

Special Purpose Investment Companies Act
Promulgated SG No. 46/20.05.2003, amended, SG No. 109/16.12.2003, effective 1.01.2004, amended and supplemented, SG No. 107/7.12.2004, effective 7.12.2004

*Note: An update of the English text of this Act is being prepared following the amendments in SG No. 34/25.04.2006 (effective 1.10.2006)

Text in Bulgarian: Закон за дружествата със специална инвестиционна цел

Chapter One

GENERAL PROVISIONS

Subject

Article 1. This Act settles the dealings related to the securitization of real estates and receivables through companies having obtained licence for conducting activity as special purpose investment companies, as well as their incorporation, activity and dissolution.

Objective

Article 2. The objective of the Act is:

1. to create conditions for development of investment through securitization of real estates and receivables and for development of the capital market;
2. to provide protection of the interests of the investors in the special purpose investment companies.

Chapter Two

ESTABLISHING AND LICENSING OF SPECIAL PURPOSE INVESTMENT

COMPANY

Definition

Article 3. (1) Special purpose investment company shall be a joint-stock company which, under the conditions and by the order of this Act, invests the funds raised by issuance of securities in real estates or receivables (securitization of real estates and receivables).

(2) The trade name of the special purpose investment company shall include the indication "joint-stock special purpose investment company" or the abbreviation "JSSPIC".

(3) Persons who do not meet the requirements of this Act may not include in their trade name the indication "joint stock special purpose investment company" or the abbreviation "JSSPIC".

Company objects

Article 4. (1) The special purpose investment company may carry out the following transactions:

1. raising resources by issuing securities;
2. purchase of real estates and real rights on real estates, carrying out construction and improvements for the purpose of assigning them for management, renting, leasing or leasehold and their sale, or sale-purchase of receivables.

(2) The special purpose investment company may not carry out commercial transactions other than those under Paragraph (1) and the directly related ones, unless permitted by this Act.

(3) The special purpose investment company may not acquire real estates or receivables subject to a legal dispute.

(4) The real estates acquired by the special purpose investment company shall be located on the territory of the Republic of Bulgaria.

(5) The receivables acquired by the special purpose investment company shall:

1. be from local persons;
2. not be subject to enforcement.

(6) A special purpose investment company may securitize only real estates or only receivables.

Incorporation

Article 5. (1) The special purpose investment company shall be incorporated only under Article 163 of the Commerce Act. Founders may not be more than 50 persons.

(2) Incorporation of a special purpose investment company shall require at least 30 percent of the capital to be subscribed by institutional investors.

(3) On incorporation of a special purpose investment company the statutory meeting shall obligatorily take a decision for initial increase of the capital by the same class of shares as the ones registered at the statutory meeting from the moment when the company obtains a licence under Article 11. The increase shall not be less than 30 percent of the capital of the company.

(4) The special purpose investment company shall inform the Financial Supervision Commission about its entry in the commercial register within 7 days from receipt of the court decision.

Capital and shares

Article 6. (1) The capital of the special purpose investment company may not be less than BGN 500,000.

(2) The capital registered at the statutory meeting shall be fully paid up at the moment of filing the application for entry in the commercial register.

(3) The contributions to the capital may be only in cash.

(4) The shares of the special purpose investment company shall be dematerialized. Article 185 (2), second sentence of the Commerce Act shall not apply.

(5) The special purpose investment company may not issue preference shares entitling to more than one vote.

(6) The capital of the special purpose investment company may not be reduced through compulsory cancellation of shares.

(7) Increase of the capital under Article 197 of the Commerce Act shall not be admitted.

Articles of Association

Article 7. Besides the data stipulated by the Commerce Act the Articles of Association of the special purpose investment company shall also contain:

1. the term for which the company is established;
2. the type of the assets to be securitized by the company;
3. the investment objectives of the company;
4. restrictions for the type of real estates in which the company may invest, respectively for the type of receivables and their securitization, if so required;
5. the maximal size of the expenses for management of the company as a ratio to the book value of the assets of the company;
6. the rules for determining the remuneration of the members of the board of directors of the company, as well as of the remuneration of the servicing companies;
7. the rights and obligations of the servicing companies.

Management

Article 8. (1) The special purpose investment company shall be managed and represented by a board of directors.

(2) The members of the board of directors shall have higher education and shall not:

1. have been convicted for general offence;
2. have been declared bankrupt as sole trader or as unlimited liable partner in a trade company, and not to be under proceedings for declaring bankruptcy;
3. have been members of a managing or control body of a company or cooperation, terminated due to bankruptcy during the last two years preceding the date of the decision for declaring the bankruptcy, if there are unsatisfied creditors;
4. have been deprived of the right to occupy material liability position;
5. spouses or relatives up to third degree inclusive, in direct descent or lateral branch between themselves, or to a member of a managing or control body of the servicing company.

(3) The requirements of Paragraph 2 shall also refer to the individuals representing corporate bodies - members of the board of directors.

(4) For establishing the circumstances under Paragraph 2 a declaration, a diploma of graduated degree of education and a certificate of conviction shall be presented.

Raising and safeguarding the funds

Article 9. (1) The funds raised from issue of securities shall be deposited by the persons having purchased the securities to a bank account specially opened by the special purpose investment company.

(2) The funds and securities of the special purpose investment company shall be kept in a depository bank.

(3) The depository bank shall make all payments for the account of the special purpose investment company in observance of the terms stipulated by its Articles of Association and prospectus for public offering of securities.

(4) Applied for the depository bank shall be the requirements of Article 173 of the Public Offering of Securities Act.

Profit distribution

Article 10. (1) (Supplemented, SG No. 107/2004) The special purpose investment company shall distribute as dividend not less than 90 percent of the profit for the financial year, arrived at according to the procedure established by Paragraph (3) and in compliance with the requirements of Article 247a of the Commerce Act. Item 1 of Article 246 (2) of the Commerce Act shall not apply.

(2) The dividends shall be paid within 12 months from the end of the respective financial year.

(3) (Repealed - SG No. 109/2003, new, SG No. 107/2004) The distributable profit shall be the financial result (accounting profit or loss), adjusted as follows:

1. credited/debited with the expenses/income from subsequent valuations of real estates;
2. credited/debited with the losses/profits on transactions for transfer of ownership of real estates;
3. credited/debited, in the year of transfer of ownership of real estates, with the positive/negative difference between:
 - (a) the selling price of the real estate, and
 - (b) the sum total of the historical cost of the real estate and the subsequent expenditures which have led to an increase

of the net book value thereof;

4. credited/debited with the losses/profits on sales reported in the year of conclusion of financial leases;

5. credited/debited, in the year of expiry of the term of validity of the financial lease, with the positive/negative difference between:

(a) the income from the sale of the real estate recorded at the commencement of the term of validity of the financial lease, and

(b) the sum total of the historical cost of the real estate and the subsequent costs which have led to an increase of the net book value thereof.

(4) (Repealed, SG No. 109/2003).

Issuance of licence

Article 11. (1) The members of the board of directors shall be obliged, not later than 6 months from the date of entering the special purpose investment company in the commercial register, to file with the Financial Supervision Commission an application for issuance of licence for carrying out activity as a special purpose investment company according to a sample form, accompanied by:

1. the Articles of Association and the other statutory acts;

2. prospectus for obligatory increase of the capital through public offering of shares under Article 5(3);

3. documents certifying compliance with the requirements of Article 8 (2) for the members of the board of directors of the companies and for the persons authorized to manage and represent it;

4. the contract with the depository bank;

5. the names and the data of the persons possessing directly, or through related persons, over 5 percent of the voting shares; the persons shall present written declarations for the source of the resources from which they have made the contributions against the registered shares, including on whether the resources have not been borrowed, as well as for the taxes paid by them during the last 5 years.

(2) The Financial Supervision Commission shall issue a licence and shall confirm the prospectus within one month from the receipt of the application, and when additional information and documents have been required - within 14 days from their receipt. The Commission may require one-off removal of discrepancies and/or submission of additional information.

(3) The Financial Supervision Commission shall refuse to issue licence if:

1. the prospectus for public offering of securities, the servicing company, the depository bank or the contract under Item 4 of Paragraph (1) do not comply with the requirements of this Act, with the Public Offering of Securities Act or with the acts for their implementation;

2. the persons possessing directly or through related persons over 5 percent of the voting shares or who can exercise control over the company by their activity or by their influence on decision-making may harm the security of the investments;

3. the company does not meet the minimal capital requirements;

4. the members of the board of directors and the persons authorized to manage and represent the company do not meet the requirements of Article 8 (2);

5. other requirements of the law have not been met or the interests of the investors have been threatened.

Prospectus

Article 12. (1) The prospectus for public offering of securities by a special purpose investment company shall contain data about the company, its activity and the offered shares in compliance with the provisions of the Public Offering of Securities Act and the acts for its implementation, as well as:

1. about the investment purposes and the restrictions of the investment policy;

2. description of the criteria to which the real estates correspond, respectively the receivables in which the company will invest, as well as the characteristics of the acquired real estates, respectively receivables;

3. about the other sources of financing is such are provided for;

4. the maximal size of the provided external financing as compared with the size of the own capital;

5. data about the depository bank and the requirements to be met by the servicing companies;

6. the amounts or the method of determining the remuneration of the members of the board of directors, as well as of the servicing companies;

7. the maximal admissible size of the expenses related to the management of the company as a ratio to the book value of the assets of the company;

8. the additional investments and expenses necessary for commissioning the assets;

9. additional facts and circumstances determined by an ordinance of the Financial Supervision Commission.

(2) The members of the board of directors, the managerial agent of the company, as well as the investment intermediary shall be jointly and severally liable for the damages caused by false, misleading or incomplete data contained in the prospectus. The person under Article 34 (1) or (2) of the Accountancy Act shall be liable jointly and severally with the persons referred to in the first sentence for damages caused by false, misleading or incomplete data contained in the financial reports of the special purpose investment company, and the registered auditor - for the damages caused by the financial

statements audited by him.

Initial increase of the capital

Article 13. (1) Initial increase of the capital of the special purpose investment company shall be carried out only on the grounds of a prospectus confirmed by the Financial Supervision Commission. Article 112a (1) of the Public Offering of Securities Act shall not apply.

(2) On initial increase of the capital rights shall be granted within the meaning of Item 3 of § 1 of the Public Offering of Securities Act. One right shall be granted for each share from the increase.

(3) The initial increase of the capital shall be serviced by an investment intermediary with a capital not less than that stipulated in Article 56, (1) of the Public Offering of Securities Act. The whole rights issue under Paragraph 2 shall be undertaken by the investment intermediary and shall be offered for public trading on a regulated market. On the initial increase of the capital the provisions of Article 112 (1) of the Public Offering of Securities Act and Article 194 of the Commerce Act shall not apply.

(4) The special purpose investment company shall send a notification to the regulated market on which its shares will be offered. The notification shall contain the initial date on which the offering of rights shall begin, the terms of its fulfilment and information regarding the number and the nominal and issued value of the shares to be registered.

(5) The notification under Paragraph 4 shall be sent not later than 30 working days from the date of issuance of the licence for carrying out activity as a special purpose investment company.

(6) The regulated market shall be obliged to accept for trading the rights under paragraph 2.

(7) The time limit for registration of shares under paragraph 1 shall be at least 30 days. The beginning of the time limit of registering shares shall coincide with the beginning of the time limit for rights transfer. The time limit for registration of shares shall expire at least 15 working days after the expiration of the time limit for the rights transfer.

(8) The initial increase of the capital shall be made up to the size of the registered shares.

Change of the trade name when licence is refused

Article 14. (1) The Financial Supervision Commission shall send to the court of registration of the special purpose investment company the enacted refusal to issue licence.

(2) If the Financial Supervision Commission does not receive an application under Article 11 (1) within 6 months from the date of entry in the commercial register of the special purpose investment company it shall inform the court about that.

(3) On notification under Paragraph 1 or 2 the court of registration shall change, ex-officio, the trade name of the special purpose investment company and the indication "jointstock special purpose investment company" or the abbreviation "JSSPIC" shall be replaced by "joint stock company", respectively "AD".

Change of the structure and management

Article 15. (1) A change of the Articles of Association and of the other structural acts of a special purpose investment company, as well as a replacement of the depository bank and of the servicing company shall be admitted upon approval of the Financial Supervision Commission.

(2) The Financial Supervision Commission shall issue or refuse to issue an approval under paragraph 1 within 14 days from receipt of the application with its attachments, and if additional information has been required - from its receipt. The Commission shall refuse to issue an approval if the requirements of the law and the acts for its implementation have not been met. The refusal shall be motivated in writing.

(3) The court shall enter in the commercial register the change of the Articles of Association upon presentation of the approval under paragraph 1.

Withdrawal of licence

Article 16. (1) The Financial Supervision Commission shall withdraw the issued licence if the special purpose investment company:

1. does not commence the permitted activity within 12 months from the date of issuance of the licence;
2. has presented untrue data which have served as grounds for issuance of the licence;
3. ceases to meet the requirements under which the licence has been issued;
4. systematically violates the provisions of this Act or of the acts for its implementation.

(2) The Financial Supervision Commission shall notify the company within 7 days from taking the decision for withdrawal of the licence.

(3) Upon the enactment of the decision for withdrawal of the licence the Financial Supervision Commission shall immediately file a request to the respective district court for institution of proceedings for liquidation of the special purpose investment company and shall undertake the necessary measures for informing the public.

Chapter Three

REQUIREMENTS TO THE ACTIVITY OF SPECIAL PURPOSE INVESTMENT COMPANY

Due care

Article 17. (1) The management of the assets of a special purpose investment company shall be carried out with due

care, giving priority to the interest of the shareholders to the own interest and maintaining an optimal balance between reliability and profitability.

(2) The members of the board of directors of a special purpose investment company shall be obliged, immediately upon acquisition of a real estate, to insure it.

Servicing companies

Article 18. (1) The special purpose investment company may not carry out directly the activities on using and maintenance of the acquired real estates or collection of acquired receivables.

(2) The special purpose investment company shall assign to one or more commercial corporations, having the necessary organization and resources (servicing company), the servicing and maintenance of the acquired real estates, the construction and improvements, respectively the servicing of the acquired receivables, the keeping and safeguarding of accounting and other reporting correspondence, as well as any other necessary activities.

(3) The servicing companies shall ensure the fulfilment of the activities under paragraph 2 in compliance with the law and with the Articles of Association of the special purpose investment company.

(4) A servicing company may not offset funds of the special purpose investment company against its remuneration.

(5) The Financial Supervision Commission shall carry out inspections of the servicing companies under Articles 18 and 19 of the Financial Supervision Commission Act.

Valuation of real estates and receivables

Article 19. (1) Prior to acquiring real estates and receivables the special purpose investment company shall assign their valuation to one or more experts with qualification and experience in the relevant field.

(2) The valuation may not be assigned to a person who:

1. holds directly or indirectly shares in the special purpose investment company;
2. is a member of the board of directors of the special purpose investment company;
3. is a related person with a member of the board of directors or with a person holding directly or indirectly more than 5 percent of the shares of the special purpose investment company;
4. is a seller of the real estate, a member of a managing or control body, a partner or shareholder of the seller, as well as a person related to the seller, a member of his managing or control body, his partner or shareholder;
5. may be affected by another form of dependence or conflict of interest.

(3) The valuers shall submit a declaration for absence of circumstances under Paragraph 2.

(4) The valuers shall be liable for the damages caused guiltily to the company or its shareholders, arising from their incorrect valuation.

(5) The prices at which the special purpose investment company acquires real estates or receivables may not be considerably higher, and the prices at which it sells them - considerably lower than the valuation, except in exceptional circumstances. In this case the persons who manage and represent the company must explain their actions in the next regular report.

Subsequent valuations of real estates and receivables

Article 20. (1) (Redesignated from Article 20, SG No. 107/2004) The real estates or receivables held by the special purpose investment company shall be valued at the end of each financial year or on occurrence of a change by more than 5 percent in the index of the prices of real estates or in the inflation index determined by the National Statistical Institute.

Article 19 shall apply respectively.

(2) (New, SG 107/2004) Any valuations according to the procedure established by Paragraph (1) shall be presented in the financial reports of the special investment purpose company in accordance with the requirements of accounting legislation.

General restrictions

Article 21. (1) The special purpose investment company may not secure other's liabilities or grant loans.

(2) The special purpose investment company may:

1. issue debt securities registered for trade on a regulated market;
2. draw bank credits for acquisition and commissioning of the assets subject to securitization;
3. draw bank credits amounting to 20 percent of the book value of the assets used for payment of interest, if the term of the credit is not more than 12 months.

(3) The special purpose investment company may invest up to 10 percent of its capital in a servicing company.

Investing free resources

Article 22. (1) A special purpose investment company may invest its free resources in securities, issued or guaranteed by the Bulgarian government, and in bank deposits.

(2) A special purpose investment company for securitization of real estates may invest up to 10 percent of its assets in mortgage bonds.

(3) A special purpose investment company may not acquire interests in other companies except in the cases of Article 21 (3).

(4) A special purpose investment company may not participate on the capital market by investing in assets other than those under paragraphs 1 and 2, or to carry out buy-back in accordance with the procedure of Article 111 (5) of the Public Offering of Securities Act.

Restriction on acquisition of new assets for securitization

Article 23. A special purpose investment company may acquire a new asset or assets for securitization only if this has been stipulated by the Articles of Association of the securities.

Protection of company property

Article 24. Articles 646 - 649 of the Commerce Act shall not apply to the real estates and receivables sold to a special purpose investment company, unless the transactions have been carried out in violation of Articles 4 and 19 of this Act.

Chapter Four

DISCLOSURE OF INFORMATION AND CONFLICT OF INTEREST

Disclosure of information

Article 25. (1) The special purpose investment companies for securitization of real estates shall publish in their quarterly and annual reports, besides the information disclosing as public companies:

1. information about the share of the assets assigned for use against consideration of value as compared with the total size of the securitized assets;
2. information about sale or purchase of a new asset of value exceeding 5 percent of the value of the securitized assets;
3. other information determined by an ordinance of the Financial Supervision Commission.

(2) The special purpose investment companies for securitization of pecuniary receivables shall publish in their quarterly and annual reports, besides the information disclosing as public companies, information about:

1. the share of unserviced receivables in the total securitized receivables;
2. the type and the size of the collateral and the term to the maturity of the receivables for receivables exceeding 10 percent of their total amount;
3. the average size of the collateral as compared with the total size of the receivables;
4. the average-weighted term of payments on interest and principals of the securitized receivables;
5. classification of the receivables determined by the ordinance under Item 3 of Paragraph 1;
6. other information determined by the ordinance under Item 3 of Paragraph 1.

(3) The special purpose investment companies possessing interests or shares in a servicing company shall present in their quarterly and annual reports financial reports for the activity of the servicing company.

Conflict of interest

Article 26. (1) The persons, managing and representing the special purpose investment company, shall be obliged to fulfil their duties conscientiously and with due care for protection of the interests of the investors, giving priority of the interest of the company to their own interest.

(2) The persons under Paragraph 1 shall be obliged to present, every year, to the Financial Supervision Commission, declaration for their property and business interests.

(3) The persons under Paragraph 1 shall be obliged to avoid conflicts between their interests and the interest of the company and, should such conflicts occur, to disclose them in due time, in a way accessible to the investors, and not participate in taking decisions in these cases.

(4) The persons, managing and representing the company, shall also be obliged to keep the trade secret of the company after losing this capacity until the public disclosure of the respective circumstances.

Chapter Five

TRANSFORMATION AND DISSOLUTION OF THE SPECIAL PURPOSE INVESTMENT COMPANY

Transformation

Article 27. (1) A special purpose investment company may not be transformed into another type of commercial corporation, as well as change its objects.

(2) The transformation through merger by the formation of new company or merger by acquisition shall be carried out upon permit of the Financial Supervision Commission only between special purpose investment companies securitizing assets of the same type.

(3) Transformation through division by the formation of new companies or separation shall be carried out upon permit of the Financial Supervision Commission, and the newly established company(s) must also be special purpose investment companies.

Dissolution

Article 28. The special purpose investment company shall be dissolved upon expiration of the term stipulated by the Articles of Association or by a decision of the general meeting only on grounds stipulated by the Articles of Association and by the prospectus for issuance of securities. Permit shall be issued by the Financial Supervision Commission for dissolution

of the company. The persons appointed as liquidators or trustees in bankruptcy of a special purpose investment company shall be approved by the Financial Supervision Commission. Articles 68a and 69 of the Public Offering of Securities Act shall apply respectively.

Issuance of permit

Article 29. (1) Application in a sample form shall be filed for issuance of permit under Articles 27 and 28. The Financial Supervision Commission shall take a decision on the application within 14 days from its filing, and when additional reference and documents have been required within 7 days from their receipt. Article 28 (2) and (3) of the Public Offering of Securities Act shall apply respectively.

(2) The Financial Supervision Commission shall refuse to issue permit for transformation or dissolution if the interests of the investors are not protected. The applicant shall be informed in writing about the decision within three days.

(3) The conditions and the procedure for issuing permit under Articles 27 and 28 shall be determined by an ordinance of the Financial Supervision Commission.

Chapter Six

COMPULSORY ADMINISTRATIVE MEASURES AND ADMINISTRATIVE PENALTY LIABILITY

Compulsory administrative measures

Article 30. (1) Applied for special purpose investment companies shall be the provisions of Articles 212 - 220 of the Public Offering of Securities Act, with exception of the provisions of Article 212, Item 4 of Paragraph (1) and Paragraphs 2 - 6.

(2) Applied for the servicing companies shall be the provision of Article 212, Item 1 of Paragraph (1) of the Public Offering of Securities Act.

Administrative penalty liability

Article 31. (1) Who commits or admits the committing of violation of:

1. Article 3(3), Article 8 (2 or 3), Article 12(1) and Article 26(2) shall be subject to a fine of BGN 500 to BGN 2,000;

2. Article 4 (2, 4 or 5), Article 5 (3), Article 6 (5, 6 or 7), Article 21, Article 22 and Article 26 (1, 3 or 4) shall be subject to a fine of BGN 2,000 to BGN 5,000;

3. Article 4 (6), Article 9 (3), Articles 10, 19, 20 and 23 shall be subject to a fine of BGN 5,000 to BGN 10,000.

(2) For repeated violation under Paragraph 1 the respective fine shall be double.

(3) For violation under Paragraph 1 the following property sanctions shall be imposed on corporate bodies and individuals:

1. under Item 1 - from BGN 1,000 to BGN 5,000 and for repeated violation - from BGN 2,000 to BGN 10,000;

2. under Item 2 - from BGN 5,000 to BGN 10,000 and for repeated violation - from BGN 10,000 to BGN 20,000;

3. under Item 3 - from BGN 10,000 to BGN 20,000 and for repeated violation - from BGN 20,000 to BGN 30,000.

(4) For not observing enforced compulsory administrative measure under Article 30 the offenders and the permittees shall be punished by a fine of BGN 2,000 to BGN 10,000.

(5) The acts for established violation shall be issued by officials authorized by the chairman of the Financial Supervision Commission, and the penalty provisions shall be issued by the chairman of the Commission. The establishment of the violations, the issuance, the appeal and the execution of penalty provisions shall be carried out in accordance with the procedure of the Administrative Violations and Sanctions Act.

ADDITIONAL PROVISIONS

§ 1. Within the meaning of this Act:

1. "Securitization" is activity by which real rights (right of ownership and right of construction) on real estates or rights on pecuniary receivables, including future receivables, are materialized in securities publicly offered.

2. "Expenses related to the management of the company" are all expenses related to the management and servicing, including expenses for remuneration of members of the board of directors of the company, as well as expenses for remuneration of the servicing companies, the registered auditor, the valuers and the depository bank.

3. "Local person" is:

a) a corporate body with headquarters in the country;

b) a corporate body with headquarters outside the country for the activity in the country through a registered branch;

c) an individual permanently residing in the country.

4. "Related persons" are the persons within the meaning of § 1 of the Commerce Act.

5. "Repeated" is the violation committed within one year from the enactment of the penal order by which the offender has been punished for the same kind of violation.

TRANSITIONAL AND CONCLUDING PROVISIONS

§ 2. Applied for issues not settled by this Act shall be respectively the provisions of the Public Offering of Securities Act and the Commerce Act, with the exception of Article 204 (1) of the Commerce Act.

§ 3. Within 6 months from the enactment of this Act the Financial Supervision Commission shall adopt the ordinances for its implementation.

The Act was adopted by the 39th National Assembly on 7 May 2003 and was affixed with the official seal of the National Assembly.