
SUPERVISION OVER THE PENSION FUND MANAGEMENT COMPANIES IN THE SLOVAK REPUBLIC

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Annotation. The system of pension savings provision was redesigned in Slovakia in 2003. The consideration of the development trends of the population created the necessity for the reform of the "one - pillar system" based on the principle of pay as you go and the intergenerational solidarity, whereby in this reform, the idea of the transfer of the responsibility for material security in the pension - age from the state to the individual has been implemented. Currently there exists a so-called "three - pillar system". In the "second -pillar", representing the old-age pension savings, the pension fund management companies are operating. They are under the supervision of the National bank of Slovakia. The article focuses on chosen specific aspects of supervision over the pension fund management companies.

Keywords: pension fund management company, supervision, National bank of Slovakia

INTRODUCTION

Financial market consists of various segments in which operate specific entities, all with different scope of business, but at the same time possessing a common characteristic element - the need for regulation and supervision of their activities. To the group of the supervised entities belong the pension fund management companies, which had been created a result of the pension – reform. **Meaning the system of old - age pension savings provision was redesigned in Slovakia in 2003.** The reform had its "roots" in the consideration of the development trends of the population. These created the necessity for the reform of the "one - pillar system" based on the principle of pay as you go and the intergenerational solidarity. The key idea of the reform was the transfer of the responsibility for material security in pension - age from the state to the individual. Currently, there exists a so-called "three - pillar system". The first pillar is represented by a long-term model in which the state secures its citizens through intergenerational solidarity and in accordance with the principle of merit. The legal entity in this area is the state-run Social insurance. It is a defined benefit system. The second pillar is represented by the old - age pension savings. This is a defined contribution system. The pension fund management companies operate in the second pillar. The third pillar, the savings for the additional rents, is a supplementary component to the first two pillars.

Because of the sensitivity of old – age pension savings, supervision is necessary. The term supervision has a broad meaning. We can also see that not only this term is being currently used by legislation, but also the terms inspection and control. We analyse all of them.

The **aim** of the paper is to provide information about the term supervision and its complexity and about the system of the supervision over the pension fund management companies performed by the National Bank of Slovakia by using the analytical method. The author uses the analytical **method** in order to provide information about the legal frame regulating the supervision over the pension fund management company. The **relevance** of the research mainly consists in providing data about the various concepts of the terms supervision, inspection and control, their overlapping to a certain extent and presenting definitions of supervision from a point of view of the supervisory body and the pension fund management company.

PENSION FUND MANAGEMENT COMPANIES IN THE SLOVAK REPUBLIC

Due to the sensitivity of the area of old - age pension savings, the pension fund management companies are being supervised by the National bank of Slovakia. A pension fund management company can be defined as a joint stock company incorporated in the Slovak Republic whose scope of business comprises the establishment and management of pension funds. The legislation is banning the change of the scope of business or the legal form of a pension fund management company.

The supervision starts already with application for an authorisation submitted by a founder of a pension fund management company. When a pension fund management company is being founded, an interest of more than 50% in its share capital may be held only by a bank, an insurance company, a reinsurance company, an investment firm, or an entity established outside the territory of the Slovak Republic which has a similar scope of business and which is authorised to conduct such business by the competent authority of the Member State¹ in which it is established. As a part of the supervision the National bank of Slovakia examines whether the applicant fulfils the conditions for operating a pension fund management company. If the applicant proves the fulfilling a licence issued by the National bank of Slovakia enabling to establish and operate a pension fund management company (hereinafter „licence“) is granted.

¹ A Member State means a Member State of the European Union, a member of the European Economic Area, or a member of the Organisation for Economic Co-operation and Development.

After granting licence a pension fund management company is obliged to ensure that within 18 months after the date when the establishment of pension funds under its management is commenced, the total number of savers in all of its pension funds is not less than 50,000. If within this period a pension fund management company fails to register the number of savers the National bank of Slovakia revokes its licence.

The pension fund management company must create and manage one guaranteed bond pension fund and one non-guaranteed equity pension fund. The assets of a guaranteed bond pension fund may consist only of bond and financial investments and hedging transactions for foreign-exchange and interest-rate risk. Bond and money market investments may in total constitute not more than 80% of the net asset value of a non-guaranteed equity pension fund. In addition to the two mentioned types of pension funds, a pension fund management company may establish and manage other pension funds, and under the rules of each such fund the pension fund management company shall either:

- undertake to replenish the assets of the pension fund (in which case the fund is a 'guaranteed pension fund'), or
- not undertake to replenish the assets of the pension fund (in which case the fund is a 'non-guaranteed pension fund').

The legislator provides conditions for savers under which they can save. One of them defines the amount of risk to which the assets of a saver can be exposed. The older the saver is, the more conservative his assets must be invested. The value of assets that a saver has in a guaranteed bond pension fund must be as a percentage ratio of the net value of the saver's assets in the old-age pension scheme: at least 10% as at the first day of the calendar month in which the saver attains 52 years of age, up to 100% as at the first day of the calendar month in which the saver attains 61 years of age.

In the Slovak Republic, currently six pension fund management companies (AEGON d.s.s., a.s., Allianz – Slovenská dôchodková správcovská spoločnosť, a.s., AXA d.s.s., a.s., Dôchodková správcovská spoločnosť Poštovej banky, d.s.s., a.s., NN dôchodková správcovská spoločnosť, a.s., VÚB Generali dôchodková správcovská spoločnosť, a.s.)² are established, provide services to savers and are under supervision.

² Source the website of the Association of the pension fund management companies: <http://www.adss.sk/Default.aspx?CatID=57>.

THE TERM SUPERVISION AND ITS COMPLEXITY

According to M. Kohajda, we currently monitor the use of different terms to describe the activities connected with supervision, such as “control” or “inspection”.³ We agree with M. Kohajda, the terms “supervision”, “control” and “inspection” are being adopted unsystematically into legislation. For completeness, it is necessary to point out, that creating a structure when drafting legislation is difficult because the terms "supervision", "control" and "inspection" overlap to some extent. This can be demonstrated by the following legal opinions.

Under the term control can be understood a process by which it can be detected to which extent the existing conditions correlate with the eligible conditions; the causes of the failure to comply with obligations are being detected and measures are being derived.⁴

J. Staša is defining inspection an activity, the essence of which is the observation of certain activities or of certain conditions, which is followed by evaluation, when necessary, the application of means directed to secure the aims pursued by the inspection.⁵

V. Sládeček understands under the term inspection an activity, consisting of observing and assessing the adequacy of the proceeding of a certain person or activity and eventually the correction of deficiencies.⁶ M. Kohajda defines inspection as a doing of a subject based on law, observing another subject and comparing its activities with the request set by law.⁷ R. Pomahač circumscribes inspection as an activity, in which comparing and evaluating leads to the influencing of the subject to behave in accordance with law.⁸ V. Vopálka describes inspection as a situation in which the performance of public administration is being delegated to subjects different from the state and the inspection is a tool by which the required level of their functioning should be achieved.⁹ M. Radvan distinguishes the terms inspection and supervision; inspection is carried out by state administration and supervision is realized by an authority which is independent from the state administration.¹⁰

Some authors came to the conclusion that there is an overlapping between the terms “inspection” and “supervision”. M. Karfiková and P. Kotáb see in the term supervision a form

³ Kohajda, M. Pojem „Dohled“ A Jeho Užití V Současné České Legislativě. *Milníky práva v stredoeurópskom priestore 2007*. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, Vydavateľské oddelenie, 2007, p. 516 – 523.

⁴ Vrabko, M. a kol. *Správne právo hmotné. Všeobecná časť*. Bratislava: C. H. Beck, 2012, p. 212.

⁵ Hendrych, D. a kol.: *Správni právo. Obecná časť*. Praha: C. H. Beck, 2006, p. 279.

⁶ Sládeček, V.: *Obecné správní právo*. Praha: ASPI, 2005, p. 179.

⁷ Kohajda, M., p. 516 – 523.

⁸ Pomahač, R. Správní dozor a kontrolní řád. *Správni právo*. 1968, 45(5-6): 264-268.

⁹ Vopálka, V. Veřejní správa kontrolující. *Správni právo*. 1968, 45(5-6): 258-263.

¹⁰ Radvan, M., Kyncl, L., Moždiáková, M. *Právo kapitálového trhu*. Brno: Masarykova univerzita, 2010, p. 46.

of state supervision, which is specific in that the actual performance of this supervision is not exercised by the state, but is entrusted to a body distinct from the state, by private and public corporations and autonomous institution.¹¹

In our opinion, **supervision can be defined as a group of operations carried out by the competent authority in order to examine the correctness of the business of the supervised entity.**

One of the specific forms of supervision is financial market supervision. According to V. Babčák financial market supervision is a way of financial control.¹² V. Pavlát and P. Kubiček define financial market supervision as an activity of the oversight body consisting in examining whether the regulated entities in the financial sector comply with the applicable laws, regulations and rules set by the regulator, in their enforcement and sanctioning in case of failure.¹³ This is a definition *stricto sensu*. In a broader context includes financial market supervision the competences of the National bank of Slovakia relating to relations, in which the central bank performs the licensing function, the financial consumer protection and the appraisal of risks concerning financial stability.¹⁴

According to our opinion **financial market supervision is a form of state supervision, whose specificity lies in the fact that that state control is entrusted to an entity other than the state – the National bank of Slovakia.** Financial market supervision is a necessity, because financial markets are an important ¹⁵element in the functioning of the economy of every state.

SUPERVISION OVER THE PENSION FUND MANAGEMENT COMPANY

As already mentioned, the pension fund management companies are being supervised by the National bank of Slovakia. **The objective of supervision is principally to protect the assets of pension funds and to ensure financial market stability and a competitive and transparent environment.** The exercise of supervision focuses on revealing indications of imprudent business conduct, ensuring the portfolio management of pension funds in accordance with restrictions set by the legal frame, ensuring that savers are informed and minimising investment risks.

¹¹ Bakeš, M. a kol. *Finanční právo*. Praha: C. H. Beck, 2006, p. 52.

¹² Babčák, V. a kol. *Finančné právo na Slovensku a v Európskej únii*. Bratislava: EUROKÓDEX, 2012, p. 173.

¹³ Pavlát, V., Kubiček, A.. *Regulace a dohled nad finančními trhy*. Praha: Vysoká škola finanční a správní, o.p.s., 2010, p. 20.

¹⁴ Sidák, M., Slezáková, A. a kol. *Regulácia a dohľad nad činnosťou subjektov finančného trhu*. Bratislava: Wolters Kluwer, 2014, p. 55-56.

¹⁵ *Ibid.*, p. 33.

The main legal frame for supervision is created by the Act No. 43/2004 Coll. On The Old - Age Pension Savings and on amendments and supplements to certain law (hereinafter „Act“) and by the Act No. 747/2004 Coll. On Financial Market Supervision and on amendments and supplements to certain law (hereinafter „ Supervision Act“).

The supervision is being executed in two forms. As an „on-site inspection“ meaning the acquisition of information and documents directly, as a rule, at the premises of supervised entities or from their employees which concerns the supervised entity and its activities or other persons whose position, transactions or other activities are associated with the supervised entity, and it also includes the assessment of the information and documents so obtained. The second form is the „off-site supervision“ representing a way which contains in particular the acquisition and evaluation of information and documents submitted to the National bank of Slovakia at its written request and information contained in reports, statements and other supporting documentation submitted to the supervisory body under the Act, the Supervision Act, under separate laws, or under other generally binding legal regulations or decisions issued by National bank of Slovakia. Both forms are executed by the Securities Market, Insurance and Pension Savings Supervision Department belonging to the Financial Market Unit of the National bank of Slovakia.¹⁶

The scope of the supervision carried out by the National bank of Slovakia includes for example, compliance with the provisions of the legislation determining the field of old - age pension savings, compliance with the rules of a pension fund and the articles of association of a pension fund management company, the compliance with the system of internal control and others. **There exists also a negative definition of the supervision´s scope.** The subject-matter of supervision shall not include the resolution of contractual disputes between clients and pension fund management companies, the hearing and adjudication of which falls within the competence of a court or other authority under a separate regulation. Meaning the National bank of Slovakia is not deciding disputes between clients and pension fund management companies concerning their contractual relationship. This reflects the idea that authority is supervising the pension fund management companies so that they perform their activities correctly in relation to clients.

In exercising supervision, the National bank of Slovakia can require the entities subject to supervision to provide data, documents and information necessary for the proper exercise of

¹⁶ Source the website of the National bank of Slovakia: <http://www.nbs.sk/en/about-the-bank/organisational-structure>.

supervision, and in the extent required for the exercise of supervision. The entities are obliged to submit the required data, documents and information to the National bank of Slovakia within the time limit set by this authority.

The activities performed mainly by the following are subject to supervision: a pension fund management company, members of the management board, members of the supervisory board, and authorised representatives of pension fund management company, shareholders of a pension fund management company; the depository of a pension fund management company.

The legislator also empowers the National bank of Slovakia acting through persons authorised to exercise supervision to attend their general meetings and meetings of their supervisory board and management board of the pension fund management company.

The National bank of Slovakia has the right, when finding out that a breach of an obligation under the Act has resulted in a material gain to the person who breached the obligation or to a person close to that person, or to a person with close links to that person, it may require that person to pay compensation of equivalent value to the material gain to the person at whose expense this gain was acquired.

The National bank of Slovakia is entitled, whether or not as part of sanction proceedings, **to discuss shortcomings in the activities of a pension fund management company with members of its management board or members of its supervisory board, with an authorised representative, a senior employee or the internal control officer.** These persons must provide the cooperation requested by National bank of Slovakia.

CONCLUSIONS

The financial market consists of various segments in which operate specific entities, all with different scope of business, but at the same time possessing a common characteristic element - the need for regulation and supervision of their activities. One of the supervised entities is the pension fund management company, created a result of the pension – reform. Meaning the system of old - age pension savings provision was redesigned in Slovakia in 2003. Old - age pension means a saving scheme the purpose of which is, in combination with pension insurance as defined by a separate regulation, to ensure an income for savers in old-age and for their survivors in the event of their death. Because of the sensitivity of this area supervision is necessary; logically the pension fund management companies belong to supervised entities of the financial market in Slovakia. In the legal environment of the Slovak republic the state

delegates the performance of financial market supervision to the independent central bank – the National bank of Slovakia.

We examined the term supervision, its diverse definitions, which show partially overlapping with the terms inspection and control. In our opinion, supervision can be defined as a group of operations carried out by the competent authority in order to examine the correctness of the business of the supervised entity. One of the specific forms of supervision is financial market supervision. Financial market supervision is a form of state supervision, whose specificity lies in the fact that that state control is entrusted to an entity other than the state - the National bank of Slovakia. From a point of view of a pension fund management company supervision can be seen as a set of actions leading to an obligation to do something, tolerate or not to do something enabling the on-site inspection or the off-site supervision. From a point of view of the supervisory body supervision can be seen as procedure leading to the verification of the correctness of business of the supervised entity - the pension fund management company.

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PENSIJŲ FONDŲ VALDYMO ĮMONIŲ PRIEŽIŪRA SLOVAKIJOS RESPUBLIKOJE

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Santrauka

Finansų rinka susideda iš įvairių segmentų, kuriuose veikia specifiniai subjektai, kurie veikia skirtingai, tačiau turi bendrą elementą – jų veiklą reikia reguliuoti ir prižiūrėti. Viena iš priežiūros institucijų yra pensijų fondo valdymo įmonė, kuri buvo sukurta po pensijų reformos. Senatvės pensijų sistemos nuostatos Slovakijoje buvo pakeistos 2003. Senatvės pensijų sistemos tikslas yra taupymo schema, kurios tikslas, ją derinant su pensijų draudimu, kurį numato kiti teisės aktai, užtikrinti pajamas taupantiesiems senatvėje ir jų palikuonims jų mirties atveju. Ši sritis yra labai jautri ir todėl būtina priežiūra. Straipsnyje analizuojamas priežiūros terminas, jo įvairūs apibrėžimai, kurie rodo, kad šis terminas iš dalies sutampa su terminais „inspekcija“ ir „kontrolė“. Mūsų nuomone, priežiūra gali būti apibrėžta kaip operacijų seka, kurias vykdo kompetentinga valdžios institucija, o jos tikslas yra įvertinti prižiūrimos įmonės verslo tinkamumą. Finansų rinkų priežiūra yra valstybės priežiūros forma, kurios specifiška yra tai, kad valstybės kontrolės funkcija yra patikėta ne valstybei, o Slovakijos nacionaliniam bankui.

Keywords: pension fund management company, supervision, National bank of Slovakia.

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