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UPDATED TEXT OF THE INVESTMENT FUNDS AND THEIR MANAGEMENT  
COMPANIES ACT

LEGISLATIVE DECREE N° 862

Includes amendments by:

- Law 27641 published on 01.19.2002.
- Law 27649 published on 01.23.2002.
- Legislative Decree 1046 published on 06.26.2008
- Law 29782 published on 07.28.2011
- Law 30708 published on 12.24.2017

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LEGISLATIVE DECREE N° 862	3
Chapter I.....	3
General Provisions.....	3
Sub-Chapter I.....	3
Investment Funds.....	3
Sub-Chapter II.....	6
Management companies.....	6
Chapter II.....	10
Complementary Provisions on Investment Funds Placed through Public Offering and their Management Companies.....	10
Sub chapter I.....	10
Public Offering of Investment Funds.....	10
Sub-Chapter II.....	14
Management Companies.....	14
FINAL PROVISIONS.....	14

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## Updated Text of the Investment Funds and Their Management Companies Act

### LEGISLATIVE DECREE N° 862

#### Chapter I

#### General Provisions

#### Sub-Chapter I

#### Investment Funds

**Article 1.** An investment fund is an autonomous patrimony made up by the contributions of natural and legal persons that shall be invested in instruments, financial operations and other assets, and that shall be managed by a management company incorporated to such end, at the sole risk of the fund's participants. The name, "Investment Fund Management Company" will be exclusively used by administration companies whose operations are authorized by SMV. Securities Investment Mutual Funds Administration Companies described in the Securities Market Act may also manage Investment Funds. Hereafter, all mentions to "Fund" shall be understood as meaning an Investment Fund. (\*) (\*\*)

(\*) Article replaced by Article 1 in Law N° 27641.

(\*\*) Article replaced by Art. 4. Law N° 30708

#### **Article 2. Investment Fund Installments (\*)**

The fund's equity is divided in installments represented in participation certificates. The latter are transferable and may adopt the characteristics of securities or book entries. Shares represented by physical securities, which are mentioned in the Participants Register under the charge of the firm will be considered as owners. If they are represented through book entries the owner will be the party that is mentioned as holder in the accounting records of the Security Clearance and Settlement Institution.

Participation Certificates may be placed through public or private offerings.

Those grouped in classes with different right contents can be issued regarding a same fund, following authorization by SMV(\*\*). Similarly, differentiated series can be issued, provided that shares inside each series have equal characteristics and value, being subjected to SMV regulations.

(\*) Article amended by Article 1 in Legislative Decree 1046.

(\*\*) Comisión Nacional Supervisora de Empresas y Valores- CONASEV was substituted by Superintendencia del Mercado de Valores- SMV by Law N° 29782.

**Article 3.** Funds are closely held capital organizations. They are characterized by their fixed number of quotas. Such quotas may not be redeemed before the fund is liquidated, unless these are reimbursements resulting from the exercise of the participants' right to leave the Fund, pursuant to conditions established by SMV by virtue of a general provision. The participants' General Meeting may agree on new contributions or the increase in the number of quotas.

In addition, SMV may determine by virtue of general dispositions other conditions in which it may be possible to redeem the corresponding quotas before the Fund is liquidated. (\*) (\*\*)

(\*) Article replaced by Article 3 in Law 27641.

(\*\*)(\*\*) Article replaced by Art. 4. Law N° 30708

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**Article 4.** Functioning and operations in each fund will be subjected to the law herein, regulations on the matter, the fund's participation regulations and the agreement signed with the participant.

(\* Article replaced by Article 4 in Law 27641.

**Article 5.** The status as participant in the Funds is required by:

a) Subscription of Participation certificates when this management company receives the investors' contribution. This contribution shall be made in cash or in non-money assets. In the latter case, it should be regulated by general provisions issued by SMV; (\*)

b) Acquisition of Participation certificates; and,

c) Granting of Participation certificates in co-ownership, inheritance due to death and others permitted by law.

(\* Subsection replaced by Article 5 in Law 27641

**Article 6.** When a Participation Certificate belongs in co-ownership to more than one person, its holders shall appoint one person to represent them before the management company.

**Article 7. Participation Certificate Transfer.**

The Participation Certificate transfer has no effect against the management company while it is not communicated in writing or against third parties as long as it has not been included in the participants registry the management company must keep, or in the accountant registry in charge of the Security Clearance and Settlement Institution. Due to having signed the transfer, the transferor accepts every regulation that rules the fund.

The management company is obliged to register, with no procedures whatsoever, the transfers requested to it.

(\* Article amended by Article 1 in Legislative Decree 1046.

**Article 8.** Article repealed by the Seventeenth Final and Temporary Provision of Law 27649

**Article 9.** The Fund participation regulations shall contain, among others, the following: (\*)

a) Fund Name, specifying if its Participation certificates are placed by public or private offerings;

b) Fund duration;

c) Investment policy, including their diversification and/or specialization degree, considering, among others, risk levels.

d) Plans for placing issued Participation Certificates;

e) Equity appraisal procedures;

f) Criteria that will base the distribution of benefits from the Fund;

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g) Commissions received by the management company and expenditure to be assumed by the management company and the Fund;

h) Information that will be supplied to participants, particularly on installments appraisal, regularity and communication means through which information will be released;

i) Regulations for subscribing and negotiating installments;

j) Mechanisms to be used in case there are disputes between the management company and the participants;

k) The power of the Participants' General Assembly, necessary quorum for calling an assembly and adoption agreement and, be it the case, the functions of the Oversight Committee, as well as the way to elect and remove its members;

l) Policies and limits to be complied with regarding participant, concentration and participation;

m) The selection and renewal criteria concerning the Fund or Funds auditor, the legal person acting as external manager and, if appropriate, the administration company itself; (\*)

(\*) Article replaced by Art. 4. Law N° 30708

n) Procedure for its amendment;

o) Policy for increasing contributions and rules to determine their amount and conditions, as well as the preference rights corresponding to holders of shares to subscribe the new ones;

p) Indebtedness policy;

q) Regulations concerning Fund operations with assets of persons linked or related to the management company and of these with Fund installments; (\*)

r) Procedures for transferring fund management, for fund dissolution and liquidation; and,

s) Other rights and duties pertaining to the management company and the participants.

(\*) Replaced by Article 6 in Law 27641.

**Article 10.** (\*) Fund resources may be invested in all kind of assets and securities, pursuant to the Law herein, the regulation on the matter and the participation regulations.

(\*) Article replaced by Article 7 in Law 27641.

**Article 11.** Funds shall call a Participant's General Assembly that can be ordinary or extraordinary. Their functions are: (\*)

a) Ordinary Assembly, which meets once a year within the first four months of the year:

i. Approving the Fund's Financial Statements;

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ii. Selecting and removing the Oversight Committee members and fixing their remuneration, as appropriate; and,

iii. Dealing with other issues, including those that may fall within the competence of the Extraordinary Meeting, when they have been mentioned in the call.

b) Extraordinary Assembly that meets whenever the Fund so requires by request of a percentage of participants set forth in the participation regulations or the Ordinary Meeting.

i. Approving amendments proposed by the management company to the Fund's participation regulations; (\*)

ii. Appointing the Fund's Independent Auditors;

iii. Determining, as appropriate, by request of the management company, the conditions of new share issuances, fixing the amount to be issued and the term of placement.

iv. In case of management company dissolution or any other serious circumstance that may affect the rights of shareholders, agree transfer of administration to another management company or Fund dissolution and approve the Final Balance;

v. In case of Fund dissolution, establish the liquidation procedure, appoint the liquidator, fix its mandate; and,

vi. Resolve any other issues that law or the participation regulations so establish. (\*)

(\*) Replaced by Article 8 in Law 27641.

## Sub-Chapter II Management companies

### Article 12. Investment Fund Management Companies (\*)

Publicly held companies whose corporate objective is managing one or more investment funds are investment fund management companies.

SMV authorizes reorganization and operation of the management company and supervises it, as long as it aims at managing investment funds, whose participation certificates will be placed through public offerings. Management companies under CONASEV's competence scope may additionally manage mutual funds invested in securities and privately offered investment funds, provided they are subjected to the regulation such entity may approve regarding firm funds. CONASEV may create a simplified regime for the funds that such firms manage, making requirements set forth by regulations, applicable by Law, more flexible. Likewise, investment fund management companies under the competence of CONASEV may carry out activities that complement their corporate objective following an authorization by CONASEV.

Those companies whose purpose is not to manage Investment Funds whose participation certificates will be placed by virtue of a public offering and which, therefore, are not under the SMV's jurisdiction, must inform the potential buyers of such offerings that the SMV does not have any oversight role whatsoever over those companies and, consequently, the management of such funds, and that the information provided to those persons and other services they are provided are the sole responsibility of the company and are not overseen by SMV. (\*\*)

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(\*) Article amended by Article 1 in Legislative Decree 1046.

(\*\*) Article replaced by Art. 4. Law N° 30708

### Article 13.

Paid capital of administration companies shall be in the amount of seven hundred fifty thousand soles (S/ 750 000,00). The administration company's net worth may not fall under the amount resulting from the summation of the net worth of the mutual funds and investment funds they manage in the percentages that SMV shall determine by virtue of a general provision. Under no circumstance, the percentages identified by SMV shall exceed 0,75%, and differential percent rates may be established to fit the funds' nature and structure. (\*\*)

Additionally, through general regulations, SMV may establish its maximum limit to the minimum equity mandated for management companies, according to the characteristics of managed funds and market situation.

(\*) Article replaced by Article 10 in Law 27641.

(\*\*) Paragraph replaced by Art. 4. Law N° 30708

**Article- 13-A.** (\*) Management companies shall make up the guarantee on behalf of SMV, backing up the commitment with shareholders under their charge, for an amount not under the percentage SMV establishes in the general regulation, depending on the net equity managed by each investment Fund.

The guarantee the former paragraph refers to is intangible and cannot be subjected to judicial measure or encumbrance. Such guarantees may adopt the following modalities:

- a) Banking deposit to SMV;
- b) Banking letter of guarantee in favor of SMV; and,
- c) Caution policy issued by issuance companies in favor of SMV.

SMV may require a guarantee for higher amounts due to the volume and nature of investment Funds or other substantiated circumstances.

(\*) Article included by Article 11 in Law 27641.

**Article 13-B.** (\*) The guarantee may be executed by SMV when, during the administration of investment Funds, the management company incurs in one of the following:

- a) Infringing the obligations to shareholders pursuing to current legal regulations.
- b) Incurring in intent or negligence in developing their activities which cause damage to the investment Fund;
- c) Entering the management company or investment Fund into a liquidation process to pay liquidators, when the management company cannot pay its expenditures;
- d) Cash the encumbered investment fund assets, during a liquidation process; and,

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e) Other established by SMV.

If the guarantee is totally or partially executed, the management company is obliged to its immediate replenishment, pursuing to general provision issued by SMV.

(\*) Article included by Article 12 in Law 27641.

**Article 13-C.** (\*)The guarantee referred to in Article 13-A shall be kept until six (6) months have elapsed following the end of activities of the management company or until they are resolved by executed sentence following legal actions the beneficiaries of such guarantee may have initiated against it within the term. Such beneficiaries will necessarily pay judicial with fees in case their request is not granted.

(\*) Article included by Article 13 in Law 27641.

**Article 14.** (\*)The management company may manage more than one Fund. The equities of each one of the Funds are independent from each other and from the management company.

Accounting and recording of operations in the management company as well as of each Fund it manages shall be kept separately pursuing to general regulations established by SMV. Such accounting is subjected to examination and revision by auditing firms.

(\*) Article replaced by Article 14 in Law 27641.

**Article 15.** To manage mutual fund's assets, an Investments Committee shall be set up comprised of at least three (3) natural persons, which will be charged with deciding on the fund's investments. A single Investments Committee may perform such role with regard to more than one mutual or investment fund, pursuant to the general provisions set forth by SMV. (\*)

(\*) Article replaced by Art. 4. Law N° 30708

#### **Article 16.**

The following may not be founders, directors, managers or representatives of management companies or external managers, nor members of Surveillance Committee neither members of Investments Committees: (\*)

a) Those prevented by law;

b) Directors, advisers, officials and other SMV workers, spouses and relatives to the second degree by blood or first degree by marriage;

c) Those who have been convicted due to a crime;

d) Those who have been declared bankrupt, even if the procedure is closed; and,

e) Those who have received an administrative sanction for bad management by the Superintendence of Banking and Insurance, SMV or Superintendence of Private Administrators of Pension Funds when performing as directors, managers or representatives of the company subjected to their control or supervision.

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(\*) Paragraph replaced by Art. 4. Law N° 30708

**Article 17.** The management company, its directors, managers, shareholders with a share of more than 10 per cent (10%) of the capital, members of the Investment Committee, as well as any person participating in investment decisions regarding funds or who, due to their condition, have accessed to information on fund investment decisions are prohibited from:

- a) Acquiring, renting, usufructing, using or exploiting, directly or indirectly, assets or rights from the managed Funds. They can neither rent nor transfer in exchange for payment, the assets or rights of the firm to the Fund under their administration in any way;
- b) Lend to said Funds, except if shareholders not related to the management company or entity or person that will grant the loan had previously authorized such loan and its conditions. (\*)
- c) Receiving loans or guarantees on account of Fund resources;
- d) Directly or indirectly collecting from the Fund, for any unauthorized supplied service; and,
- e) Being shareholder, director, manager or member of the Investment Committee at another management company.

The management company will be obliged to compensate the Funds under its administration for any damages if any of its dependents or persons supplying services to it causes damages to the Fund, as a consequence of executing or omitting, as it may correspond, any of the prohibitions in the Law herein, the participation regulations and the general regulations issued by SMV, in the case of Funds whose installments are placed through public offering. The persons who might have participated will be jointly responsible for reimbursing for caused damages.

(\*) Substituted by Article 15 in Law 27641.

#### **Article 18. Reporting Requirements (\*)**

The management company authorized by SMV that manages funds whose shares have been negotiated through public offerings shall inform SMV about the amount of their equity and that of the funds it manages, notwithstanding provisions in Article 12.

Exceptionally, when SMV finds indications of public offerings that do not comply with the provisions in the Law herein, it may request information to determine their nature and if they are or not under its competence. If it is proved that a public offering has been made without observing the applicable regulations, the firm will be sanctioned pursuing to the Securities Market Law.

(\*) Article amended by Article 1 in Legislative Decree 1046.

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## Chapter II

### Complementary Provisions on Investment Funds Placed through Public Offering and their Management Companies

#### Sub chapter I

#### Public Offering of Investment Funds

**Article 19.** The Funds whose participation certificates are placed or negotiated through public offering shall comply with the abovementioned legal provisions and those established in the chapter herein. In case of conflict, the latter are applied.

Notwithstanding the abovementioned, the functioning and operation of these funds are additionally subjected to general regulations issued by SMV.

**Article 20.** (\*) Participation certificates issued by management companies on account of the funds may be registered in a centralized trading mechanism if so foreseen in the participation regulations pursuant to general regulations issued by SMV.

(\*) Article replaced by Article 16 in Law N° 27641.

#### **Article 21. Installments Placement (\*)**

Management companies may promote placement of installments fund, before their registration at SMV, provided they highlight that the fund has not yet been registered at SMV and that their placement will start following their registration.

(\*) Article amended by Article 1 in Legislative Decree 862.

**Article 22.** (\*) The management company shall comply with the following to start the fund's activities:

- a) Being registered in the Stock Market Public Registry as a management company of Investment Funds or of Mutual Funds Invested in Securities; and,
- b) The net equity of the fund will attain the minimum amount established in its participation regulations

If, after the fund's activities had started, the fund's net equity decreases below the minimum stipulated by the management company in the participation regulations, SMV will determine the fund liquidation or any other measure that will be adopted following evaluation of the particular characteristics in each case.

(\*) Article replaced by Article 17 in Law 27641.

**Article 23.** Aiming at registering each fund in the Stock Market Public Registry, the company will submit SMV the fund's participation regulations and the statement of the contract between the company and the participants. (\*)

Registration will be made in no more than twenty (20) working days following submission of the request. For a single time, SMV may make observations, in which case the term will be suspended until they are solved. In such circumstance, SMV has a five (5) working day term to register the fund.

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The registration referred to in the article herein will be made simultaneously with the operation permit of the management company, when it so corresponds.

(\*) Paragraph replaced by Article 18 in Law 27641.

**Article 24.** (\*) Investment surpluses, as investments not foreseen in the investment fund's investment policy due to causes that cannot be attributed to the management company shall be solved according to their conditions to that effect that the shareholders' assembly agree through general provisions. SMV will issue regulations for appropriate transparency and protection of investors and to set forth the correction conditions in case there is no agreement at the participant's assembly.

Investment surpluses and investment not foreseen in the investment fund's investment policy due to causes attributed to the management company shall be corrected in a term no longer than six (6) months, according to general provisions placed by SMV

(\*) Article replaced by Article 19 in Law N° 27641.

**Article 25.** (\*) Placement of shares shall be preceded by submission of the participation regulation, which shall be kept updated.

(\*) Article replaced by Article 20 in Law 27641.

**Article 26.** The securities or documents that represent the assets in which the fund's resources are invested shall be submitted by the management company to an entity authorized to supply custody services.

Notwithstanding the aforementioned, the management company may perform the custody of participation certificates it issues.

**Article 27.** Fund resource investments may be made in:

- a) Marketable securities; (\*)
- b) Marketable securities issued or guaranteed by the State, traded in Peru or abroad;
- c) Financial instruments not registered in the Stock Exchange Public Registry; (\*)
- d) Deposits in National Financial System entities in domestic or foreign currency, as well as instruments that represent them;
- e) Deposits in foreign banks or financial entities, as well as instruments representing them;
- f) Financial instruments issued by governments, central banks, and other legal entities governed by public law or by foreign private law;
- g) Participation certificates of mutual funds invested in securities;
- h) Real estate located in Peru, and the rights on it;
- i) Rental operations, as lessor or lessee. In such case, the fund will assume the same rights and duties corresponding to lessor or lessee, as it may correspond, through the management company.

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j) Temporary securities and transfers, report operations and repurchase agreement operations, (\*) (\*\*)

k) Foreign currency purchase and sale transactions: (\*\*\*)

l) Futures transactions, options and other derivatives;

m) Purchase of credit portfolios;

n) Commodities and the rights upon them;

ñ) Structured yield financial instruments;

o) Other securities, assets and operations, as determined by SMV pursuant to general provisions (\*\*\*\*)

Asset investments mentioned in subparagraphs c), e), f), i), j), k), l), m), n) and ñ) will be subject to the general dispositions enacted by SMV. (\*\*\*\*)

(\*) Substituted by Article 21 in Law 27641.

(\*\*) (\*\*\*) (\*\*\*\*) Paragraph replaced by Art. 4. Law N° 30708

(\*\*\*\*) Paragraph l) to o) added by Art. 4. Law N° 30708

#### **Article 28. Participant (\*)**

No natural or legal person may be, directly or indirectly, holder of more than one third of the net equity of an investment fund, except if they are founders and institutional investors, pursuant to the Securities Market Law, whose limit will be established in the respective participation regulations.

When there is excess due to causes not attributable to the shareholder, SMV will regulate its regularization regarding terms and conditions.

(\*) Article amended by Article 1 in Legislative Decree 862.

**Article 29. (\*)** Investments of funds will be subjected to diversification criteria established in the corresponding participation regulations.

Through general regulations, SMV may establish the diversification criteria depending on each Fund's specific characteristics.

(\*) Article replaced by Article 23 in Law 27641.

**Article 30. (\*)** The company that manages a fund may issue debt and receive loans in favor of the fund on account of its resources provided there is express authorization by the Oversight Committee, authorized to this effect by the shareholders' assembly. The same will rule for cases in which specific guarantees are granted to back up debts or loans.

If issuance of obligations is done through public offering and exceeds the Fund equity, specific guarantees shall be set up according to stipulations in Article 90 of the Securities Market Law. If aid issuance is done through private offer, it shall be subjected to provisions in article 307 of the General Corporation Law.

(\*) Article replaced by Article 24 in Law 27641.

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**Article 31.** The following is forbidden in investments that management companies make with fund resources:

- a) Granting guarantees, except those established by SMV through general regulations; (\*)
- b) Carrying out active credit or advance operations, except following express authorization of its Oversight Committee or if they are securities issued or guaranteed by banking or financial companies or by the State;
- c) Investment in stock owned by mutual funds and/or Investment Funds management companies, Pension Fund private management companies, stock exchange brokerages, intermediation companies and other funds managed by the administration company itself. In the latter, SMV may provide exceptions by virtue of general norms. (\*\*)

(\*) Subsection substituted by Article 25 in Law 27641.

(\*\*) Paragraph replaced by Art. 4. Law N° 30708

**Article 32.** The assets and securities that make up the funds will not be affected by charges, precautionary measures or prohibitions of any kind, except if they are granted guarantees stemming from Fund operations.

In any case, such charges and prohibitions, as well as liabilities that Fund may have will not exceed the limit established by SMV through general provisions. (\*)

(\*) Paragraph replaced by Article 26 in Law 27641.

**Article 33.** (\*) The Oversight Committee will be made up by no less than three (3) or no more than six (6) people. The shareholders, directors and managers of the management company, their spouses and relatives to the second degree of blood and first of marriage and the people related to them may not partake in such organs. An Oversight Committee may perform operations regarding more than one Investment Fund managed by the same management company in charge of its administration.

(\*) Article replaced by Article 27 in Law 27641.

**Article 34.** The Oversight Committee shall:

- a) Oversee that the management company –regarding the fund and according to Law– will comply with the participation regulations and the placement terms; (\*)
- b) Verify that the information supplied to participants is truthful and timely;
- c) Verify that actions following the Fund's external auditor's observations and recommendations are carried out; (\*)
- d) Call the General Assembly to report on its management and when, in exercise of its functions, it so deems necessary; and,
- e) Other set forth in the participation regulations or delegated by the General Assembly. (\*)

(\*) Subsection replaced by Article 28 in Law 27641.

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**Article 35.** The Oversight Committee will perform its functions with diligence, loyalty and impartiality, always giving absolute priority to the Fund participants' interest. Its functions cannot be delegated.

## **Sub-Chapter II Management Companies**

**Article 36.** Management companies of Investment Funds to be placed through public offering shall register at the Stock Market Public Registry.

Through general regulations, SMV will set forth the requirements to authorize the organization, operation and adequation of those that have been managing only Investment Funds placed through private offer.

**Article 37.** Article repealed by Article 2 in Legislative Decree 1046, published on June 26 2008.

**Article 38.** SMV may, ex-officio or by request of the General Assembly or the Oversight Committee, appoint one or more controllers to management companies in the following cases:

- a) When one or more managed funds faces a situation which, according to SMV, may cause damage to its participants; and,
- b) When the management company incurs in serious infractions of the law and general regulations issued by SMV.

Controllers shall adopt the necessary measures to recover the funds and, be it the case, reorganize them and transfer them to another management company. CONASEV authorizes such transfers subjected to general regulations it issues.

**Article 39.** Through general regulation, SMV establishes the controller's power and intervention modalities. It may suspend the board of directors' and managers' powers when the situation so requires.

**Article 40. Dissolution and Settlement Process.**

SMV will enact the general provisions to which management companies must adhere when entering a dissolution and liquidation process, and shall also designate the person(s) that will perform as liquidator. (\*)  
(\*\*)

(\*) Article amended by Article 1 in Legislative Decree 862.

(\*\*) Article replaced by Art. 4. Law N° 30708

## **FINAL PROVISIONS**

**FIRST.** The following are applicable to the law herein as complements.

- a) The Securities Market Law;
- b) The General Corporation Law;
- c) The Trade Code and the Securities Law;
- d) Stock exchange and commercial uses;

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e) The General Law on Banking, Financial and Insurance Institutions;

f) The Civil and Civil Procedural Code; and,

g) The Criminal Code.

**SECOND.** The amounts mentioned in the law herein are constant and are annually updated at each year close, according to the Wholesale Price Index for Metropolitan Lima regularly published by INEI. The figure resulting for January 1996 is considered as base for such index.

**THIRD.** The law herein will come into effect 45 working days following the date of its publication in the *Official Gazette*.