficiaries the pecuniary payments stated in the pension plans according to the instructions of the management company.

Article 45  
**(Relationship between management companies and depositories)**

1. The regime governing the relationship between management bodies and depositories, including commissions to be charged by the latter, shall be contained in a written contract.
2. A copy of the contract mentioned in the preceding paragraph shall be sent to AMCM, including any subsequent amendments thereto.

3. The depository shall continue to be liable even if it entrusts the pension fund assets, in whole or in part, to a third party for safekeeping.

## CHAPTER VI FINAL AND TRANSITIONAL PROVISIONS

### Article 46 (Fiscal regime)

1. Pension plans and pension funds shall be exempt from all taxes, rates or duties in relation to:
  - a) All juridical acts inherent to their respective constitution and subscription from third parties;
  - b) The initial assets which form the respective patrimony, including their applications and the income generated therefrom;
  - c) The contributions made by the associates, participants and contributors;
  - d) The instalments paid on its account, with the exemption applicable both to the payer and the beneficiary of such instalments.
2. The contributions made to the pension plans and pension funds shall be considered revenue expenses of the year.

### Article 47 <sup>(a)</sup> (Transitional regime)

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*(a) According to the provisions of the Article 2 of Law n° 10/2001 of 2 July:*

- “1. The period laid down in Article 47 paragraph 1 of Decree-Law n° 6/99/M of 8 February is hereby extended to 31 December 2002.*
- 2. During the period from 8 March 2001 to the effective date of the present law, the provident funds shall also benefit from the fiscal regime established in Decree-Law n° 6/99/M of 8 February.”*

1. The entities who, on the effective date of the present law, have provident funds constituted pursuant to the terms of Decree-Law 44/88/M of 13 June shall have a period of 2 years to adapt to the rules herein established, namely those concerning the financing requirement, acquired rights and the appointment of an actuary.
2. During the period referred to in the preceding paragraph, the provident funds shall benefit from the fiscal regime established in the present law for pension funds.

Article 48  
**(Publication of notices)**

The notices issued by AMCM, under the terms of the present law, shall be subject to publication in the Official Gazette.

Article 49  
**(Supplementary law)**

In all matters not regulated by this law, the provisions governing the activity of insurance companies shall be applicable with necessary adaptations.

Article 50  
**(Revocations)**

Decree-Law 44/88/M of 13 June and Decree-Law 58/88/M of 4 July are hereby revoked.

Article 51  
**(Effective date)**

The present law shall come into effect 30 (thirty) days following its publication.

Approved on February 4, 1998.

To be published.

The Governor, Vasco Rocha Vieira

**- INDEX -**

**CHAPTER I**  
**General provisions**

- Article 1 - Object
- 2 - Pension plans
- 3 - Pension funds
- 4 - Members of pension plans
- 5 - Pension fund managers and deposit of assets
- 6 - Supervision

**CHAPTER II**  
**Pension plans**

- Article 7 - Types
- 8 - Obligation to finance
- 9 - Acquired rights
- 10 - Method of paying benefits
- 11 - Definition of the concepts which give rise to the right to receive the benefit
- 12 - Proof

**CHAPTER III**  
**Pension funds**

**SECTION I**  
**Types, constitution, joining and leaving**

- Article 13 - Types of funds and their respective constitution
- 14 - Authorisation for constitution
- 15 - Deed of constitution of closed pension funds
- 16 - Actuarial valuation of liabilities
- 17 - Management contracts of closed pension funds
- 18 - Management regulation of open pension funds
- 19 - Individual membership of open pension funds
- 20 - Collective membership of open pension funds
- 21 - Right to withdraw from an open pension fund
- 22 - Effects of exercising the right of withdrawal
- 23 - Amendments to the deed of constitution and to the management regulations

**Section II**  
**Information and publicity**

- Article 24 - Information to participants and beneficiaries
- 25 - Publicity

Section III  
**Duration, closure and liquidation of pension funds**

- Article 26 - Duration
- 27 - Closure
- 28 - Liquidation of the fund and withdrawal of the associate

CHAPTER IV  
**RULES GOVERNING PENSION FUND ASSETS**

- Article 29 - Income
- 30 - Expenses
- 31 - Autonomy of assets
- 32 - Excess financing
- 33 - Financial, technical and actuarial management
- 34 - Actuary in charge
- 35 - Composition of assets

CHAPTER V  
**MANAGEMENT AND DEPOSIT OF PENSION FUNDS**

Section I  
**Management**

- Article 36 - Management companies
- 37 - Duties of management companies
- 38 - Forbidden acts
- 39 - Liquidity
- 40 - Solvency margin
- 41 - Determination of solvency margin
- 42 - Insufficiency of solvency margin

Section II  
**Deposit**

- Article 43 - Deposit
- 44 - Duties of depositories
- 45 - Relationship between management companies and depositories

**CHAPTER VI**  
**FINAL AND TRANSITIONAL PROVISIONS**

Article 46 -Fiscal regime

- 47 - Transitional regime
- 48 - Publication of notices
- 49 - Supplementary law
- 50 - Revocations
- 51 - Effective date