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NOTARY'S OFFICIAL PROCEDURES BOOK
REGISTRY NUMBER

2310

MERGER AGREEMENT

This notarial act has been prepared and certified by Merle Saar-Johanson, notary in and for Tallinn, on the nineteenth of September in the year two thousand and twenty two (19.09.2022) and the participants in this notarial act are

EfTEN Real Estate Fund III AS, registry code 12864036, address A. Lauteri tn 5, 10114 Tallinn, e-mail address info@eften.ee, hereinafter the **Acquiring Fund**, represented by the member of the management board entered on the registry card **Viljar Arakas**, personal identification code 37902260336, who is a person known to the attester of the act and who confirms that his powers as the member of the management board are valid, he has not been recalled and his term of office has not expired or it has been properly extened,

EfTEN Kinnisvarafond AS, registry code 11505393, address A. Lauteri tn 5, 10114 Tallinn, e-mail address info@eften.ee, hereinafter the **Fund Being Acquired**, represented by the member of the management board entered on the registry card **Tõnu Uustalu**, personal identification code 37503082761, who is a person known to the attester of the act and who confirms that his powers as the member of the management board are valid, he has not been recalled and his term of office has not expired or it has been properly extended,

The Acquiring Fund and the Fund Being Acquired hereinafter also the merging funds, who enter into the following agreement:

1. OBJECT OF THE AGREEMENT

The object of the agreement is merger of the merging funds without liquidation proceedings, whereby the Fund Being Acquired is deemed dissolved as of entry of the merger on the registry card of the Acquiring Fund and the merging funds will continue operating under the business name **EfTEN Real Estate Fund AS** (it is contemplated that the articles of association of the Acquiring Fund shall be amended in order to change the business name of the Acquiring Fund).

2. THE ACQUIRING FUND

2.1. **The Acquiring Fund is EfTEN Real Estate Fund III AS**, registry code 12864036, with the share capital of fifty million seven hundred twenty-five thousand three hundred fifty (50,725,350) euros as at the date of this agreement.

2.2. Pursuant to the shareholders list of the Acquiring Fund of 19 September 2022 at 12:00, maintained by Nasdaq CSD SE Estonia branch, the share capital of the Acquiring Fund is devided into five million seventy-two thousand five hundred thirty-five (5,072,535) shares, whereas the nominal value of one (1) share is ten (10) euros.

2.3. The Acquiring Fund is a closed-ended public real estate fund founded as a public limited company, the shares of which are admitted to trading on a regulated market (Main List of Nasdaq Tallinn Stock Exchange) since 01 December 2017.

3. THE FUND BEING ACQUIRED

3.1. **The Fund Being Acquired is EfTEN Kinnisvarafond AS**, registry code 11505393, with a share capital of nineteen million two hundred sixty-six thousand six hundred eight euros and fifty cents (19,266,608.50) as at the date of this agreement.

3.2. Pursuant to the shareholders list of the Fund Being Acquired of 19 September 2022 at 12:00, maintained by Nasdaq CSD SE Estonia branch, the share capital of the Fund Being Acquired is devided into thirty-eight million five hundred thirty-three thousand two hundred seventy-one (38,533,271) shares, whereas the nominal value of one (1) share is zero point five (0.5) euros.

3.3. The Fund Being Acquired is a closed-ended non-public real estate fund founded as a public limited company.

4. REASON FOR THE MERGER AND THE IMPACT OF THE MERGER ON THE SHAREHOLDERS OF THE MERGING FUNDS

4.1. By analyzing the profiles of the merging funds, including the proportion of financial leverage, business results, evaluation bases and service providers of the merging funds the management boards of the merging funds' fund manager EfTEN Capital AS and of the merging funds have arrived at a decision that the merger of the Acquiring Fund and the Fund Being Acquired is in the interest of the sharereholders of both merging funds for the reasons outlined in sections 4.2 and 4.3 below.

4.2. The merging funds' management boards and the fund manager of the merging funds consider the broader market sentiment for retail investments has been positive in previous years and continues to be so even at the time of signing this agreement. Although various risks are foreseen in the securities market as well as in the real estate sector in the future, real estate is considered a popular rather than an unpopular asset class from the perspective of investment. The business performance of the merging funds is relatively similar, on asset and equity levels, which are favorable to the merger. Upon the merger of the Acquiring Fund and the Fund Being Acquired, the fund will have real estate inesvtments with the worth of approximately three hundred seventy million (370) euros, comprised of thirty-five (35) commercial real estate investments in the Baltic states, the business volume growth of which will benefit the shareholders of both merging funds upon merger. In the opinion of the management boards of the merging funds, the supervisory boards of the merging funds and the management board of the fund manager of the merging funds the underlying assets (real estate investments) of the merging funds have performed well, even

through the corona crisis over the last two years. The vacancy rate of the rental premises in the real estate of the Fund Being Acquired is less than one point eight per cent (1,8%) and the vacancy rate of the Acquiring Fund is of the same magnitude and the real estate investments and the strategies of both funds are compatible and at the same time complement each other. As a result of the merger, diversification of assets is increased, incl. geographically and across business sectors. The proportion of each individual investment will decrease as well as the risks stemming therefrom to the merging funds as well as their investors (shareholders). Both the Acquiring Fund as well as the Fund Being Acquired have been established on the basis of an identical investment strategy – opportunistic and value-adding investment strategy – but at different times (the memorandum of association of the Acquiring Fund was entered into on 6 May 2015 when the investment period of the Fund Being Acquired had ended). The investment strategy or risk profile of the Acquiring Fund will not change upon the merger and the Acquiring Fund will continue to invest and raise capital also after the merger. Due to a greater market capitalisation, the merger will bring along better visibility, incl. amongst foreign investors, which in turn provides a more solid foundation for increasing market liquidity and financing and developing real estate investments. The merging funds have the same fund manager (i.e. EfTEN Capital AS), auditor (i.e. AS PricewaterhouseCoopers), depositary (i.e. AS Swedbank) and the same appraiser of the underlying assets (real estate investments) (i.e. Colliers International), so the merger will not lead to an increase in costs. The valuation principles of the merging funds are the same. Therefore, in the assessment of the merging funds' management boards, the merger, as contemplated in this agreement, will have positive effect on the shareholders of the merging funds.

4.3. The merging funds have a similar dividend policy as well as a similar structure of costs and fees. For the shareholders of the Fund Being Acquired the principle of calculating the success fees of the fund manager, which was until the listing of the Acquiring Fund on the stock exchange also analogous to the principles of calculating the success fees of the Fund Being Acquired, will change. Since the listing of the shares of the Acquiring Fund (01.12.2017) the success fee is calculated from the spread of the adjusted closing price of the last trading day of the reporting year and the closing price of the last trading day of the previous reporting year which is multiplied by the number of shares at the end of the reporting period and which also applies to the shareholders of the Fund Being Acquired upon entry into force of the merger. The principles of fees and charges of the Acquiring Fund are outlined in the articles of association of the Acquiring Fund, which is available on the website of the Acquiring Fund at www.eref.ee. In accordance with the divend policy of the merging funds, eighty percent (80%) of the free cash flow earned the previous financial year shall be paid out as dividends, which have previously been paid out every year. The shares of the Acquiring Fund are dividend shares and as of now, no changes are foreseen for the future with respect to that.

5. CONFIRMATIONS OF THE PARTIES

5.1. The Acquiring Fund and the Fund Being Acquired confirm (each independently) that:

5.1.1. As at the time of signing this agreement, no resolution has been adopted to change the amount of the capital entered in the Commercial Register of neither the Acquiring Fund nor the Fund Being Acquired, except for those already entered in the Commercial Register as at the date of this agreement. In this regard the parties clarify that the share capital of the Fund Being Acquired is planned to be increased by non-monetary contribution, the obejct of which is the claim to the success fee deriving from the management contract concluded between the Fund Being Acquired and the

fund manager, by issuing shares of the Fund Being Acquired to the fund manager (the abovementioned management contract shall be terminated in connection with the merger). The share capital of the Acquiring Fund is planned to be increased in connection with the exchange of shares in the course of the merger specified in this agreement.

5.1.2. The shares of the Fund Being Acquired are not encumbered by rights of third parties not specified in this agreement and no third party has any statutory or contractual right to apply for such rights, except for the pledge encumbering the shares of the Fund Being Acquired owned by Vello Kunman, the pledge encumbering the shares of the Fund Being Acquired owned by Erki Kilu, the pledge encumbering 4,369,014 shares of the Fund Being Acquired owned by OÜ Taali Grupp, the pledge encumbering the shares of the Fund Being Acquired owned by Jaan Pillesaar and the pledge encumbering the shares of the Fund Being Acquired owned by OÜ DSVH.

5.1.3. The assets of both the Acquiring Fund and the Fund Being Acquired are not encumbered with a commercial pledge and no agreement has been concluded to encumber the assets of the aforementioned funds with a commercial pledge.

5.1.4. All contributions for the shares of the merging funds have been paid in full.

5.1.5. No bankruptcy proceedings have been initiated or liquidation resolutions adopted with respect to neither the Acquiring Fund nor the Fund Being Acquired.

5.1.6. Both the Acquiring Fund as well as the Fund Being Acquired have not issued any preferred shares or convertible bonds.

5.1.7. The information specified in clauses 2 and 3 of this agreement is correct.

5.2. The parties confirm jointly and each independently, that

5.2.1. There are no circumstances that would restrict or exclude the parties' right to conclude this agreement on the terms specified herein or that would restrict or exclude the performance of this agreement in accordance with its terms.

5.2.2. They acknowledge that the merger cannot be challenged after entry of the merger on the registry card of the Acquiring Fund.

6. MERGER AND CALCULATING THE EXCHANGE RATIO

6.1. The Acquiring Fund shall merge with the Fund Being Acquired in accordance with the terms of this agreement and the laws of the Republic of Estonia. The Acquiring Fund shall merge the Fund Being Acquired with itself.

6.2. As a result of the merger, the Fund Being Acquired shall be dissolved without liquidation proceedings and the Acquiring Fund shall become the legal successor of the Fund Being Acquired.

6.3. In order to carry out the merger, the share capital of the Acquiring Fund shall be increased on the account of the totality of assets of the Fund Being Acquired transferred to the Acquiring Fund (non-monetary contribution), the value of which shall be EPRA Net Asset Value (hereinafter **NAV**) of the Fund Being Acquired. The use of EPRA NAV has been recommended by the association of European real estate sector entrepreneurs (the official name: *European Public Real Estate Association*, above and hereinafter **EPRA**) and it is commonly used by publicly listed European real estate companies. Calculation of EPRA NAV assumes a long-term business strategy for the real estate investment company where divestment of assets in the near future is unlikely and temporary differences in financial assets or liabilities obscure the transparency of the fair value of the net assets of the fund. Therefore, under EPRA's NAV measure IFRS (International Financial Reporting Standards; in Estonian: rahvusvaheline raamatupidamise standard, in accordance with which the merging funds' consolidated financial statements have been prepared) NAV is

adjusted by excluding 1) deferred income tax liability from real estate investments and 2) the fair value of interest derivatives. Due to that EPRA NAV describes the fair value of the merging funds more clearly than NAV which is calculated in accordance with IFRS. The fund manager has published EPRA NAV in addition to IFRS NAV of both merging funds as of 01.01.2019. In accordance with § 143 (5) of the Investment Funds Act (hereinafter **IFA**) the value of the shares used as the basis of the exchange ratio of shares of a closed-end fund may be different from the NAV of the shares if 1) the conditions for determination of the exchange ratio and the value of the shares used upon determination of the exchange ratio shall be decided at the general meeting of the shareholders of the fund being acquired and the acquiring fund and at least two-thirds of the votes represented at the general meeting are in favour thereof, unless the articles of association prescribe a greater majority requirement; 2) the shares of the acquiring fund are traded on a regulated market. The foregoing conditions under § 143 (5) of the IFA are met in this merger agreement and therefore the useage of EPRA NAV is reasoned and consistent with the applicable law. The merging funds' management boards therefore consider EPRA NAV as suitable and appropriate for assessment of the value of the assets of the Fund Being Acquired.

6.4. The extent of the increase of share capital of the Acquiring Fund as well as the number of shares to be issued upon the increase and the share premium shall be calculated on the basis of the formula specified in clause 6.4.1 of this agreement. The new shares of the Acquiring Fund shall be issued at a share premium, while the nominal value of each new share is ten (10) euros. All figures specified in clauses 6.3, 6.4.1 and 6.5 shall be calculated as at the day preceding the balance sheet day of the merger (i.e. 01.01.2023), i.e. on the basis of the balance sheet figures as at 31.12.2022.

6.4.1. Number of new shares of the Acquiring Fund upon increase of share capital = the Fund's Being Acquired EPRA NAV (in euros) ÷ (divided) the Acquiring Fund's EPRA NAV per share (in euros, precision equivalent to four decimals).

The Fund's Being Acquired EPRA NAV = the Fund's Being Acquired equity + the Fund's Being Acquired interest derivatives at fair value + the Fund's Being Acquired deferred income tax liability.

The Acquiring Fund's EPRA NAV per share = (the Acquiring Fund's equity + the Acquiring Fund's interest derivatives at fair value + the Acquiring Fund's deferred income tax liability) ÷ (divided) number of the Acquiring Fund's shares.

6.5. Upon the merger, the shares of the Fund Being Acquired owned by a shareholder of the Fund Being Acquired who has been entered in the shareholders list of the Fund Being Acquired as at the end of the business day of Nasdaq CSD on 31.12.2022, unless the general meeting of the shareholders of the Fund Being Acquired specifies otherwise, shall be exchanged with the shares of the Acquiring Fund on the basis of the exchange ratio calculated as follows:

Exchange ratio upon merger = the Fund's Being Acquired EPRA NAV per share (in euros, precision equivalent to eight decimals) ÷ the Acquiring Fund's EPRA NAV per share (in euros, precision equivalent to eight decimals). In this respect, the EPRA NAV per share of the Fund Being Acquired shall be calculated on the basis of a formula analogous to the calculation of the EPRA NAV per share of the Acquiring Fund, i.e. the Fund's Being Acquired EPRA NAV per share = (the Fund's Being Acquired equity + the Fund's Being Acquired interest derivatives at fair value + the Fund's Being Acquired deferred income tax liability) ÷ number of the Fund's Being Acquired shares. The exchange ratio shall be rounded at eight decimal places.

As a result of the merger, each shareholder of the Fund Being Acquired shall receive the shares of the Acquiring Fund for the share of the Fund Being Acquired on the basis of the

exchange ratio calculated in accordance with the formula specified in the sentence preceding the previous sentence.

6.6. The number of shares used for the exchange as calculated in accordance with the formula specified in clause 6.5 of this agreement and the increase of the share capital of the Acquiring Fund shall be determined by the resolution of the supervisory board of the Acquiring Fund. In this respect, upon the exchanging of the shares, the supervisory board of the Acquiring Fund reserves the right to round the number of shares to the nearest integer when determining the exact number of new shares of the Acquiring Fund.

6.7. No payments shall be made to the shareholders of the Fund Being Acquired upon exchange of shares owned by shareholders of the Fund Being Acquired with shares of the Acquiring Fund.

6.8. The shares of the Acquiring Fund shall be deemed transferred to the shareholders of the Fund Being Acquired at the time of making the merger entry on the registry card of the Acquiring Fund. Upon entering the merger on the registry card of the Acquiring Fund, the shareholders of the Fund Being Acquired shall become the shareholders of the Acquiring Fund and their shares shall be exchanged with the shares of the Acquiring Fund.

6.9. The Acquiring Fund shall grant the shareholders of the Fund Being Acquired all rights which derive from the law and the articles of association of the Acquiring Fund.

6.10. The shares of the Acquiring Fund shall grant the shareholders of the Fund Being Acquired the right to dividends for the financial year when the merger entry is made on the registry card of the Acquiring Fund and thereon.

6.11. The shareholders of the Acquiring Fund as well as the Fund Being Acquired do not have the right to demand redemption of their shares and § 144 of the IFA is not applicable to this merger (applicability of § 144 of the IFA is precluded by virtue of § 516 (4) of the IFA).

6.12. The Acquiring Fund will continue operating under the business name **EfTEN Real Estate Fund AS** (a resolution for the amendment of the articles of association and the business name of the Acquiring Fund is planned to be adopted for the purposes of this).

6.13. Pursuant to § 154 (2) of the IFA the merging funds are not required to prepare a merger report or interim balance sheet. Instead of the interim balance sheet, the fund's last published semi-annual report will be presented to the shareholders.

6.14. Verification of merger conditions shall be carried out in accordance with § 153 of the IFA.

6.15. The members of the management boards and supervisory boards of the merging funds shall not be granted any additional rights or benefits in connection with the merger. Moreover, the members of the management board and supervisory board of the Fund Being Acquired shall not be paid any compensation in connection with the dissolution of the Fund Being Acquired as a result of the merger.

6.16. Rights and obligations arise under this merger agreement only after the merger agreement has been approved by both merging funds and the Financial Supervision Authority has given permission for the funds to merge.

7. TRANSFER OF TOTALITY OF ASSETS OF THE FUND BEING ACQUIRED

Upon entry into force of the merger, the totality of assets of the Fund Being Acquired, incl. rights, obligations and agreements, will transfer to the Acquiring Fund. Immediately after the merger entry has been made on the registry card of the Acquiring Fund, the management board of the Acquiring Fund shall submit petitions for the registration of the property of the Fund Being Acquired entered into property registers as property of the Acquiring Fund (where certain property is required to be registered pursuant to law).

8. BALANCE SHEET DATE AND ENTRY INTO FORCE OF THE MERGER

8.1. The balance sheet date of the merger, i.e. the time since when the transactions of the Fund Being Acquired shall be deemed to be made on account of the Acquiring Fund shall be 01.01.2023, which shall become effective upon entry in the commercial register.

8.2. The merger will enter into force upon entering the merger on the registry card of the Acquiring Fund in the commercial register.

9. EMPLOYEES AND MANAGEMENT

9.1. The merging funds do not have employees. A subsidiary of the Acquiring Fund as well as a subsidiary of the Fund Being Acquired have employees employed under employment contracts where this is appropriate considering the specifics of the assets and interests of the merging funds (for example in shopping centres), also where this is required under the law, and the merger does not affect the employment contracts concluded with the merging funds subsidiaries' employees, which continue to remain valid under the same terms and conditions.

9.2. The merging funds purchase services under the management contract from the fund manager (EfTEN Capital AS) or with the assistance of the fund manager and in accordance with the management contract and the outsourcing arrangements of the fund manager from third parties (e.g. audit service, brokerage service, if necessary, safe custody, etc.). The management contract between the Fund Being Acquired and the fund manager as well as the depositary contract between the Fund Being Acquired and depositary (AS Swedbank) shall be terminated in connection with the merger.

9.3. Upon entry of the merger on the registry card of the Acquiring Fund, the authorisations and term of office of the members of the management board and the supervisory board of the Fund Being Acquired shall be deemed expired.

10. THE ORIGINAL AND DISTRIBUTION OF NOTARISED TRANSCRIPTS

10.1. This notarial act is drawn up and signed in one original which is preserved at the notary's office.

10.2. Notarised transcripts of the notarial act shall be issued to the participants either on paper or digitally as chosen by the participant. The notarised digital transcript is also available to the participants at the State Internet portal www.eesti.ee.

10.3. The Acquiring Fund and the Fund Being Acquired request the notary to submit a notarised transcript of this notarial act to the registrar of the Commercial Register.

11. EXPENSES RELATED TO ENTRY INTO THE AGREEMENT

11.1. The costs related to the merger, incl. conclusion of this agreement shall be paid by the manager of the Acquiring Fund in accordance with § 165 (1) of the IFA.

11.2. The participant shall pay the notary fee in cash or by payment card at the notary's office or within three (3) working days by a bank transfer to the current account of the notary. The notary has the right to withhold the transcripts of the notarial act until settlement of the notary's fee. Pursuant to § 38 (2) of the Notary Fees Act the participants shall be solidarily liable for the payment of the notary fee.

This notarial act has been read out to the participants at the presence of the attester, it has been given for their review before approval and thereafter approved and signed by hand by the participants in the presence of the attester of the notarial act. The participants waived the reading of the documents attached to the act, the attached documents were given to the participants for review; these were approved by the participants and signed by hand in the presence of the attester of the act.

This document has 16 pages that are bound with a string and embossed with a seal impression.

Notary fee for certifying the merger agreement EUR 10 735,92 (transaction value EUR 6,390,000.00: Notary Fees Act § 18 (2), 22, 23 (2)).

Total notary fee	EUR **10,735.92**
Value Added Tax	EUR 2,147.18
Total	EUR 12,883.10

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Given name(s) and surname in cursive *signature*

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Given name(s) and surname in cursive *signature*

Signature and seal of the notary

Appendix 1 to the notarial act

1. Notary's explanations to the parties

1.1. Under § 140 (1) of the Investment Funds Act, a fund (hereinafter *fund being acquired*) may be merged with another established or founded fund (hereinafter *acquiring fund*). (3) A common fund may merge with a common fund. Common funds may also merge in such a manner that a new common fund is established. A public limited fund may merge with a public limited fund. Public limited companies may also merge in such a manner that a new public limited fund is founded. (6) A public fund may merge with a non-public fund only as an acquiring fund. The provisions of this Chapter concerning merger of funds apply to merger of a public fund with a non-public fund.

1.2. Under § 142 (1) of the Investment Funds Act, the provisions of the Commercial Code do not apply to merger of a public limited fund, unless otherwise provided for in this Chapter. (2) A public limited fund may merge pursuant to the provisions of subsections 391 (1)-(5) of the Commercial Code only with another public limited fund.

1.3. Under § 143 (1) of the Investment Funds Act, upon merger of a fund, the number of the units or shares of the acquiring fund issued to a unit-holder or shareholder of the fund being acquired shall be such that the net asset value thereof corresponds to the net asset value of the units or shares of the fund being acquired which were held by the unit-holder or shareholder. (3) The units or shares of an acquiring fund belonging to the assets of the fund being acquired and the units or shares of a fund being acquired belonging to the assets of the acquiring fund shall be redeemed before the merger. (4) The units or shares of a fund being acquired shall be cancelled upon merger. (5) The value of the units or shares used as the basis of the exchange ratio of the units or shares of a closed-end fund may be different from the net asset value of the units or shares under the following conditions: 1) the conditions for determination of the exchange ratio and the value of the units or shares used upon determination of the exchange ratio shall be decided at the general meeting of unit-holders or shareholders of the fund being acquired and the acquiring fund and at least two-thirds of the votes represented at the general meeting are in favour thereof, unless the fund rules or articles of association prescribe a greater majority requirement; 2) the units or shares of the fund being acquired are traded on a regulated market or, pursuant to the fund rules or articles of association, the units or shares of the fund being acquired must be admitted to trading on a regulated market within 12 months after adoption of the decision of the general meeting specified in clause 1) of this subsection. (6) The fund manager of an acquiring fund may determine, with the consent of the fund manager of the fund being acquired, the final issue price of a closed-end fund under the conditions indicated in the decision of the general meeting and within the range of the issue price determined in the decision of the general meeting specified in clause (5) 1) of this section.

1.4. Under § 146 (1) of the Investment Funds Act, for merger of a fund, a fund manager or public limited fund must apply for an authorisation from the Financial Supervision Authority (hereinafter in this Division *authorisation for merger*). (2) In order to apply for an authorisation for merger, a written application and the following data and documents (application, data and document jointly hereinafter in this Division the *application*) must be submitted to the Financial Supervision Authority: 1) the merger agreement; 2) the consent of the depositary of each merging fund specified in subsection 153 (1) of this Act; 3) the information specified in subsection § 156 of this Act which is given to the unit-holders or shareholders of each merging fund (hereinafter in this Division *merger information*); 4) an assessment of the impact of the merger on the financial position of the fund manager of the

acquiring fund, including forecasts of compliance of the fund manager with prudential requirements, unless the UCITS is subject to cross-border merger. (5) If funds merge in such a manner that a new fund is founded or established upon the merger or the fund rules, articles of association or prospectus of the fund are amended, an application for approval of establishment or foundation of a new fund in accordance with the provisions of § 31 of this Act or an application for approval of the amendments to the fund rules or articles of association by the Financial Supervision Authority in accordance with the provisions of § 37 of this Act must be appended to the application for an authorisation for merger, or the amendments to the prospectus must be submitted to the Financial Supervision Authority in accordance with the provisions of § 77 and, as appropriate, § 79 of this Act. If any other application is appended to the application for authorisation for merger or any other application in submitted in connection with the merger, it must be ensured that the amendments to the fund rules, articles of association or prospectus of the fund enter into force in line with the date of the merger taking effect, and the right arising from amendment of the fund rules, articles of association or prospectus of the fund to redeem the units or shares, as appropriate, is applicable in line with the right provided for in § 144 of this Act.

1.5. Under § 151 (2) of the Investment Funds Act, for merger of a fund, the fund manager of a common fund or a public limited fund shall enter into an agreement (hereinafter *merger agreement*). (3) A merger agreement shall set out at least the following data: 1) the method of merger and types of merging funds; 2) the reason for the merger; 3) the impact of the merger on unit-holders or shareholders of both the fund being acquired as well as the acquiring fund; 4) the exchange ratio of the units of the fund being acquired and criteria for the valuation of the assets and liabilities of the fund on the date of calculating the exchange ratio; 5) the method of calculation of the exchange ratio; 6) the planned effective date of the merger as of which the transactions of the fund being acquired shall be deemed to be conducted by the acquiring fund; 7) the procedure for transfer of assets and change of units or shares. (4) A merger agreement may prescribe that monetary payments of the acquiring fund are made to unit-holders or shareholders of the fund being acquired, and the amount thereof may not exceed one-tenth of the total amount of the net asset value of the units or shares exchanged for them. The monetary payments specified in this subsection must be made together with the issue of the units or shares of the acquiring fund to the unit-holders or shareholders of the fund being acquired. (5) A merger agreement may contain other conditions.

1.6. Under § 152 (1) of the Investment Funds Act, a merger agreement of a public limited fund must be notarised.

1.7. Under § 153 (1) of the Investment Funds Act, the depositary of each fund participating in the merger shall verify the compliance of the data specified in clauses 151 (3) 1), 6) and 7) of this Act with the fund rules, articles of association or prospectus of the fund and the requirements of this Act. In the case of compliance with the requirements specified in the previous sentence, the depositary shall prepare a written report on the verification carried out which *inter alia* states consent for merger of the fund. (2) The depositary or sworn auditor of a fund being acquired shall additionally verity the following conditions of a merger agreement: 1) the criteria for valuation of the assets applicable on the date of calculating the exchange ratio; 2) the method of calculation of the exchange ratio and the actual exchange ratio determined on the date for calculation of that exchange ratio; 3) the monetary payments per unit or share. (3) In order to verify the conditions of a merger agreement, one or several common sworn auditors may be appointed to several or all of the funds being acquired. (4) A depositary or sworn auditor shall prepare a written report on the verification specified in subsection (2) of this section which shall be made accessible

by the fund manager to the unit-holders or shareholders of the fund being acquired and the acquiring fund and the Financial Supervision Authority at their request free of charge. If the conditions specified in subsection (2) of this section are verified by a sworn auditor, the provisions of subsections 396 (2^2)-(4) of the Commercial Code apply to the report prepared as a result of the verification.

1.8. Under § 154 (1) of the Investment Funds Act, in addition to the provisions of this Act, the provisions of §§ 397 and 398, subsections 419 (2)-(5) and §§ 420 and 421 of the Commercial Code apply to holding of a general meeting, unless otherwise provided for in this Act. (2) At least two weeks before the general meeting which decides on the merger, the management board shall submit to shareholders for examination at the seat of the public limited fund a signed merger agreement, the annual reports of the merging funds for the past three years, if available, and the depositary's report specified in subsection 153 (1) of this Act. Upon merger of a public limited fund, no merger report or interim balance sheet is prepared. Instead of the interim balance sheet, the latest disclosed semi-annual report shall be submitted to shareholders for examination. (3) The articles of association of a public limited fund may not prescribe that adoption of the merger resolution requires more than three-quarters of the votes represented at the general meeting. (4) If the articles of association of a public limited fund place the decision making on merger of a public limited fund within the competence of the supervisory board of the public limited fund, the provisions of §§ 321-323 of the Commercial Code concerning meetings and decisions of the supervisory board apply to decisions on approval of the merger, unless otherwise provided for in this Act. (5) Merger of a public limited fund shall be decided by the general meeting of the public limited fund, unless otherwise provided for in the articles of association of the public limited fund.

1.9. Under § 155 (1) of the Investment Funds Act, funds being acquired and acquiring funds disclose promptly after receipt of an authorisation for merger a notice on the fund merger on the website of the fund manager of the common fund, the consolidation group to which the fund manager belongs or the public limited fund. (2) The notice specified in subsection (1) of this section must set out at least the following: 1) the date of issue of the authorisation for merger; 2) the term for redemption or exchange of the units or shares of the fund; 3) the planned effective date of the merger provided for in the merger agreement.

1.10. Under § 156 (1) of the Investment Funds Act, the fund manager of a common fund being acquired and of an acquiring common fund or a public limited fund shall submit appropriate and accurate merger information concerning the circumstances of the merger to the unit-holders or shareholders of the fund which allows the unit-holders or shareholders to assess the impact of the merger and the need to exercise the right to redeem or exchange their units or shares. (2) The merger information shall be submitted after receipt of an authorisation for merger but not later than 30 calendar days before the date of redemption or exchange of units or shares.

1.11. Under § 161 (1) of the Investment Funds Act, a merger takes effect on the date provided for in the merger agreement, unless otherwise provided for in this Act. (2) Upon merger taking effect, the assets of the fund being acquired transfer to the acquiring fund. (3) The fund manager of an acquiring fund or a public limited fund must notify, promptly after the merger taking effect, the depositary of the acquiring fund of transfer of the assets of the fund being acquired to the acquiring fund. (4) A merger which has taken effect shall not be challenged.

1.12. Under § 163 (1) of the Investment Funds Act, the provisions of §§ 400-403 and 405 of the Commercial Code apply to entry of merger of a public limited fund in the commercial register, unless otherwise provided in this Subdivision. (2) A merging public limited fund may submit the application specified in subsection 400 (1) of the Commercial

Code for entry of the merger of the public limited fund in the commercial register after the date of calculation of the exchange ratio of the shares specified in subsection 144 (2) of this Act. (4) The final balance sheet of a public limited fund shall be prepared in accordance with the requirements for the balance sheet that constitutes part of an annual report of the public limited fund and the provisions of this Act concerning approval of annual reports and conduct of audits of public limited funds.

1.13. Under § 165 (1) of the Investment Funds Act, expenses related to merger of a fund shall be covered by the manager of the merging fund. Differently from the provisions of clause 58 (1) 3) of this Act, no legal, consultation or management fees related to the merger shall be paid for the account of the fund. (2) No fee shall be charged for issue of the units or shares or cancellation of the units or shares of an acquiring fund. (3) No fee shall be charged for redemption or exchange of units or shares upon merger, with the exception of compensation to cover the costs arising upon redemption or exchange of units or shares upon merger.

1.14. Under § 400 (1) of the Commercial Code, the management board of or the partners entitled to represent a merging company shall submit, nor earlier than after one month of the approval of the merger resolution, a petition for entry of the merger in the commercial register. The following shall be appended to the petition: 1) a copy of the merger agreement certified by a notary; 2) the merger resolution; 3) the minutes of the meeting of the partners or shareholders if the merger resolution is made at a meeting; 4) the permission for merger, if required; 5) the merger report or the agreements not to prepare one; 6) the auditor's report, if required, or the agreements not to prepare one; 7) the final balance sheet of the company being acquired if the company being acquired submits the petition; 9) resolution of the Competition Board to grant permission for a concentration if the obligation to request such permission arises from the Competition Act; 10) if the shares of a merging company are entered in the Estonian register of securities or another depository, the confirmation of the registrar of the Estonian register of securities or another depository that the management board of the merging company has notified the registrar or the depository of the merger; 11) the interim balance sheet or the agreements not to prepare one.

1.15. A registrar may enter a merger in the register only if the final balance sheet of the company being acquired is prepared as at a date not earlier than eight months before submission of the petition to the commercial register. The final balance sheet is prepared pursuant to the requirements established for the balance sheet that constitutes part of the annual report, and the approval of the final balance sheet and conducting the audit thereof is governed by the provisions concerning the approval of the annual report and conducting an audit. The final balance sheet shall be prepared using the same accounting policies and presentation which were used in the preparation of the balance sheet that constitutes part of the latest annual report. The final balance sheet shall be prepared as at the day preceding the merger balance sheet date.

1.16. The members of the management board and supervisory board, or the managing partners of a merging company shall be solidarily liable to the company, the partners or shareholders, or the creditors of the company for any damage wrongfully caused by the merger. The limitation period for the aforementioned claim shall be five years from entry of the merger on the registry card of the acquiring company.

1.17. Under § 397 (1) of the Commercial Code, rights and obligations shall arise from a merger agreement if the merger agreement is approved by all merging companies. A merger resolution shall be in writing. (2) The partners or shareholders shall be provided with the opportunity to examine the merger agreement, merger report and auditor’s report at least two weeks before deciding on approval of the merger agreement unless otherwise

provided by law. (3) A partner or shareholder may demand a copy of the merger agreement or resolution. (4) The management boards of or the partners entitled to represent the merging companies, prior to deciding on the approval of the merger agreement, shall notify the partners or the general meeting of all material changes in the assets of the company which occur in the interim between the entry into the merger agreement and deciding on the approval of the merger agreement. The management boards of or the partners entitled to represent the merging companies shall notify of the changes specified in the previous sentence also the management boards of or the partners entitled to represent the other merging companies, who shall notify of the above changes the partners or the general meeting of their companies. (5) The obligations specified in subsection (4) of this section need not be performed if the only share or all the shares of the company being acquired are held by the acquiring company, or if this is agreed to by all the partners or shareholders of the merging company.

1.18. Under § 398 (1) of the Commercial Code, at the request of a partner, shareholder or member of the management board or supervisory board, a court may declare invalid a merger resolution which is in conflict with the law, the partnership agreement or the articles of association if the request is submitted within one month after the resolution is made. (2) The merger resolution of a company being acquired shall not be declared invalid on the basis that the share exchange ratio is fixed too low. (3) If the share exchange ratio is fixed too low, a partner or shareholder may demand a refund from the acquiring company which may exceed the amount specified in subsection 392 (2) of this Code. (4) The acquiring company shall pay a fine for delay on an unpaid refund in the amount provided by law as of entry of the merger on the registry card of the acquiring company. The above does not preclude or restrict the filing of claims for compensation for damage exceeding the default interest.

1.19. Under § 419 (2) of the Commercial Code, at the request of a shareholder, he or she shall be immediately provided free of charge either complete or partial copy, based on the shareholder's wish, of the documents specified in subsections (1) and (3) of this section. Upon the shareholder's consent, the copy may be sent to his or her e-mail address. (2^1) If a public limited company pursuant to § 63 of this Code has provided to the registrar its homepage address, to fulfil the requirements specified in subsections (1) and (2) of this section it may publish the documents on its homepage in a way which provides the opportunity for saving and printing these. The documents shall be available on the homepage of the public limited company within one month prior to the general meeting and until the end of the general meeting. (3) If the latest annual report of a merging public limited company is prepared in respect to financial year, which ended earlier than six months prior to the entry into the merger agreement, the balance sheet (interim balance sheet) compliant with the requirements established for the balance sheet that constitutes part of the annual report shall be prepared as at no earlier than the first day of the third month preceding the entry into the merger agreement. The interim balance sheet shall be prepared using the same accounting policies and presentation which were used in the preparation of the balance sheet that constitutes part of the latest annual report. The interim balance sheet shall be submitted to shareholders for examination pursuant to the procedure specified in subsections (1)–(2^1) of this section. The interim balance sheet need not be prepared if all the shareholders of the merging public limited companies agree thereto. Instead of the interim balance sheet, the half-yearly report disclosed pursuant to § 184^{11} of the Securities Market Act may be submitted to shareholders for examination. (4) At least one month prior to the general meeting deciding on the merger, the management board shall submit the merger agreement to the registrar of the commercial register or disclose it on the homepage of the public limited company. Upon the disclosure of the merger

agreement on the homepage of the public limited company, it shall be available to the public free of charge until the end of the general meeting. In addition, the management board shall publish in the official publication *Ametlikud Teadaanded* a notice concerning the entry into the merger agreement. The notice shall indicate where or at which homepage address it is possible to examine the merger agreement and other documents specified in subsection (1) of this section and receive copies of these documents. Upon the disclosure of the merger agreement on the homepage of the public limited company, the notice shall also indicate the disclosure date of the merger agreement. (5) If the public limited company is required to make public the regulated information in the central recording system for information specified in subsection 184^6 (5) of the Securities Market Act, the merger agreement may be disclosed in such system instead of the homepage of the public limited company. In the remaining part, subsection (4) of this section shall apply.

1.20. Under § 420 (1) of the Commercial Code, at the general meeting, the management board shall explain the legal and economic consequences of the merger, including the exchange of shares. (2) At the general meeting, the supervisory board shall present its opinion concerning the merger. (3) At the general meeting, information concerning circumstances related to other merging companies shall also be given to a shareholder at the request of the shareholder.

1.21. Under § 421 (1) of the Commercial Code, a merger resolution shall be adopted if at least two-thirds of the votes represented at the general meeting are in favour, and the articles of association do not prescribe a greater majority requirement. (2) If a public limited company has several classes of shares, the merger resolution shall be adopted if, in addition to the provisions of subsection (1) of this section, at least two-thirds of the holders of each class of shares vote in favour of the resolution, and the articles of association do not prescribe a greater majority requirement. If a resolution is made pursuant to the procedure provided for in subsection 297 (2), at least two-thirds of the votes represented of each class of shares at the general meeting must vote in favour of the resolution unless the articles of association prescribe a greater majority requirement. (3) If the acquiring company is not a public limited company, the holders of preferred shares and convertible bonds of the public limited company being acquired shall participate in the determination of representation and in voting on the same bases as the shareholders. (4) If at least nine-tenths of the share capital of a private limited company or of the share capital of a public limited company being acquired is held by the acquiring public limited company, approval of the merger agreement by a merger resolution of the acquiring public limited company shall not be required for merger. The own shares of the company being acquired shall not be taken into account in the determination of representation. The acquiring public limited company at least one month before deciding on the approval of the merger agreement by the company being acquired or, if the merger agreement need not be approved at the meeting of shareholders or the general meeting of the company being acquired, at least one month before the creation of the rights and obligations arising from the merger agreement shall perform the disclosure obligations specified in § 419 of this Code. A merger resolution is necessary if this is demanded within the term specified in the previous sentence by shareholders of the acquiring public limited company whose shares represent at least one-twentieth of the share capital and unless the articles of association prescribe a lower representation requirement. (5) If all the shares of the public limited company being acquired are held by the acquiring private limited company or public limited company, the approval of the merger agreement by the merger resolution of the public limited company being acquired is not required for the merger. The own shares of the public limited company being acquired shall not be taken into account in the determination of representation. The public limited company being acquired shall at least one month before

the creation of the rights and obligations arising from the merger agreement perform the disclosure obligations specified in subsections 419 (4) and (5) of this Code.

1.22. Under § 516 (4) of the Investment Funds Act, a fund founded as a public limited company which was founded pursuant to the Investment Funds Act in force prior to the entry into force of this Act shall be deemed to be a fund founded pursuant to this Act to which the provisions of subsections 18 (1), (2), (7), (8), (9) and (12), § 19, subsection 24 (5), clauses 29 (2) 1), 2) and 12), § 34, subsections 42 (3) and (4), subsection 50 (2), subsection 54 (6), § 56, § 144, subsection 152 (2), subsection 242 (1), clauses 244 (2) 1), 2) and 4), subsection 256 (1) and subsection 259 (2) of this Act do not apply.